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DRAFT REGULATORY EVALUATION, INITIAL REGULATORY FLEXIBILITY DETERMINATION, INTERNATIONAL TRADE IMPACT ASSESSMENT, AND UNFUNDED MANDATES ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

PASSENGER FACILITY CHARGE PROGRAM (14 CFR PART 158) AMENDMENT TO COLLECTION COMPENSATION PURSUANT TO REPORT LANGUAGE FOR PUBLIC LAW 106-181

**OFFICE OF AVIATION POLICY AND PLANS
OPERATIONS REGULATORY ANALYSIS BRANCH, APO-310**

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EXECUTIVE SUMMARY

This regulatory evaluation examines the costs and compensation effects associated with the proposed rule to amend part 158 of Title 14 of the code of Federal Regulations, Passenger Facility Charges. The Federal Aviation Administration (FAA) proposes to update part 158 to meet the statutory requirement of 49 U.S.C. §40117(i)(2)(C) that air carriers receive compensation for their necessary and reasonable expenses incurred in collecting and handling the passenger facility charge (PFC). This compensation is to be net of interest accruing to the air carriers after collection of the PFC from the passenger and before its remittance to the airport public agencies.

The current compensation to air carriers permitted by §158.53 is $0.08 per PFC remitted to the airport public agency. The new statutory provisions implemented under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) enable airport authorities to increase the PFC level from its previous $3 cap to $4 or $4.50 per revenue enplanement in order to collect more funds to accomplish specified objectives of the PFC program. These objectives are to enhance the safety, security and capacity of their facilities; reduce noise in nearby communities; and enhance airline competition to the benefit of air travelers.

The allowance of a $4.50 PFC level may increase the expense to air carriers for collecting and handling in a manner not remunerated by the existing $0.08 per PFC remitted compensation level. Some air carriers and their trade associations have argued since the middle-1990's that the $0.08 per PFC remitted compensation level is not adequate to recover their costs even at the $3 PFC level. Accordingly, Congress directed the FAA in the conference committee report accompanying AIR-21 (House Report 106-513) to provide air carriers with the opportunity to demonstrate their argument for more compensation in a rulemaking proceeding.

Based on data submitted by the air carriers and subject to comment in the notice of proposed rulemaking, the FAA proposes a new compensation amount of $0.10 per PFC

collected, to be raised to $0.11 per PFC collected in 2005 and thereafter. The FAA estimates that this compensation level would allow air carriers to recover reasonable PFC collection and handling expenses. Once fully phased in, the new compensation amount would increase air carrier compensation by up to $21 million annually in PFC funds (based on 1999 collection levels) above levels they would receive at the $0.08 per PFC remitted level. The additional compensation to air carriers proposed in this rule would be equivalent to less than one percent of total future PFC receipts.

The FAA estimates that the proposed rule, which chiefly involves a reallocation of a small portion of each PFC collection from airports to air carriers, would be a cost-effective means to accommodate the statutory requirement that air carriers receive compensation for their necessary and reasonable expenses incurred in collecting and handling PFCs. In particular, the FAA proposes an amount and method of compensation that would minimize its impact of air travelers, airports, and air carriers. Air travelers would not incur an increase in the cost of their tickets as a result of this adjustment. The higher compensation to air carriers would slightly reduce annual PFC streams to airports but would not erode airport PFC collection authority. Rather, airports would be able to recover this slightly higher handling fee by minimal extensions of PFC collection periods. Air carriers may incur minor costs of incorporating the new compensation levels in their accounting programs, but this cost would be greatly outweighed by the higher compensation level they would receive.

The proposed rule would not have a significant impact on a substantial number of small entities, nor would it constitute a barrier to international trade. The rule does not contain a federal intergovernmental or private sector mandate that exceeds $100 million in any year, therefore, the requirement of the Unfunded Mandates Reform Act of 1995 do not apply.

I. INTRODUCTION

This regulatory evaluation investigates the economic impact of a proposed rule amending part 158 of Title 14 of the Code of Federal Regulations, Passenger Facility Charges, to reflect reasonable and necessary compensation levels to air carriers for collecting PFCs as required by statute (49 U.S.C. §40117(i)(2)(C)). The proposed rule was initiated in response to language in House Report 106-513, which accompanied the "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century," in which Congress directed the FAA to provide air carriers with the opportunity to demonstrate their views that the cost of collection allowed by the current PFC regulation, $0.08 for each PFC remitted to an airport public agency, is too low. This proposed rule would specifically amend §158.53.

In addition to the economic analysis, this regulatory evaluation contains an initial regulatory flexibility determination, which analyzes the economic impact of the proposed regulatory changes on small entities, as required by the Regulatory Flexibility Act of 1980, as amended. This evaluation also contains an assessment of the effect of the proposed regulatory changes on international trade, as required by the Trade Agreement Act of 1979. Finally, this document contains an Unfunded Mandate Assessment, as required by the Unfunded Mandates Reform Act of 1995.

II. BACKGROUND

On November 5, 1990, Congress enacted the Aviation Safety and Capacity Expansion Act of 1990 (Pub.L. 101-508) that authorized public agencies to impose a PFC of $1, $2, or $3 per enplaned passenger at a commercial service airport it controls. For each passenger round trip, a PFC is only collected at the first two airports and the last two

enplaning airports where PFCs are imposed thus bringing the maximum charge to $12. The statute set forth several broad objectives for the use of these funds in furthering airport development including preserving or enhancing airports' safety, security, or capacity; reducing noise; or enhancing airline competition. The statute authorized the use of the funds for a broad array of development projects and gave airports more flexibility in the use of these funds than allowed by Airport Improvement Program (AIP) grants. The statute directed the Secretary of Transportation to establish the PFC program through regulation, including procedures to require an air carrier or foreign air carrier and its agents to collect a PFC imposed by an airport public agency. These procedures were to ensure that the collected money, less a uniform amount the Secretary determines reflects the average necessary and reasonable expenses (net of interest accruing to the carrier and agent after collection and before remittance) incurred in collecting and handling the fee, is paid promptly to the eligible agency for which they are collected.

On May 29, 1991, FAA issued a final rule (56 FR 24254) setting forth procedures for public agency applications for authority to impose PFCs, for FAA processing of such applications, for collection, handling, and remittance of PFCs by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing AIP grants apportioned to large and medium hub airports imposing a PFC. Minor technical amendments and corrections (56 FR 30867 and 56 FR 37127) were made in the summer of 1991. This rule established part 158, Passenger Facility Charges.

Section 158.53 provides that, as compensation for collecting, handling, and remitting PFC revenue, the collecting air carrier shall be entitled to $0.08 of each PFC remitted, in addition to any interest or other investment return earned on the PFC revenue between the time of collection and remittance to the airport public agency. To recover their costs of implementing PFC charges, §158.53 allowed air carriers to retain an additional $0.04 of each PFC remitted (for a total of $0.12 per PFC remitted) on or before June 28, 1994, after which the basic $0.08 fee became effective.

On May 27, 1994, the Airport Transportation Association of America (ATA) petitioned for a rule change to §158.53 to extend the handling fee of $0.12 per each PFC remitted to a public agency, for an additional 3 years after June 28, 1994. The ATA also proposed that after the third year, the petitioner would file comments to determine if the entire airline industry had fully recovered the cost necessary to maintain the PFC collection system. Further, the petitioner requested that §158.53 be amended to allow air carriers to retain a handling fee for each refunded PFC.

On June 24, 1994, the FAA published a summary of the ATA's petition in the Federal Register (59 FR 32668). Air carriers and public agencies were asked to provide specific data to the FAA, so that the agency could determine an adequate rate of airline compensation. The FAA received twelve comments in response to this notice, but determined that these comments did not contain sufficient information to make a decision. As a result, the FAA issued an Advance Notice of Proposed Rulemaking (ANPRM) (61 FR 16678) on April 16, 1996, providing additional guidance on the quantity and quality of information that the FAA needed in order to make a decision regarding the ATA's petition on adequate compensation for PFC revenue collecting, handling, and remitting. However, the FAA withdrew this ANPRM on April 10, 2000, (65 FR 18932) because airline responses fell below the required minimum response required by the FAA (i.e., cost data representing 75 percent of enplanements at all PFC locations nationally).

On April 5, 2000, the "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" (AIR-21, Pub.L. 106-181) was signed into law, making several modifications to the PFC program, including allowing a public agency to apply to the FAA to increase the PFC level that it may charge from the previous cap of $3 to $4 or $4.50. On May 30, 2000, the FAA issued a final rule to amend part 158 to incorporate the administrative and statutory changes specified in AIR-21 and other recent enactments by Congress and records of decision by the FAA. The rule became effective on June 29, 2000.

The issue of compensation to air carriers arose again during the congressional proceedings leading up to the passage of AIR-21. In report language (House Rpt. 106-513) accompanying AIR-21, Congress noted that "A number of air carriers have communicated to the conferees their views that the cost of collection allowed by current FAA regulations, $.08, is too low. While the Conferees did not evaluate the correctness of these claims, we believe that the airlines should be given the opportunity to demonstrate their correctness in a rulemaking proceeding. As soon as the airlines submit the evidence necessary for evaluation of their claim the FAA shall make its final decision within 189 days."

Current Developments

On April 27, 2000, the Office of the Inspector General (OIG) of the Department of Transportation issued a memorandum to the FAA providing recommendations on the conduct of the proposed rulemaking on the PFC collection costs. The OIG recommended that the FAA include requirements that cost data presented by the airlines must be:

- limited only to those incremental costs that are directly associated with PFC collection, handling, remittance, reporting, recordkeeping, or auditing. Though incremental cost compensation does not include an allocation for indirect costs such as utilities, officer salaries, and other administrative expense, it will compensate air carriers for the additional costs of handling and remitting PFCs; and
- accompanied by an independent audit opinion stating the costs are supportable, presented in accordance with generally accepted accounting principles, and in compliance with the requirement of the proposed rulemaking.

To be responsive to the Congress and to preclude the data collection problems that characterized its two previous data collection efforts, the FAA initiated contacts with the air carrier industry in advance of commencing its rulemaking proceedings to learn about cost categories compatible with air carrier cost accounting capabilities that might meet the specifications of the OIG. In addition, the FAA consulted with independent

accountants familiar with the accounting methods of the air carriers to learn the extent to which independent accountants would be able to determine if costs reported by air carriers are "supportable." Based on these contacts, the FAA was able to assemble cost categories and formats, as well as recommended accounting procedures, to facilitate the collection of data to be used in this NPRM.

On October 19, 2000, the FAA sent out letters soliciting the voluntary submission of 1999 cost data from the largest domestic air carriers that are members of the ATA and which account for the great majority of PFCs collected nationally. Regional and foreign air carriers, represented by their trade associations, expressed no interest in submitting cost data.

Nine major air carriers, representing 84 percent of PFC remittances in 1999, submitted data conforming to FAA requirements. The FAA presents the data in the proposed rule and provides analysis of the data, including its reasons for accepting or not accepting individual data elements. Based on its assessment of reasonable and necessary costs, the FAA is proposing to increase the compensation level specified in §158.53 to $0.10 per PFC collected in calendar years 2002, 2003, and 2004, stepping up to $0.11 per PFC collected in calendar year 2005 and thereafter. An alternate method of compensation evaluated by the FAA was to set the compensation level at $0.11 per PFC remitted in 2002 and 2003, stepping up to $0.12 per PFC remitted in 2004 and thereafter.

The variation in the amount of compensation, depending on per PFC collected or per PFC remitted, is based on the fact that for each 100 PFCs collected from passengers, approximately 10 PFCs are subsequently refunded to the passengers and are not, therefore, remitted (transferred) by the air carriers to the airport public agencies. Thus, of 100 collected PFCs, 90 will be remitted. The slightly higher compensation fee for a remitted PFC captures the handling cost of the refunded tickets for which a handling fee cannot be directly charged. Alternatively, the lower proposed fee for a collected PFC reflects the fact that an air carrier is compensated for the handling cost of the PFC upon

its collection even if it is subsequently refunded to the passenger--this cost need not be assigned to those PFCs actually remitted to public agencies.

The above two compensation methods (per collected PFC and per remitted PFC) yield approximately the same level of total compensation to air carriers, although the methods have different "step-up" dates. When the present value of 10 years (2002 to 2011, discounted at a 7 percent rate of return) of actual collection and handling costs are compared to the present value of annual compensation provided during the same 10-year period under either method, both methods come within one half of a percentage point of full cost reimbursement[1]. However, the collection-based method proposed by the FAA would permit individual air carriers to recover the expenses of PFCs refunded to their passengers in a manner more directly tied to differing refund rates among carriers (see the discussion of compensation effects below). Either compensation method equates to a roughly $0.04 increase in compensation to air carriers on a per PFC remitted basis (once fully increased by or after 2004).

Approximately one half of the need for the proposed increase in air carrier compensation is attributable to the need to accommodate higher handling fees associated with the $4.50 PFC collection, especially the credit card fee that must be paid for each PFC collected by the air carriers[2] The other half of the increase (relative to the currently authorized $0.08 compensation level) is due to expenses associated with processing fees independent of the level of the PFC. The higher compensation level proposed by the FAA would compensate the air carriers for their claimed costs (after the adjustment by the FAA for some disallowed costs).

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[1]The reason the totals are approximately the same for the two compensation methods, in spite of different fee step-up dates, stems from the use of whole-cent compensation fee amounts (i.e., $0.10, $0.11, or $0.12 per PFC) relative to the un-rounded actual air carrier costs per PFC (e.g., $0.1065 per PFC collected) (see tables 5 and 6 of the preamble to the NPRM). The fractional cent difference between the whole cent compensation fee and un-rounded actual cost per PFC handled leads to variable per year rates of over- or under-compensation per method, resulting in the need to have different step-up dates for each.

[2] The current authorized compensation level is $0.08 per remitted PFC. Standardized to a remitted PFC, reported air carrier costs for collecting and remitting a $3 PFC in 1999 were $0.0995, whereas costs of collecting and remitting a $4.50 PFC would have been $0.1184. The $0.0189 difference in handling costs between the $3 PFC and the $4.50 PFC is due to the higher credit card fee on the $4.50 PFC paid by the air

The use of a two-step increase in the proposed compensation level is due to the need to phase-in higher compensation over a period of several years as airports increasingly adopt a $4.50 PFC level. For instance, an immediate adoption of a $0.11 per PFC collected standard (which reflects the full cost of collecting and remitting a $4.50 PFC) in 2002 would result in excessive compensation to the air carriers over the next few years, as not all airports will be charging a $4.50 PFC during this time. On the other hand, a permanent $0.10 per PFC collected standard would lead to long-term under-compensation of air carriers. Use of a dual compensation level--one for $4.50 PFC levels and another for $3 PFC levels--is ruled out because the PFC statute specifically requires a "uniform amount" for all PFC collections occurring in a given time period.

The FAA considered the use of compensation levels involving fractional cents but, for ease of explanation to the public and to prevent possible reprogramming expenses for air carriers and airports, the FAA has opted to use whole cent units. Use of whole cent levels means that in some years there will be slight amounts of under-compensation to carriers, and in some years slight overcompensation. However, the present value of compensation using either compensation method considered in the NPRM (per collected PFC or per remitted PFC), over a 10 year period (discounted at an annual rate of 7 percent), almost exactly equals actual air carrier costs over this period (see section below on Air Carrier Costs).

III. Analysis of Costs

This proposed change in compensation to air carriers is limited to what is authorized by statute. The amount of compensation to air carriers, once their collection and handling costs have been established, is not subject to the FAA's discretion. Accordingly, compensation costs associated with this proposed rule are not costs of the rule *per se* but are attributable to the PFC statute. However, the reasonableness of the costs to be

carriers to the credit card company, less the greater amount of "float" interest earned by the carrier on the higher PFC amount held prior to remitting it to the airport public agency (see Table 4 in the NPRM).

reimbursed is subject to FAA review and public comment in the proposed rule. In addition, the methods for providing this compensation (per collected PFC or per remitted PFC), and whether compensation is provided in whole cent or fractional cent amounts, are subject to the FAA's discretion and public comment.

A. Costs to Airports

The principal effect of the higher collection compensation level for airports is the marginal erosion of the airports' PFC revenue stream. The FAA is proposing the compensation fee be shifted from a per PFC remitted to a per PFC collected basis. A $0.11 per PFC collected fee (applicable in 2005 and afterwards) is approximately equivalent to a $0.12 per PFC remitted fee (average air carrier ticket refund rates, which account for the difference between PFCs collected and remitted, are 10 percent). Thus, the actual increase in compensation relative to the current $0.08 level, would be $0.04 per PFC remitted in 2005 (once the increase is fully phased in). Prior to 2005, when the compensation would be $0.10 per PFC collected, the effective increase compensation would be $0.03 per PFC remitted relative to the current $0.08 level.

The proposed increase in compensation (once fully phased in) would lead to the redistribution of $21 million per year in PFC collections to air carriers from airports based on 1999 enplanements. The sum amounts to a loss of less than one percent of the projected annual PFC stream ($2.3 billion in 2005, based on 1999 enplanements and the assumption that all airports move to the $4.50 maximum PFC level authorized by AIR-21). However, the proposed increase in compensation would not erode authorized collection authority for airports. Rather, as noted above concerning passenger impacts, the higher compensation would result in a small extension of the time period required to collect an authorized amount of PFC revenue. For example, an authorized PFC collection amount (such as $1 million) that would currently take a public agency one year to collect at a $4.50 PFC level (where the air carrier retains $0.08 per remitted PFC) would require one year plus 3.3 days to collect at a $4.50 level under the proposed higher compensation (where the air carrier effectively would retain $0.12 per remitted PFC).

However, the FAA notes that by raising the PFC level from $3 to $4.50 (and thus contributing to the need for higher air carrier compensation), the public agency is still able to collect in less than 244 days at the proposed higher compensation level what it previously needed 365 days to collect at the existing compensation level.

It is possible that some airports may be negatively impacted by the slight increase in the time it would take, due to the increase in the compensation level, to raise authorized PFC amounts for projects. However, most airports with PFC-funded projects already in place originally premised the financing of these projects on a $3 PFC level, and now, under AIR-21, can implement a $4 or $4.50 PFC level to supplement funding. New projects being formulated around the $4.50 PFC level can be planned around the higher compensation levels, if necessary.

The group of airports that would be most impacted by the proposed increase would be those airports that do not move to a $4 or $4.50 PFC level. The FAA, in its calculations to phase in the $0.11 per PFC collected charge, assumes that all (or virtually all) airports will shift to a $4.50 PFC by 2005. This assumption reflects the almost uniform adoption of the $3 PFC level by airports prior to AIR-21, even though they had the option of either a $1, $2, or $3 PFC level. However, some airport public agencies may decide to remain at the $3 level due to market or other local conditions. Similarly, some large or medium hub airports may not be able to develop a sufficient volume of projects to qualify at the $4.50 level. In the case of any airport remaining at a $3 level, the airport's annual PFC revenue erosion would increase to 1.3 percent. For example, an authorized PFC collection amount (such as $1 million) that would currently take a public agency one year to collect at a $3.00 PFC level (where the air carrier retains $0.08 per remitted PFC) would require one year plus 5.1 days to collect at a $3.00 level under the proposed higher compensation (where the air carrier effectively would retain $0.12 per remitted PFC).

The FAA believes that this somewhat higher percentage loss of revenue for the limited number of airports that remain at the $3 level would not severely affect their infrastructure improvement plans. Moreover, the FAA is required by statute to apply a

compensation level that is a "uniform amount that reflects the average necessary and reasonable expenses" of the air carriers. Thus, the FAA cannot vary collection compensation levels to reflect differing PFC collection.

B. Costs to Air Carriers

Air carriers should incur only minimal costs in adjusting their accounting and ticketing programs to accommodate the proposed compensation amounts of $0.10 and $0.11 per PFC collected. In particular, the air carriers' programs accommodated a compensation level of $0.12 per remitted PFC before June 28, 1994. The principal potential cost introduced by the proposed rule is that the basis for compensation would be on a per collected PFC rather than a per remitted PFC basis. This new basis of compensation may require some new programming. However, the FAA believes that the reprogramming costs, if any, to accommodate this change would be minor. The FAA is aware that several air carriers already have this capability. The FAA also notes that, in the past, the ATA, which represents the air carriers collecting the great majority of PFCs, has supported conversion to this basis of compensation.

The FAA has proposed the use of whole cent compensation levels in part to avoid possible reprogramming costs that fractional cent amounts could necessitate. The use of whole cent amounts would also minimize the number of times that this program component would have to be updated in various air carrier programs, and would simplify explanation of the compensation fee structure to the public. By using whole cent amounts, the amount of compensation to air carriers will be fractionally below actual costs in some years and fractionally above actual costs in others. However, the present value of compensation, over a ten-year period (discounted at an annual rate of 7 percent) provides for the full recovery of recurrent and one-time costs of collecting and handling PFCs.

C. Impact on Air Passengers

The adjustment in the PFC collection compensation would not affect the PFC amount or the ticket prices paid by airline passengers for any given flight. Rather, the equivalent of $0.04 cents of each $4.50 or $3 PFC collected and not refunded, which otherwise would have been remitted by the air carrier to the airport under the existing $0.08 per PFC remitted rule, would now go to the air carrier to compensate the carrier fully for its PFC collection and handling costs. The only potential impact on air passengers would derive from the effects of the slightly reduced annual PFC remittances to airports. Because it would take an airport slightly longer to collect a specific amount of PFC revenues to fund a project, the period of time during which a PFC would be collected would be longer. In some cases, the longer collection period could slightly delay the airport completion or implementation of PFC-funded projects intended to benefit air passenger. However, the effect would be minor. Since the increase in the PFC level is mandated by statute, any impact of passengers would be a cost of the statute and not a cost subject to discretion in the proposed rule. Nevertheless, the FAA has analyzed the impact for information purposes.

The higher compensation level of $0.11 per PFC collected as of 2005 would generate an additional $21 million in annual compensation for air carriers over the amount they would receive at the $0.08 per remitted PFC level (based on 1999 enplanements on which a PFC was assessed). This additional compensation is less than one percent of the amount of estimated annual PFC collections that will prevail once airports fully transition to a $4.50 PFC level (this amount would be $2.325 billion at 1999 PFC collection levels). Accordingly, the higher compensation level would add just over 3.3 days per year to the time period required by an airport to collect an authorized amount of PFC revenue (or one additional year of collections for every 110 years of collections). Any effect of this slightly longer collection period would be de minimus.

IV. Analysis of Compensation Effects

Under the PFC statute, air carriers are responsible for the collection, handling, and remittance of PFC revenues, and in return, are entitled to compensation through the retention of a uniform amount that the Secretary determines reflects the average necessary and reasonable expenses (net of interest accruing to the carrier and agent after collection and before remittance). As such, the compensation level as well as the costs of the proposed rule are attributable to the statute and are not subject to the discretion of the FAA.

The selection of a per PFC collected rather than a per PFC remitted compensation amount is subject to the FAA's discretion. In the case of refunded tickets, the FAA reasoned that the additional handling cost of collecting and then refunding a PFC to a passenger would add to the overall expense of collecting and handling PFCs. Such costs would be embedded in the overall collection and handling cost data provided by the air carriers. If all air carriers had identical refund rates, use of an average compensation amount per PFC collected or per PFC remitted would be equally fair to individual carriers. For instance, if total industry collection and handling costs were $12 million for 120 million PFCs collected (of which 20 million were refunded and 100 million remitted to the airports), then a compensation amount of $0.10 per PFC collected or $0.12 per PFC remitted PFC would generate the same total compensation to the industry. Moreover, if all air carriers had equivalent refund rates, all would be equally reimbursed for these refund expenses. However, refund rates among individual air carriers in 1999 varied from 5 percent of total collected PFCs refunded to as high as 20 percent refunded. By selecting a compensation method based on PFCs collected, individual carriers would be reimbursed in a manner that more closely corresponds to actual handling levels. This approach, while not affecting the overall amount of compensation received, provides a closer match between each individual carrier's actual handling costs and compensation.

V. Summary of Costs and Compensation Effects

The proposed rule would amend part 158 to be consistent with the current statute governing the PFC program--in particular, the statutory requirement that air carriers receive compensation for their necessary and reasonable expenses (net of interest accruing to the air carriers after collection from the passenger and before remittance to the airport public agencies) incurred in collecting and handling PFCs. The need for this proposed rule stems both from the higher PFC cap of $4.50 authorized by AIR-21 and the need to address (as directed by Congress in report language of AIR-21) long-standing concerns by air carriers that the current compensation amount in part 158 ($0.08 for each PFC remitted) is inadequate.

The FAA estimates that a compensation amount of $0.10 per PFC collected in years 2002 through 2004, followed by a rate of $0.11 per PFC collected in the following years, would allow air carriers to recover fully their collection and handling expenses over a ten year period (as measured using the present value of the handling cost and compensation streams, discounted using a 7 percent interest rate). This compensation level would meet the requirements of the statute.

This increase in the compensation paid to air carriers would result in the loss of the equivalent amount of revenue to PFC collecting airports. However, airports moving to the $4.50 PFC level will realize (or have already realized) a very large net increase in PFC collections ($1.50 per PFC remitted, less the additional $0.04 per PFC in handling compensation that would be permitted by this proposed rule). This impact can be anticipated by airport public agencies in their financial planning of projects to be proposed at the new $4.50 level. Airports remaining at $3 PFC levels would sustain some erosion in PFC receipts compared to their pre-AIR-21 status, although the impact would be minor, amounting to 5.1 day's worth of collections in one year period. These airports also have the recourse of moving to a higher PFC level if necessary to accomplish critical projects.

In summary, the FAA concludes that the proposed rule is a cost-effective means to accommodate the statutory requirement of providing a uniform compensation level that fully compensates the reasonable and necessary costs of the air carriers for collecting and handling PFCs for airports, in a manner that minimizes administrative expenses.

VI. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the proposed rule would not impose costs on small commercial service airports. Rather, costs associated with this proposed rule would be limited to only what is authorized by statute. Moreover, actual PFC collection authority

is not affected by the proposed compensation level, and all costs are fully recoverable through the PFC by small adjustments in the period of PFC collection. Similarly, the effects on small air carriers that collect and handle PFCs would be the result of statutory requirements. Furthermore, even after possible minor up-front administrative costs to convert ticketing systems to the proposed compensation levels, the FAA expects that the proposed rule would result in higher net revenue for those carriers.

The FAA conducted the required review of this proposed rule and determined that it would not have a significant economic impact. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

VII. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards

In accordance with the above statute, the FAA has assessed the potential affect of this proposed rule and has determined that, to the extent it imposes any costs affecting international entities, it would impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

The provisions of this proposed rule would have no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States. The additional compensation to air carriers for handling PFCs would not affect the cost of international travel. The existing rule imposes the same requirements to collect the PFC on tickets issued in the United States on domestic air carriers and foreign air carriers. All

international air carriers, both foreign and domestic, would receive higher compensation levels to reimburse their reasonable costs of collecting and handling PFCs.

VIII. Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.