

aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before March 1, 2004.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FAA-200X-XXXXX] by any of the following methods:

- *Web Site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Tim Adams (202) 267-8033, Sandy Buchanan-Sumter (202) 267-7271, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on February 4, 2004.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

#### **Petitions for Exemption**

*Docket No.:* FAA-2003-15925.

*Petitioner:* AirTran Airways, Inc.

*Section of 14 CFR Affected:*

14 CFR 93.123.

*Description of Relief Sought:*

AirTran seeks reconsideration for the denial of its petition for exemption, which would allow AirTran to conduct

10 operations at LGA without the necessary slots required under § 93.123.

[FR Doc. 04-2883 Filed 2-9-04; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **Notice of Policy Regarding the Eligibility of Airport Ground Access Transportation Projects for Funding Under the Passenger Facility Charge Program**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with section 123(e) of the Vision 100—Century of Aviation Reauthorization Act, (Pub. L. 108-176, December 12, 2003), the Federal Aviation Administration (FAA) is publishing its policy with regard to the eligibility of airport ground access transportation projects for funding under the Passenger Facility Charge (PFC) program.

The FAA determines the eligibility of airport ground access transportation projects, no matter the technology proposed (e.g. road, heavy or light rail, water) for funding under the PFC program, on a case-by-case basis after a review of the particulars associated with each unique proposal. In general, a request to use PFC's to fund an airport ground access transportation project must be submitted by a qualified applicant and the project must be eligible for funding under the Airport Improvement Program (AIP); meet at least one of the PFC program objectives and, if applicable, at least one of the significant contribution requirements<sup>1</sup>; and be adequately justified (49 U.S.C. 40117(d)(3)). In addition, all PFC projects must conform to other applicable regulatory requirements as referenced in 14 CFR part 158 (e.g., environmental requirements, specified implementation schedules). Airport ground access transportation projects proposed at a PFC level higher than \$3 must also conform to the AIP funding test (49 U.S.C. 40117(b)(4)(B); 14 CFR 158.17(a)(2)) and the airside needs test (49 U.S.C. 40117(d)(4); 14 CFR 158.17(a)(3)).

**ADDRESSES:** This is an informational notice only and comments are not being solicited at this time.

<sup>1</sup> As the FAA has applied the significant contribution requirement, a finding that a project meets a PFC objective is subsumed within a finding that a project meets the significant contribution requirement.

**FOR FURTHER INFORMATION CONTACT:** Sheryl Scarborough, Financial Analysis and Passenger Facility Charge Branch (APP-510), Room 619, Airports Financial Assistance Division, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8825.

**SUPPLEMENTARY INFORMATION:** In recent years, the FAA has been requested to approve PFC funding of airport ground access transportation facilities. Proposals to build rail transit projects in particular have tended to involve large amounts of funds—from several hundred million to more than a billion dollars—and thereby generated close scrutiny, if not controversy. The Federal Transit Administration (FTA) estimates that three dozen or more localities currently have plans or proposals to build fixed guideway access projects to their airports.

We are publishing this policy to comply with the requirement of section 123(e) of the Vision Act. Section 123(e) directs the FAA to publish its current policy on airport ground access transportation project eligibility for PFC funding within 60 days after enactment of the Vision 100 Act. By consolidating guidance set forth in the preamble to the PFC regulation as well as the PFC regulation itself (14 CFR part 158), FAA Order 5500.1 "Passenger Facility Charge" (August 9, 2001), the AIP Handbook (change 1 to FAA Order 5100.38B (January 8, 2004), and FAA PFC Records of Decision and Final Agency Decisions approving the use of PFC revenue to finance airport ground access transportation projects, this notice should assist public agencies eligible to impose PFC's, air carriers, local transit operators, and other stakeholders in understanding how the FAA applies the statutory and regulatory criteria governing the PFC program to airport ground access transportation projects. The FAA has a more extensive background in evaluating highway ground access projects through its experiences with the various FAA airport grant programs and through the numerous requests for PFC funding of highway access projects (e.g. Las Vegas McCarran International, Miami International, and Baltimore-Washington International Airports). Therefore, although it can be used for any proposed mode of transportation, this summary of FAA policy reflects the FAA's recent experience in approving three major fixed guideway access projects—the Light Rail System (LRS) at John F. Kennedy International Airport

(JFK), the monorail project at Newark Liberty International Airport, and the Airport MAX project at Portland International Airport (PDX). This FAA policy is subject to refinement in the future as different issues are raised during the evaluation of new projects.

The FAA determines the eligibility and justification for airport ground access transportation projects, no matter the technology proposed (e.g., road, heavy or light rail, water), on a case-by-case basis after a review of the particulars associated with each unique proposal (Preamble to 14 CFR part 158, § 158.15 Project eligibility (56 FR 24258, May 29, 1991)). In general, an airport ground access transportation project must: be submitted by a qualified applicant; be eligible for funding under the AIP; meet at least one of the PFC program objectives and, if applicable, at least one of the significant contribution findings; and be adequately justified (49 U.S.C. 40117(d)(3)). In addition, all PFC projects must conform to other applicable regulatory requirements as referenced in 14 CFR part 158 (e.g., environmental requirements, specified implementation schedules). Airport ground access transportation projects approved for PFC levels above \$3 must also conform to the AIP funding test (49 U.S.C. 40117(b)(4)(B)); 14 CFR 158.17(a)(2)) and the airside needs test (49 U.S.C. 40117(d)(4)); 14 CFR 158.17(a)(3)), as discussed more fully below.

## I. Qualified Applicants for PFC Projects

### 1. Who May Apply?

The PFC statute (49 U.S.C. 40117(a)(2)) and regulation (14 CFR part 158.5) provide that only “a public agency that controls a commercial service airport” may submit an application to fund a specific project with PFC revenues. As defined in 14 CFR 158.3, a public agency may be “a State or any agency of one or more States; a municipality or other political subdivision of a State; an authority created by Federal, State, or local law; a tax supported organization; or an Indian tribe or pueblo that controls a commercial service airport.” In addition, the sponsor of an airport participating in the Pilot Program on Private Ownership of Airports (49 U.S.C. 47134) may also submit a PFC application. A commercial service airport is defined in 14 CFR 158.3 as “a public airport enplaning 2,500 or more passengers annually and receiving scheduled service.”

### 2. May Other Parties Participate in Project Design and Development?

Public agencies are strongly encouraged to coordinate the design and development of airport ground access transportation projects with local and regional transportation planning boards (e.g., metropolitan planning organizations). This is especially important in cases where the PFC-funded project necessitates access or access improvements to a public roadway or transit system off airport property. (Section 187 of the Vision 100 Act requires public agencies controlling large or medium hub airports that are planning to construct or relocate an airport or construct a new runway or major runway extension to offer the local metropolitan planning organization the opportunity to review any airport layout plan or master plan in which the proposed project is depicted. This provision is intended to ensure that any ground access improvements necessitated by the proposed project are identified in a timely manner.) However, projects to be funded with PFC revenues must conform to the eligibility conditions specified below. In addition, the public agency is the final authority on the type and scope of an airport ground access transportation project submitted for PFC funding. 49 U.S.C. 40117(b)(2) specifies that “A state, political subdivision of a state, or authority of a state or political subdivision that is not the eligible agency may not regulate or prohibit the imposition or collection of a passenger facility fee or the use of the passenger facility revenue.”

## II. PFC Project Eligibility

### 1. How Is PFC Eligibility Established?

Under 49 U.S.C. 40117(a)(3)(A), PFC eligibility for airport ground access transportation projects is identical to that of AIP projects. AIP eligibility of airport projects, codified in Chapter 471 of 49 U.S.C., is summarized in change 1 to FAA Order 5100.38B, AIP Handbook (January 8, 2004). 49 U.S.C. 47102(3)(1) specifically identifies projects to support the movement of passengers, cargo, and baggage as being eligible airport development.

In past decisions on the eligibility of airport ground access transportation projects, the FAA has relied on the eligibility conditions summarized in paragraphs 620a, “Access Roads,” and 622b, “Rail Service to Airports” of change 1 to FAA Order 5100.38B (January 8, 2004) and its predecessor FAA Order 5100.38A (October 24, 1989), paragraphs 553, “Airport Roads,” and 555 “Rapid Transit Facilities.” The

use of eligibility criteria for access roads to judge eligibility of rail and fixed guideway systems is based, in part, on a March 15, 1971, opinion by the FAA Assistant Associate General Counsel. In that opinion, the Assistant Associate General Counsel determined that rail service to an airport was AIP eligible under the category of airport “entrance and service roads.” The eligibility criteria summarized in the paragraphs cited above were themselves established through agency legal opinions interpreting 49 U.S.C. and its predecessor statutes.

To be AIP and PFC eligible, the airport ground access transportation project must meet the following conditions: (1) The road or facility may only extend to the nearest public highway or facility of sufficient capacity to accommodate airport traffic; (2) the access road or facility must be located on the airport or within a right-of-way acquired by the public agency; and (3) the access road or facility must exclusively serve airport traffic. Related facilities, such as acceleration and deceleration lanes, exit and entrance ramps, lighting, equipment to provide operational control of a rail system or people mover, and rail system or people mover stops at intermediate point on the airport are eligible when they are a necessary part of an eligible access road or facility (change 1 to FAA Order 5100.38B (January 8, 2004) paragraphs 620a(5) and 622(a)). Related facilities may also include information technology and other electronic systems that will improve the operation, capacity or safety of the ground access facility, overhead variable message signs, and traffic control systems.

In addition to the above eligibility criteria, the public agency must retain ownership of the completed ground access transportation project. The public agency may choose to operate the facility on its own or may choose to lease the facility to a local or regional transit agency for operation within a larger local or regional transit system.

### 2. What Does the FAA Consider the Nearest Highway or Facility?

An airport ground access transportation project extending off the airport must connect to the nearest public highway or facility (depending on the transportation mode in question) of sufficient capacity to accommodate airport traffic (change 1 to FAA Order 5100.38B, paragraph 620a(1)). More than one access facility and/or connection point may be eligible if the airport traffic is of sufficient volume to require more than one access route (change 1 to FAA Order 5100.38B,

paragraph 620a(4)). Situations where more than one access route is needed would occur if an existing access route could not be expanded to meet expected traffic due to physical, environmental, or other binding constraints; or if a particular access route is poorly situated to serve a significant flow of traffic associated with a geographically separate region served by the airport.

Moreover, the FAA has allowed an airport ground access transportation project to connect to more than one point of a public transportation mode if the connections are to physically separated systems. For instance, in the case of the LRS at JFK, the FAA allowed the LRS to connect to the nearest-points-of access of two separate public rail systems (*i.e.*, the New York City Transit Subway and the Long Island Rail Road). Given the size of the New York City metropolitan area and the extremely close proximity of one rail connection point to airport parking facilities to be served by the LRS, the FAA determined that the access to two rail sites serving geographically distinct areas was reasonable.

### 3. What Qualifies as Airport-Owned Land or Rights-of-Way?

Airport ground access transportation projects built entirely on airport-owned land within the traditional boundaries of an airport clearly meet the airport-owned land requirement for AIP eligibility, as stated in change 1 to FAA Order 5100.38B, paragraph 620a(2). Moreover, an airport ground access transportation project may extend off the traditional boundaries of an airport (to the nearest off-airport highway or access facility) provided that the right-of-way for the project will be owned and controlled by the public agency for the life of the project and the project is connected to the airport at some point, thus qualifying as an appurtenant area and within the airport boundary under 49 U.S.C. 47102(2)(A)(ii). To satisfy this eligibility requirement, the public agency must amend its Airport Layout Plan and Exhibit A to show the right-of-way. The FAA's application of these eligibility standards was upheld by the U.S. Court of Appeals for the District of Columbia Circuit for the JFK LRS PFC decision in the case of the *Air Transport Association of America v. FAA*, 169 F.3d 1, 5 (D.C. Cir 1999) finding a certification by the eligible agency to take ownership of the right-of-way before it would use PFC funds to be adequate, and further, finding that the eligible airport ground access transportation project may be attached

to the airport terminus to be considered within the airport boundary.<sup>2</sup>

### 4. What Is Exclusive Airport Use?

The requirement under change 1 of FAA Order 5100.38B paragraph 620a(3) that the airport ground access transportation project be for the exclusive use of airport patrons and employees means that the facility can experience no more than incidental use by non-airport users. "Incidental use by non-airport users" means that through system access control procedures, physical alignment, schedules, pricing or for other reasons, routine use by non-airport users would be unattractive and non-airport users in fact constitute only a minor percentage of total system ridership. Exclusive airport use does not mean that any non-airport use must be prevented at all costs. In evaluating this requirement, the FAA considers whether techniques that would enable the public agency to prevent non-airport use would be prohibitively expensive. However, use of the airport ground access transportation project by more than a minor percentage of non-airport users would raise the FAA's concerns with regard to a project's eligibility.

Determining whether a facility meets the standard of exclusive use requires a case-by-case evaluation, although certain types of facilities are easier to evaluate than others. A rail station located within the airport boundary (particularly one in or adjacent to an airport terminal as in the case of Lambert-St. Louis, Chicago O'Hare, Hartsfield-Jackson Atlanta, Ronald Reagan Washington National, and Baltimore-Washington airports) would typically be used only by airport users and therefore be an exclusive use

<sup>2</sup>The Court reviewed the FAA's application of the eligibility standards from FAA Order 5100.38A (October 29, 1989), paragraph 553, "Airport Roads," and paragraph 555, "Rapid Transit Facilities." Among other things, the petitioner had contended that the right-of-way between the Jamaica Long Island Rail Road Station, a 3.1 mile elevated railway along the Van Wyck Expressway, and JFK did not meet FAA eligibility requirements because this right-of-way was not "on-airport." The petitioner argued that for a right-of-way to be on-airport, it must be attached to the airport landing area along its entire length. The court upheld the FAA's position, based upon FAA Order 5100.38A, paragraphs 553 and 555, that the right-of-way need only be attached to the airport landing area at some point, but not necessarily along the entire length of the right-of-way. The court also noted that the FAA's interpretation, that once a public agency owns the right-of-way, that strip of land is by definition airport-owned and therefore "within the airport" was "reasonable" and "consisted with the FAA's own regulations and past practice." 169 F. 3d at 6. The court also cited 56 FR 24,254, 24,258 (1991), the FAA's preamble to the final PFC rule, which states that "ground transportation projects are eligible if the public agency acquires the right-of-way." 169 F. 3d at 6.

facility (some exceptions may exist if the rail station is also convenient to a nearby non-airport facility). A facility near the boundary of an airport or which otherwise may attract non-airport use may qualify as exclusive use if system access control could be implemented by design features, pricing techniques (making non-airport use non-economical), routing to discourage non-airport use, or other methods approved by the FAA<sup>3</sup>. If a road or facility is intended to serve both airport and non-airport users, only those physically-discrete subsections of the road or facility that exclusively serve airport users could be funded with AIP or PFC funds. In the case of the PDX Airport MAX rail system, the FAA permitted PFC funding for only one of three discrete segments (the on-airport segment ending at the terminal) as it alone was solely intended for use by airport patrons and employees.

### III. PFC Objective and Significant Contribution Findings

In addition to AIP eligibility, the PFC statute as implemented by 14 CFR part 158, requires that PFC projects, including PFC-funded airport ground access transportation projects, must accomplish one or more PFC program objectives and, if applicable, be found to make a significant contribution to the national air transportation system in one or more specific areas, depending on the size of the airport and the proposed PFC level. In accordance with 49 U.S.C. 40117(d)(2), as implemented by 14 CFR 158.15(a), the PFC program objectives are: (1) Preserving or enhancing the safety, capacity, or security of the national air transportation system; (2) reducing noise or mitigate noise impacts resulting from an airport that is part of such system; or (3) furnishing opportunities for enhanced competition between or among air carriers. In accordance with 49 U.S.C. 40117(b)(4)(A) as implemented by 14 CFR 158.17(b), a large or medium hub airport proposing a project at a \$4 or \$4.50 PFC level must demonstrate that the project makes a significant contribution to: (1) Improving air safety and security; (2) increasing competition among air carriers; (3) reducing current or anticipated congestion; or (4)

<sup>3</sup>For instance, during the FAA's evaluation of the JFK LRS, it was suggested that local non-airport commuters might park in the JFK long term parking facilities and enter the LRS to access the Long Island Railroad or the subway lines. The FAA concluded that such non-airport uses of the LRS would be economically unfeasible due to the combined cost of the roundtrip LRS fare and airport parking relative to alternative means of accessing the non-LRS transit system.

reducing the impact of aviation noise on people living near the airport.

Any public agency requesting PFC funding for an airport ground access transportation project at a \$1, \$2, or \$3 PFC level must meet the PFC Objectives requirement. Ground access transportation projects proposed for funding at a \$4 or \$4.50 PFC level at a small hub or smaller airport must also meet the PFC Objectives requirement. However, airport ground access transportation projects proposed for funding at a \$4 or \$4.50 PFC level at a large or medium hub airport must meet the significant contribution requirement.

#### *1. Which PFC Objectives Are Typically Met by an Airport Ground Access Transportation Project?*

Typically, public agencies propose that an airport ground access transportation project meets the objective of preservation or enhancement of capacity of the national air transportation system, in that airport passengers or air cargo customers may be afforded faster and/or more reliable access times to airports, thus reducing total trip times. The FAA uses reduced trip time as a rough gauge of capacity benefits as it means that the national air transportation system can accommodate the same number of people or amount of air cargo with less average delay, or alternatively, a larger number of people or a larger amount of air cargo at the same level of average delay. These airport passengers or air cargo customers could include users of the proposed access system, as well as users of other means of airport access who would benefit from reductions in ground congestion enabled by the proposed system.

A public agency may propose that an airport ground access transportation project meets other PFC objectives apart from or in addition to capacity preservation or enhancement. For instance, a project could benefit competition between airlines if the improved ground access results in a passenger being able to choose between air carriers operating at different airports. In all cases, the objective(s) cited for the project must be realistic and supported by analysis. The degree to which the project meets its objective(s) is, in turn, the basis for the determination of the project's justification.

#### *2. Which Significant Contribution Findings Are Typically Proposed for an Airport Ground Access Transportation Project?*

Similar to the PFC objectives requirement, public agencies typically prepare an airport ground access transportation project description and justification to meet the "reduce current or anticipated congestion" significant contribution finding. The public agency's analysis may be similar to that outlined under the PFC objectives discussion above. In analyzing the significant contribution benefits of a "congestion" project, the FAA considers the following questions; in addition to any unique aspects of a project: (1) Does the project support or is it a part of a capacity project to which the FAA has allocated Federal resources or that would qualify for such resources?; (2) Is the project included in an AIP Letter of Intent or does it satisfy the FAA's benefit-cost criteria for large AIP discretionary investments?; (3) Has the project been identified as an important item in an FAA Airport Capacity Enhancement Plan?; or (4) Does the project alleviate an important constraint on airport growth or service? (FAA Order 5500.1, Passenger Facility Charge, (August 9, 2001), paragraph 10-12b.)

#### *3. How Does the FAA Analyze an Airport Ground Access Transportation Project That Is Undertaken To Obtain Necessary Local Approvals for Other PFC Financed Projects?*

In some cases, a state or local government agency (other than the airport public agency) may condition its approval of an airport project requested by the public agency with the requirement that the public agency also build an airport ground access transportation project. To date, the FAA has not permitted the PFC objectives or other PFC requirements that must be met by the requested airport project to be imputed to the airport ground access transportation project simply because the access project has been made a condition of the airport project's approval as a matter of state or local law. Rather, the FAA has consistently required that the proposed airport ground access transportation project, on its own merits, satisfy one or more of the PFC objectives, as well as conform to the other requirements of the PFC statute and regulation, before granting approval of the airport ground access transportation project.

#### **IV. Adequate Justification**

The FAA notes that, in addition to meeting the statutory and regulatory

criteria of eligibility, PFC-funded ground access transportation projects must be adequately justified. This requirement is established by 49 U.S.C. 40117(d)(3). The nature of the project justification depends in large measure on which PFC objective the public agency relief on to support the project. Airport ground access transportation projects are typically intended to preserve or enhance the capacity of the national air transportation system. In this case, the justification should be framed in terms of the project's effect on capacity.

#### *1. How Can a Public Agency Demonstrate Adequate Justification for an Airport Access Road Project?*

In the case of standard airport access road projects, the case for new or enlarged roads can usually be made by a straightforward traffic study. The traffic study should demonstrate the impact of the access road project in reducing roadway congestion and trip times to the airport. Usually, the need for new road capacity is evident to all users of an airport and can be clearly demonstrated based on these studies.

#### *2. How Can a Public Agency Demonstrate Adequate Justification for an Intermodal Project?*

Intermodal projects—especially rail or other fixed guideway systems—can be complex to analyze. To date, the FAA has issued PFC decisions on only a few large-scale airport rail projects and has employed two methods to determine adequate justification. Due to this limited scope of prior experience, the FAA continues to consider adequate justification on a case-by-case basis and is not prepared at this time to constrain public agencies' options for establishing justification. The FAA has relief on the specialized expertise of the FTA to validate measured capacity effects of airport rail projects and will continue to do so.

An airport ground access transportation project can be found adequately justified if it has the effect of alleviating a ground access constraint that otherwise would impede or restrain use of the airport by air passengers. Using this method, the public agency must demonstrate that, but for the proposed system, use of the airport would be substantially less, either now or in the future, than it would otherwise be due to ground access constraints. The Office of the Inspector General (OIG) agreed with this as an approach to the adequate justification requirement in a January 21, 1998, management advisory to the FAA pertaining to the JFK LRS PFC decision. In the case of the JFK

LRS, the FAA found the LRS to be adequately justified based on analysis that showed that, but for the LRS, 3.35 million fewer air passengers would be able to access JFK by the year 2013 due to roadway access constraints.

The FAA has also accepted as adequate justification the public agency's demonstration that the benefits of the project in terms of reduced travel time to the airport (either for project passengers themselves or for all air passengers who benefit from less congested roadways) are reasonable relative to the PFC cost of the project. This approach was used, in part, to establish adequate justification for the Airport MAX light rail system that will link PDX to the regional rail network. Use of this method of analysis is voluntary for the public agency, as current regulations do not require public agencies to use benefit-cost analysis to show adequate justification for a PFC project.

However, the requirement for adequate justification is not voluntary. A decision not to a benefit-cost analysis does not relieve a public agency of the need to demonstrate adequate justification in some other way. The FAA and FTA will consider other methods of establishing adequate justification that a public agency may believe better addresses its unique access project. At a minimum, an acceptable approach must demonstrate that a rail project will produce a reasonable stream of congestion reduction or other access benefits to air passengers relative to the scale and cost of the project. Thus, under whatever method is selected, the FAA would normally expect the level of justification for the project to increase as the amount of PFC funding requested for the project increases. We strongly recommend that the public agency consult with the FAA and FTA early in the planning/study process (and well in advance of submission of a PFC application to fund such a project) to identify a mutually acceptable approach to establishing adequate justification for the particular project.

#### **V. Other Issues Potentially Affecting PFC Decisions on Airport Ground Access Transportation Projects**

In its January 21, 1998, management advisory to the FAA, the OIG recommended that the FAA consider two other elements about the JFK LRS in addition to the project's effect on air passenger use of JFK (see Adequate Justification, above). Because of the great expense of the LRS project, the OIG recommended that the FAA verify that the project, if approved, would not

create a risk to investment plans for enhancing airside safety, security, and capacity. The OIG also recommended that the public agency explain why the LRS should be funded without contribution from surface transportation funds or other non-airport revenues.

#### **1. Must a Public Agency Fully Fund Airside Safety, Security, and Capacity Projects Before Applying PFC Funds to Airport Ground Access Transportation Projects?**

The answer to this question depends on what PFC level the public agency proposes for the project.

The PFC statute and regulation do not assign priority to projects meeting any one objective of the PFC program or to airside projects in preference to non-airside projects for projects proposed at a \$1, \$2, or \$3 PFC level. Accordingly, the FAA cannot require that a public agency fund an airside project in preference to an airport ground access transportation project at these PFC levels. However, the FAA would be very concerned to find that critical airport safety, security, and/or airside capacity needs could not be funded as a result of the funding of an airport ground access transportation project. In order to evaluate such concerns, the FAA may require that the public agency provide relevant materials for the FAA's review. The PFC regulation, 14 CFR 158.25, already requires that the public agency submit the airport's capital plan with the PFC application. If a funding deficiency is revealed, the FAA would encourage the public agency to correct this deficiency.

Airport ground access transportation projects proposed at a \$4 or \$4.50 PFC level, regardless of the size of the airport, must meet an airside needs test pursuant to 49 U.S.C. 40117(d)(4); 14 CFR 158.17(a)(3). This test requires that the public agency demonstrate that it has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates. Typically, the FAA reviews any available planning and inspection documents to determine the airside needs of the airport and then reviews the public agency's airport capital plan, submitted with the PFC application, to ensure that any needed airside projects are included in the capital plan.

#### **2. Does the Allocation of Some Non-PFC Funds to an Airport Ground Access Transportation Project Increase the Likelihood That the Project Will Be Approved for PFC Funding?**

The PFC eligibility of an airport ground access transportation project

does not depend upon whether the public agency also contemplates using other sources to fund portions of the project. There is no requirement in the PFC statute or regulation for public agencies to fund such projects intermodally (*i.e.*, from multiple transit funding sources). The FAA has identified factors that could encourage or discourage a public agency in pursuing intermodal funding. The magnitude of aviation benefits expected of the project to establish adequate justification for PFC funding will be less if the amount of PFC funding requested is reduced by non-PFC participation. Non-PFC or non-airport financial participation may also help build local consensus for the project by ameliorating concerns on the part of the aviation community about the use of airport resources for non-airside investments. However, the partial funding of a project from non-PFC sources does not negate the exclusive use requirement associated with PFC funding. In any instance where PFC funding is used to fund a component of an intermodal project, that component must be for exclusive airport use (*see* PFC Project Eligibility, above) and the public agency must adequately demonstrate that the funding sources are viable. The exclusive use requirement might complicate the ability of a public agency to qualify for the expenditure of funds from traditional sources of transit capital (*e.g.* FTA's major capital investments program) unless the project can be easily separated into exclusive and mixed-use components.

#### **3. Must a Public Agency Use or Pledge To Use AIP Grant Funds on an Airport Ground Access Transportation Project Before the Project Can Be Approved for PFC Funding?**

The answer to this question depends on what PFC level the public agency proposes for the project.

The PFC statute and regulation do not require that a public agency use AIP grant funds for projects proposed at a \$1, \$2, or \$3 PFC level.

Airport ground access transportation projects proposed at a \$4 or \$4.50 PFC level, regardless of the size of the airport, must meet an AIP funding test. This test requires that the FAA make a finding that the project cannot be paid for from AIP funds reasonably expected to be available in order to approve the project (49 U.S.C. 40117(b)(4); 14 CFR 158.17(a)(2)).

## VI. Use of Other Airport Revenue To Finance Airport Ground Access Transportation Projects

Eligibility for funding of airport ground access transportation projects with airport revenues is different than that for PFC or AIP funds. Guidance for use of such airport revenues on airport ground access transportation projects is provided in "Policies and Procedures Concerning the Use of Airport Revenue," Section V.A.9 (64 FR 7718-7719, February 16, 1999).

Issued in Washington, DC on February 3, 2004.

**Catherine M. Lang,**

*Deputy Associate Administrator for Airports.*  
[FR Doc. 04-2884 Filed 2-9-04; 8:45 am]

BILLING CODE 3510-DS-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2004-16999]

#### Notice of Receipt of Petition for Decision That Nonconforming 2002-2004 Aston Martin Vanquish Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 2002-2004 Aston Martin Vanquish passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002-2004 Aston Martin Vanquish passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is March 11, 2004.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St. SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202) 366-3151.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Webautoworld.com Corp. of Pampano Beach, Florida ("Webautoworld") (Registered Importer 02-295) has petitioned NHTSA to decide whether 2002-2004 Aston Martin Vanquish passenger cars are eligible for importation into the United States. The vehicles which Webautoworld believes are substantially similar are 2002-2004 Aston Martin Vanquish passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002-2004 Aston Martin Vanquish passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with

most Federal motor vehicle safety standards.

Webautoworld submitted information with its petition intended to demonstrate that non-U.S. certified 2002-2004 Aston Martin Vanquish passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002-2004 Aston Martin Vanquish passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls and Displays*, 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Restraint Anchorage Systems*, 301 *Fuel System Integrity*, 302 *Flammability of Interior Materials*, and 401 *Interior Trunk Release*.

The petitioner claims that the vehicles also comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies and sidemarker lights with reflectors; (b) installation of U.S.-model tail light assemblies and sidemarker lights with reflectors.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: Replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's face.

Standard No. 114 *Theft Protection*: Programming of the vehicle's computer