DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. FAA–2002–13918; Notice No. 02–19]

RIN 2120–AH43

Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FAA proposes to amend the passenger facility charge (PFC) regulation by changing the amount and unit of collection that a carrier may retain for collecting and handling (including remitting) PFC revenue. FAA proposes to allow carriers to keep $0.10 of each PFC they collect in calendar years 2002 through 2004. From 2005 forward, the amount will increase to $0.11 for each PFC collected. This action is necessary to implement the statutory requirement that the Secretary of Transportation (whose authority has been delegated to the Administrator of FAA) establish by regulation a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs.

DATES: Send comments by January 13, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13918 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also file comments through the Internet at *http://dms.dot.gov*. You may review the public docket containing comments to this proposed rule in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You will find the Docket Office in Room Plaza 401 of the Nassif Building at the U.S. Department of Transportation at the address listed above. You may also review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joseph Hebert, Passenger Facility Charge Branch, APP–530, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3845; facsimile (202) 267–5302.

SUPPLEMENTARY INFORMATION:

Comments Invited

FAA invites interested people to take part in this proposed action by presenting written data, views, or arguments. We also invite comments about the environmental, energy, federalism, or economic impact that might result from adopting the proposals. Commenters should provide cost estimates for substantive comments. Commenters should send two copies of their remarks to the DOT Docket Office address mentioned above. Comments must identify the regulatory docket or notice number.

We will file all comments, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking, in the docket. The docket is available for public inspection before and after the comment closing date.

FAA will consider all comments received by the closing date before acting on this proposed rulemaking. We will consider comments filed late if possible without incurring expense or delay. FAA may change the proposals in this document because of the comments received.

Commenters wishing to receive confirmation that FAA received their comments must include a self-addressed, stamped postcard stating: ''Comments to Docket No. FAA–2002–13918.'' We will date stamp and mail the postcard to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy of this notice using the Internet by taking the following steps:

(1) Select the search button on the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*.

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by sending a letter to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on FAA's Web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and may send electronic inquiries to the following Internet address: *9–AW–SBREFA@faa.gov*.

Background

Statement of the Problem

The Aviation Safety and Capacity Expansion Act of 1990 (ASCE Act), codified at 49 U.S.C. 40117, authorized the passenger facility charge (PFC) program. On May 29, 1991, the Department of Transportation adopted regulations to establish the PFC program. The regulations are codified at 14 CFR part 158. The Secretary of Transportation (Secretary), by regulations codified at 49 CFR 1.48(r), delegated authority to the FAA Administrator to allow a public agency (as defined in 14 CFR 158.3) to impose a PFC of $1, $2, or $3 for each enplaned passenger at a commercial service airport the public agency controls. Public agencies may use the money from such PFC collections only to finance FAA-approved, eligible airport-related projects, as defined at 49 U.S.C. 40117(a)(3). To approve a project, FAA must determine that the project (1) preserves or enhances safety, security, or capacity of the national air transportation system; (2) reduces noise from an airport that is part of such system; or (3) provides opportunities for increased competition between or among carriers.

The ASCE Act directed the Secretary to issue regulations requiring air carriers, foreign air carriers, and their agents, collectively referred to as ''carriers,'' to collect PFCs and pay them promptly to public agencies. The regulations were also to establish a uniform amount, reflecting the average reasonable and necessary expenses of collecting and handling the PFC, that carriers could retain from PFCs collected. This amount, referred to in 14 CFR part 158 as ''carrier compensation,'' as discussed below, is to be determined by the Secretary net of interest earned on PFC revenue between the time of collection and payment.

FAA carried out this requirement in section 158.53 of the regulations, entitled ''collection compensation.'' Section 158.53 allowed carriers initially to keep ''[a]s compensation for collecting, handling and remitting the PFC revenues'' $0.12 of each PFC remitted, in part to recover the expenses of setting up their systems to process and record charges under the PFC program. On June 28, 1994, under the terms of § 158.53, compensation dropped from $0.12 to $0.08 for each PFC collected, reflecting completion of a recoupment period from program start-up costs. Currently, carriers may keep $0.08 of each PFC remitted. For convenience, we refer to this amount as the ''handling fee'' or ''PFC handling fee,'' as well as ''carrier compensation,'' in the remainder of this discussion. Section 158.53 (b) also authorizes carriers to keep any interest or other investment return earned on PFC revenue between the time the carrier collects and remits it to the airport public agency.

On May 27, 1994, the Air Transport Association of America (ATA) petitioned FAA to amend § 158.53 by extending the handling fee of $0.12 for three more years. ATA proposed to file comments after the three-year extension, showing whether the airline industry had fully recovered the cost necessary to run the PFC collection program. Further, ATA requested that FAA amend § 158.53(a) to allow carriers to keep the handling fee for each refunded PFC, as well as each PFC remitted. FAA published in the **Federal Register** a summary of ATA's petition on June 24, 1994 (59 FR 32668). Recognizing that the standard for setting the level of the handling fee was ''average necessary and reasonable expenses,'' FAA asked carriers and public agencies to send specific data to enable the agency to determine this amount. FAA received twelve comments in response to the notice, but determined the comments did not contain enough information to enable FAA to decide on a rate of compensation that met this standard.

On April 16, 1996, FAA issued an advance notice of proposed rulemaking (ANPRM) (61 FR 16678). In that notice, FAA provided guidance on the quantity and quality of information needed to decide ATA's petition. FAA requested detailed data from carriers that, in total, represented at least 75 percent of the enplanements at PFC-collecting airport locations. FAA needed enough information on current industry costs to decide if the authorized handling fee of $0.08 continued to reflect average necessary and reasonable expenses for collecting and handling and remitting PFCs. FAA determined that a smaller sample, if it included a disproportionate representation from carriers with higher PFC handling costs, would not provide an accurate average handling cost calculation for the industry. In the ANPRM, FAA also invited comments on other issues about PFC revenues and changes in part 158 to address new legislation and industry practices. FAA withdrew this ANPRM on April 10, 2000 (65 FR 18932), because carrier responses fell below the 75 percent minimum response requested by FAA.

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) (Pub. L. 106–181), signed into law on April 5, 2000, changed the PFC program. Public agencies may now collect PFCs of $4 or $4.50. On May 30, 2000, FAA issued a final rule that amended part 158. The amendment incorporated administrative and statutory changes in the procedures to set up PFCs based on AIR–21 and other recent acts by Congress and records of decision by FAA. The rule became effective on June 29, 2000.

The issue of carrier compensation arose again during the congressional deliberations leading up to the passage of AIR–21. In report language (House Report 106–513) which accompanied AIR–21, Congress noted that several carriers communicated to the conferees their views that carrier compensation at $.08 for each PFC remitted is too low. While the conferees did not evaluate the correctness of these claims, they noted that FAA should give carriers the opportunity to prove their correctness in a rulemaking action. The report, HR 106–513 encouraged FAA to make its final decision within 189 days from the time carriers present the evidence necessary for evaluation of their claims.

On April 27, 2000, the Office of the Inspector General (OIG) of the Department of Transportation issued a memorandum to FAA. In that memorandum, OIG provided recommendations on the conduct of the proposed rulemaking on PFC collection costs. To ensure that FAA receives the information necessary for evaluation, OIG suggested that cost data be—

- ''[L]imited 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 PFC's;'' and
- ''[A]ccompanied 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.''

A copy of this memorandum is included in the docket for this proceeding.

Request for Cost Data

FAA adopted the OIG's recommendations in this rulemaking. Specifically, FAA determined that consideration of incremental costs would best implement the statutory standard that the handling fee reflect ''necessary costs.'' FAA also determined an independent audit opinion would ensure that the calculation of average expenses was based on reliable carrier cost data.

Beginning in April 2000, FAA consulted with the carrier industry through ATA to identify cost categories compatible with carrier cost accounting practices that would meet the specifications of OIG. FAA gathered this information before starting this rulemaking to avoid the data collection problems experienced in its previous rulemaking effort. In addition, FAA consulted with independent accountants familiar with the accounting methods of carriers. FAA examined the extent to which independent accountants could determine if costs reported by carriers are justifiable. Based on these contacts, FAA was able to assemble cost categories and formats, as well as recommended accounting procedures, to ensure the data evaluated in this NPRM are comparable across carriers and conforms to OIG's recommendation.

On October 19, 2000, FAA sent letters to the largest domestic ATA-member carriers. FAA asked the carriers to voluntarily send their 1999 PFC collection and handling cost data to FAA. These carriers account for most of the PFCs collected nationally. At the same time, FAA asked regional and foreign carriers through their trade associations (Regional Air Carriers Association and International Air Transport Association, respectively) if they would voluntarily send their cost data. None of the regional or foreign carriers provided data. The reporting

ATA carriers, however, included costs of their subsidiary regional carriers.

The FAA's letter to the carriers suggested the cost categories and instructions for collecting incremental costs associated with PFC collection, handling, remittance, reporting, recordkeeping, or auditing. The cost categories were: Credit card fees; audit fees; PFC disclosure; reservations; passenger services; revenue accounting, data entry, accounts payable, tax and legal; corporate property department; training reservations, ticket agents, and other departments; carrier ongoing information systems; computer reservation system ongoing; PFC absorption; Airline Tariff Publishing Corporation; and Airline Reporting Corporation. The FAA letter also suggested categories for implementation costs, including carrier one-time information systems and one-time computer reservation costs. In addition, FAA requested data on interest income on unremitted PFC funds. An example of the letter is included in the docket of this proceeding.

In its letter to the carriers, FAA emphasized that carriers will not receive compensation from PFC revenue for an item just because the item appeared on the list of cost definitions. FAA included some items because at least one carrier proposed the item as a collection or handling cost. FAA noted that not all interested parties will agree with the items included in cost definitions. FAA requested data on all cost items listed above, however, to avoid collecting more data later if FAA finds that each cost item qualifies as a ''necessary and reasonable expense of collecting, handling and remitting PFCs.''

In the letter, FAA also said that it was not seeking cost data for years before 1999. FAA stated that if a carrier found evidence of additional costs exceeding the amount authorized for retention in years before 1999, the carrier could petition FAA for a separate rulemaking to address possible under compensation in those years.

Initially, FAA considered asking carriers to have cost data audited before submission to insure its accuracy. Consultation with the independent accountants for the carrier industry, however, found the cost of getting an audit on such cost items would prohibit carriers from conducting such an audit. After consulting with OIG and the airline independent accountants, FAA decided the data could be used if carriers and their independent auditors followed certain procedures (referred to as ''agreed-upon procedures''). Therefore, the letter told each carrier to give its cost data to its independent accountant. In turn, the accountant would use the approved procedures to prepare a report similar to the agreed-upon procedures report in the docket of this proceeding.

To ensure that carriers send data in a consistent format, FAA provided a sample spreadsheet that included cost categories. FAA asked carriers to estimate what 1999 costs would have been for items such as ''credit card fees'' and ''interest revenue on float'' if the carrier had collected $4.50 PFCs at all airports that year. FAA also offered the carriers the opportunity to send out-year projections of costs. Carrier independent accountants could not, however, apply the agreed-upon procedures to out-year projections that would be cost estimates.

FAA invites comments on the categories and agreed-upon procedures. In addition, any carrier who has not already submitted data may submit their own data (that conforms to the agreed-upon procedures included in the docket of this proceeding) during the comment period. Any data submitted will be considered to the extent possible.

Receipt and Initial Processing of Cost Data

Nine carriers provided cost data to FAA by the end of January 2001 under the categories, formats, and procedures suggested by FAA. These carriers were Alaska Airlines, American Airlines, Continental Airlines, Delta Air Lines, Northwest Airlines, Southwest Airlines, TransWorld Airlines, United Airlines, and U.S. Airways. Each of these airlines sent its data to its independent accountant, who then provided its report using the agreed-upon procedures. The independent accountants sent these reports with the carrier data submissions to FAA.The nine responding carriers reported that in 1999 they remitted 436,659,521 PFCs to airports, representing 84 percent of the calculated total of 518,731,500 PFCs sent nationally in 1999. Thus, the cost data sent by the nine carriers significantly exceed the 75 percent threshold requested in the previous ANPRM data collection effort undertaken by FAA. FAA has no reason to believe that those collecting carriers not presenting data (including international and regional carriers) would have collection and remittance costs significantly different than those of the reporting carriers.

People interested in reviewing the individual carrier data submissions and the procedures reports may inspect them at the U.S. Department of Transportation Dockets, Docket No. FAA–2002–13918, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. In addition, individuals may access electronic copies through the Docket Management System Internet Web page located at *http//dms.got.gov.*

FAA reviewed the carrier's cost data for consistent data categories and formats. Then, FAA consolidated all the information into a single summary table (Table 1). This table summarizes the raw actual cost data for 1999, with estimated costs of imposing the new $4.50 PFC level.

TABLE 1.—1999 TOTAL COSTS OF PFC HANDLING, ALL REPORTING AIR CARRIERS

PFC collection cost categories	1999 actual costs [1]		1999 pro-forma [2]		Implementation [3]	
	Total cost ($)	% total	Total cost ($)	% total	Total cost ($)	% total
Credit Card Fees	24,311,612	43.7	33,390,598	52.8		
Audit Fees (External)	423,502	0.8	296,166	0.5	85,182	2.5
Disclosure Costs	6,218,343	11.2	6,191,343	9.8		
Reservations	9,751,032	17.5	9,317,814	14.7		
Passenger Services	5,226,254	9.4	5,092,650	8.1		
Data Entry:						
Internal	43,609	0.1	29,605	0.0		
Other		0.0		0.0		
Revenue Accounting	857,925	1.5	728,507	1.2	6,875	0.2
Accounts Payable	109,905	0.2	71,390	0.1		
Tax & Legal	77,359	0.1	75,859	0.1		
Corporate Property Department	323,570	0.6	282,195	0.4		

TABLE 1.—1999 TOTAL COSTS OF PFC HANDLING, ALL REPORTING AIR CARRIERS—Continued

PFC collection cost categories	1999 actual costs [1]		1999 pro-forma [2]		Implementation [3]	
	Total cost ($)	% total	Total cost ($)	% total	Total cost ($)	% total
Training:						
Reservations	99,154	0.2	99,158	0.2	49,675	1.4
Other	413	0.0	413	0.0	....	....
Ticket Agents	782,336	1.4	445,625	0.7	55,424	1.6
Internal On-Going IT	552,695	1.0	488,602	0.8	....	....
CRS On-Going fees	5,823,761	10.5	5,732,145	9.1	....	....
ATPCO	5,407	0.0	4,643	0.0	135	0.0
ARC + BSP	988,694	1.8	946,262	1.5	77,712	2.2
Internal One-Time IT update	....	0.0	....	0.0	3,020,947	87.2
CRS One-Time update	....	0.0	....	0.0	168,870	4.9
Interest Revenue on Float	(7,070,099)	n/a	(9,969,952)	n/a	....	
Total costs	55,595,572	100	63,192,975	100	3,464,820	100
Total costs less interest	48,525,473	n/a	53,223,024	n/a	3,464,820	n/a
Number of PFCs Remitted	436,659,521	....	406,526,509	....	448,929,355	
Number of PFCs Collected	485,238,737	....	452,173,384	....	505,223,269	....
Percentage of PFCs Refunded	10.0%	....	10.1%	....	11.1%	....
Range of Refunded Rates	5.4% to 20.2%	....	5.4% to 20.2%	....	5.4% to 20.2%	....
Cost Less Interest Per PFC Remitted	$0.1111	....	$0.1309	....	$0.0077	....
Cost Less Interest Per PFC Collected	0.1000	....	0.1177	....	0.0069	....
PFC Absorption	30,495,212	....	....	....	....	
Cost Per PFC Remitted	0.0698	....	....	....	....	
Cost Per PFC Collected	0.0628	....	....	....	....	

[1] Actual costs incurred. Agreed-upon procedures have been applied by the independent accountant to actual 1999 costs. Enplanement data are for 1999.
[2] Assumes the same volume as 1999, but with 100 of PFCs Collected at $4.50 for each PFC—this only impacts Credit Card Fees and Interest Revenue. One carrier did not submit data.
[3] Costs associated with the implementation of the new $4.50 PFC rate in years 2000 and 2001. This column is not year specific. One carrier did not submit data. Enplanement data are for 2000.

The same data, presented in terms of the average cost for each PFC collected and remitted, are presented in Tables 2 and 3.

TABLE 2.—AVERAGE 1999 PFC HANDLING COSTS

PFC collection cost categories	1999 actual costs—average cost per collected PFC				Average cost per remitted PFC
	Average	Standard deviation	Highest reported	Lowest reported	
Credit Card Fees	$0.0501	$0.0039	$0.0588	$0.0446	$0.0557
Audit Fees (External)	0.0009	0.0012	0.0039	0.0002	0.0010
Disclosure Costs	0.0128	0.0286	0.0874	0.0002	0.0142
Reservations	0.0201	0.0131	0.0381	0.0000	0.0223
Passenger Services	0.0108	0.0101	0.0292	0.0000	0.0120
Data Entry:					
Internal	0.0001	0.0002	0.0004	0.0000	0.0001
Other	0.0000	0.0000	0.0000	0.0000	0.0000
Revenue Accounting	0.0018	0.0015	0.0041	0.0002	0.0020
Accounts Payable	0.0002	0.0007	0.0020	0.0000	0.0003
Tax & Legal	0.0002	0.0002	0.0005	0.0000	0.0002
Corporate Property Department	0.0007	0.0005	0.0014	0.0000	0.0007
Training:					
Reservations	0.0002	0.0004	0.0012	0.0000	0.0002
Other	0.0000	0.0000	0.0000	0.0000	0.0000
Ticket Agents	0.0016	0.0033	0.0102	0.0000	0.0018
Internal On-Going IT	0.0011	0.0015	0.0042	0.0000	0.0013
CRS On-Going fees	0.0120	0.0073	0.0189	0.0000	0.0133
ATPCO	0.0000	0.0000	0.0000	0.0000	0.0000
ARC + BSP	0.0020	0.0018	0.0057	0.0000	0.0023
Internal One-Time IT update.					
CRS One-Time update.					
Interest Revenue on Float	(0.0146)	0.0029	(0.0089)	(0.0185)	(0.0162)

TABLE 2.—AVERAGE 1999 PFC HANDLING COSTS—Continued

PFC collection cost categories	1999 actual costs—average cost per collected PFC				Average cost per remitted PFC
	Average	Standard deviation	Highest reported	Lowest reported	
Total Average Costs	0.1146	0.0237	0.1594	0.0837	0.1273
Total Average Costs Less Interest	0.1000	0.0228	0.1439	0.0705	0.1111
Number of PFCs Remitted	436,659,521				
Number of PFCs Collected	485,238,737				
% of PFCs Refunded	10.0%				
Range of Refunded Rates	5.4% to 20.2%				
PFC Absorption	0.0628	0.1625	0.4457	0.0000	0.0698

Values shown as $0.0000 on this table were either reported as zero, not reported (assumed to be zero for calculation purposes), or are a calculated figure determined to be statistically insignificant (*i.e.* less than $0.0001).

TABLE 3.—1999 $4.50 PFC PRO-FORMA AND IMPLEMENTATION COSTS

All Airlines—PFC Collection Cost Categories	1999 Pro-Forma [1]		Implementation costs	
	Average cost per collected PFC	Average cost per remitted PFC	Average cost per collected PFC	Average cost per remitted PFC
Credit Card Fees/Bad Debt	$0.0738	$0.0821	N/A	N/A
Audit Fees (External)	N/A	N/A	$0.0002	$0.0002
Disclosure Costs	N/A	N/A	N/A	N/A
Reservations	N/A	N/A	N/A	N/A
Passenger Services	N/A	N/A	N/A	N/A
Data Entry:				
Internal	N/A	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A
Revenue Accounting	N/A	N/A	0.0000	0.0000
Accounts Payable	N/A	N/A	N/A	N/A
Tax & Legal	N/A	N/A	N/A	N/A
Corporate Property Department	N/A	N/A	N/A	N/A
Training:				
Reservations	N/A	N/A	0.0001	0.0000
Other	N/A	N/A	N/A	N/A
Ticket Agents	N/A	N/A	0.0001	0.0001
Internal On-Going IT	N/A	N/A	0.0000	0.0001
CRS On-Going fees	N/A	N/A	N/A	N/A
ATPCO	N/A	N/A	0.0000	0.0000
ARC + BSP	N/A	N/A	0.0002	0.0000
Internal One-Time IT update	N/A	N/A	0.0060	0.0066
CRS One-Time update	N/A	N/A	0.0003	0.0006
Interest Revenue on Float	(0.0220)	(0.0245)	NA	NA
Total Average Costs [1]	0.1383	0.1537	0.0069	0.0077
Total Average Costs Less Interest	0.1163	0.1292	0.0069	0.0077
Number of PFCs Remitted	406,526,509		448,929,355	
Number of PFCs Collected	452,173,384		505,223,269	
% of PFCs Refunded	10.1%		11.1%	
Range of Refunded Rates	5.4% to 20.2%		5.4% to 20.2%	

Values shown as $0.0000 on this table are calculated figures determined to be statistically insignificant (*i.e.* less than $0.0001).

[1] Includes actual 1999 costs for carriers reporting pro-forma data incurred for all categories except credit card fees and interest revenue. Agreed-upon procedures have been applied by the independent accountant to actual 1999 costs, but not to pro-forma $4.50 estimates.

Analysis of 1999 Cost Data

The carriers gave data according to the formats requested. FAA examined the presented data and proposes to accept all cost categories suggested (either in whole or in part), except for the PFC absorption category, as valid incremental costs associated with PFC collection and handling, and thus valid average necessary and reasonable expenses of PFC collection and handling.

Some carriers reported that, in some air service markets, they must ‘‘absorb’’ the PFC from other carrier revenues because the markets are too price sensitive for the carrier to pass the PFC along to consumers. In this case, the carriers wish to treat such absorbed costs as administrative expenses associated with PFC collection and handling.

FAA allowed carriers to present estimates of ''absorbed'' PFC costs as part of this data collection effort, but noted that FAA may discount such data. In particular, it is unclear why the PFC should bear the burden of price sensitivity in a market. FAA asked carriers to show why ''absorption'' is an incremental cost of collecting, handling, remitting, reporting, recordkeeping, and/or auditing the PFC. FAA also requested that carriers send detailed explanations of their method for determining markets where absorption occurs and for calculating absorption.

Four carriers sent information on PFC absorption expenses. One of these carriers accounted for 63 percent of the $30.5 million of such charges identified. On average, for all carriers, these charges would add $0.063 to the cost of each PFC collected nationally. For the one carrier accounting for most of the absorption cost, the cost would amount $0.42 for each PFC collected by that carrier.

The carriers presenting PFC absorption cost data did not provide information on how the absorption cost is related to the cost of collecting and handling the PFC. One carrier imputed an $0.08 charge for each PFC it refunded to passengers as an absorbed cost, in that it did not received the $0.08 handling fee for these collections. However, FAA notes that this imputed charge is not an actual cost of collecting and handling PFCs. Air carriers also have not shown why absorption costs should not be associated with some other cost center of the carrier. Further, the carriers did not explain their methods for determining markets where absorption occurs and or their methods for calculating absorption. FAA has determined there is no reason to classify the charge of a ticket price adjustment as an expense associated with PFC collection and handling (including remitting, reporting, recordkeeping, and/or auditing.) FAA finds it more suitable to classify such a charge as one associated with providing air service, such as company overhead, fuel, labor expense, or airport rates and charges.

Based on the foregoing, FAA proposes to exclude PFC absorption from the calculation of average, reasonable, and necessary expenses of PFC collection and handling.

FAA reviewed the non-absorption 1999 data reported by carriers and found that five cost categories account for 92.3 percent of PFC collection and handling expenses. These categories include credit card fees, disclosure costs, reservations, passenger services, and CRS fees.

The credit card fee was the largest single cost item that FAA proposes to accept, accounting on average for 43.7 percent of PFC collection and handling costs. That amount equals just over $0.05 for each PFC collected or $.056 for each $3 PFC remitted to airport public agencies. FAA found a high degree of uniformity in the cost amounts the nine carriers allocated to this item.

The next largest cost item is reservation services, at 17.5 percent of PFC collection and handling costs, accounting on average for $.02 for each PFC collected and $0.022 for each PFC remitted. Reservations charges include the cost of increased telephone ''talk time'' with airline customers explaining PFCs to customers when they make airline reservations by telephone. Air carriers considered, in some degree, the following items: Total reservation calls handled; PFC calls handled; seconds for each normal call; difficult calls handled; seconds for each difficult call; call hours; and average wage rate per hour. FAA found significant variability among carriers in estimates of this cost item, ranging from $0.00 to $0.038 with a standard deviation of $.013 around the average.

The third largest cost item in the raw data is disclosure costs, at 11.2 percent of PFC collection and handling costs. That amount equals, on average, $.013 for each PFC collected and $0.014 for each PFC remitted. Disclosure costs are attributable to FAA requirement that carriers provide notice to the passenger that PFC fees may be applicable to the passenger. One carrier (Southwest Airlines) accounted for 91 percent of the total reported disclosure costs, but only 13 percent of the total PFCs reported collected by the nine carriers.

FAA notes that Southwest's independent accountant, using the agreed-upon procedures, accepted the carrier's claim of disproportionately high disclosure costs. Moreover, the reason provided for the high disclosure cost, that Southwest Airlines relies disproportionately on television fare advertising as causing the higher cost, is not implausible. Consequently, FAA proposes, on a preliminary basis, to set disclosure costs for this carrier at a level equal to the disclosure costs for all other carriers combined to calculate the handling fee. We have therefore reduced the estimate for total cost of disclosure for all nine carriers to $0.0024 for each PFC collected. That amount is equal to twice the combined $.0012 for each PFC collected charge for all carriers except Southwest Airlines. FAA's eventual acceptance of a significantly higher disclosure cost, as identified by Southwest Airlines, depends, in part, on that carrier's or other carriers' submission of data supporting this claim.

The fourth largest cost item is the on-going CRS (Computer Reservation Systems) expense, at 10.5 percent of PFC collection and handling costs. This amount accounts, on average, for $.012 of each PFC collected and $0.013 of each PFC remitted. Air carriers incur on-going CRS costs, in the form of booking fees, for using the CRS. These costs do not include the one-time charges associated with reprogramming the CRS software to allow a $4.50 PFC or other changes associated with AIR–21.

The fifth and last major cost item is passenger services. This item represents 9.4 percent of PFC collection and handling costs, accounting on average for $.011 of each PFC collected and $0.012 of each PFC remitted. Passenger service costs are attributable to increased face-to-face time with airline customers. FAA found significant variability in estimates of this cost item, ranging from $0.00 to $0.029 with a standard deviation of $.010 around the average.

FAA notes that several carriers may have allocated cost items to the passenger services category that other carriers allocated to the reservations category. Combined, the reservations and passenger services categories vary less than they do independently among the nine carriers. The combined average cost has a standard deviation of $0.014 compared to a mean of $0.025.

The remaining 13 cost categories collectively account for less than 8 percent of total cost of collecting and handling PFCs. No one category exceeds 2 percent.

Table 4 shows FAA's proposed adjustments to Table 1, reflecting the exclusion of claimed ''PFC absorption'' expenses and the proposed reduction of PFC disclosure costs.

TABLE 4.—1999 TOTAL COSTS OF PFC HANDLING, ALL REPORTING AIR CARRIERS

PFC collection cost categories	1999 actual costs		1999 Pro-Forma		Implementation	
	Total cost ($)	% total	Total cost ($)	% total	Total cost ($)	% total
Credit Card Fees/Bad Debt Exp.	24,311,612	48.1	33,390,598	57.5		
Audit Fees (External)	423,502	0.8	296,166	0.5	85,182	2.5
Disclosure Costs [1]	1,159,495	2.3	1,105,495	1.9		
Reservations	9,751,032	19.3	9,317,814	16.0		
Passenger Services	5,226,254	10.3	5,092,650	8.8		
Data Entry:						
Internal	43,609	0.1	29,605	0.1		
Other		0.0		0.0		
Revenue Accounting	857,925	1.7	728,507	1.3	6,875	0.2
Accounts Payable	109,905	0.2	71,390	0.1		
Tax & Legal	77,359	0.2	75,859	0.1		
Corporate Property Department	323,570	0.6	282,195	0.5		
Training:						
Reservations	99,154	0.2	99,158	0.2	49,675	1.4
Other	413	0.0	413	0.0		
Ticket Agents	782,336	1.5	445,625	0.8	55,424	1.6
Internal On-Going IT	552,695	1.1	488,602	0.8		
CRS On-Going fees	5,823,761	11.5	5,732,145	9.9		
ATPCO	5,407	0.0	4,643	0.0	135	0.0
ARC + BSP	988,694	2.0	946,262	1.6	77,712	2.2
Internal One-Time IT update		0.0		0.0	3,020,947	87.2
CRS One-Time update		0.0		0.0	168,870	4.9
Interest Revenue on Float	(7,070,099)	n/a	(9,969,952)	n/a		
Total Costs [2]	50,536,723	100	58,107,127	100	3,464,820	100
Total Costs Less Interest	43,466,624	n/a	48,137,175	n/a	3,464,820	n/a
Number of PFCs Remitted	436,659,521		406,526,509		448,929,355	
Number of PFCs Collected	485,238,737		452,173,384		505,223,269	
Percentage of PFCs Refunded	10.0		10.1		11.1	
Range of Refunded Rates	5.4 to 20.2		5.4 to 20.2		5.4 to 20.2	
Cost Less Interest Per PFC Remitted	$0.0995		$0.1184		$0.0077	
Cost Less Interest Per PFC Collected	0.0896		0.1065		0.0069	

[1] Disclosure costs adjusted to equal two times the reported disclosure costs of all reporting carriers except for Southwest Airlines. See discussion on disclosure costs.

[2] Total costs do not include PFC absorption costs reported by some carriers. See discussion on PFC absorption costs.

Analysis of 1999 Interest Income

Interest earned on the PFC revenue collected by the carrier but not yet remitted to the airport public agencies forms a portion of the collection compensation carriers are entitled to under section 158.53. As part of the analysis of the total collection compensation for the carriers, FAA also requested information on the amount of interest earned by the carriers on unremitted PFC revenue. FAA determined that this interest amounted to $0.0146 for each $3 PFC in 1999. This amount is roughly equivalent to what FAA had estimated based on an assumed retention period of 45 to 50 days and a 4 percent annual interest rate. The variability around this average is low. The highest reported interest is $0.0185 at a 5 percent interest rate. The lowest reported interest rate was $0.0089 at a 2.5 percent interest rate.

Total adjusted average cost for each PFC collected, minus interest earned on the PFC while held by the carrier, was $0.0896 for each PFC collected and $0.0995 for each PFC remitted in 1999. We base this amount on the adjusted values in Table 4. This amount compares to the $0.08 for each PFC remitted currently allowed under the PFC regulation for each PFC remitted. This information provided a reference point for the next step in FAA's process.

Analysis of "Pro Forma" $4.50 Costs and Interest Income

FAA sought information on projected or "pro forma" costs that would be associated with handling $4.50 PFC levels. FAA specifically asked about the effect of the $4.50 level on credit card fees and interest earned on higher PFC balances. We expected that all other costs would not vary significantly between PFC levels.

To simplify presentation of the "pro forma" costs, the carriers included their estimates for credit card fees and interest income with actual 1999 data for the other cost items. One of the nine carriers reporting 1999 actual data did not report the pro forma estimate for the $4.50 PFC level. FAA found that, if it excluded the data from the non-reporting carrier, all data other than credit card fees and interest income are identical between 1999 actual and the $4.50 pro forma data for the remaining eight carriers.

The credit card fee expense becomes a significantly larger item in PFC handling costs at the $4.50 PFC level allowed by AIR–21. This is because the fee paid by the carriers to the credit card company is a percentage of the amount charged. The credit card and bad debt expense items for the $4.50 PFC level would cost carriers, on average, just over $0.074 for each PFC collected or $0.082 for each PFC remitted. We have based these amounts on the pro forma estimates provided by eight of the nine reporting carriers. FAA notes the independent accountants did not evaluate these amounts. These amounts compare to an average credit card fee of $0.0501 for each PFC collected and $0.0557 for each PFC remitted at the $3 PFC level. The estimates at the two PFC levels appear consistent. The actual fee in 1999 equates to about 1.67 percent of the $3 PFC, whereas the estimated pro forma fee equates to 1.64 percent of the $4.50 PFC. The slight difference compared to the $3 PFC amount may be attributable to the one carrier not reporting. It is significant to note that at the $4.50 level, the credit card fee alone would exceed the $0.08 compensation for each PFC remitted currently allowed under § 158.53.

FAA estimated interest earned on the PFC revenue collected by the carrier but not yet remitted to the airport public agencies to be, on average, $0.0220 for each collected $4.50 PFC and $0.0245 for each remitted $4.50 PFC. This amount is about 52 percent more than estimated for a $3 PFC level. FAA notes that one carrier did not report a pro forma estimate of interest.

In summary, collection and handling costs minus interest income for a $4.50 PFC level would yield a cost of $0.1065 for each PFC collected and $0.1184 for each PFC remitted.

Analysis of $4.50 Implementation Costs

FAA requested data from the carriers on the total cost of setting up the $4.50 PFC allowed by AIR–21. Specifically, FAA asked how much it cost the carriers to change their computer systems and other systems such as the CRS providers, the Airline Tariff Publishing Company (ATPCO), and the Airline Reporting Corporation (ARC). Air carriers and other data providers had to change programming codes and terminal screen formats to allow for four data columns. Previously, the systems only needed a single column for the $1, $2, and $3 PFC levels. Now, computer systems need columns for three numbers and a decimal point for the $4.50 PFC charge. Air carriers and other data providers completed reprogramming by April 1, 2001; however, carriers presented their handling cost data to FAA in December 2000 and January 2001 while efforts were still underway. FAA, therefore, did not require the independent accountants to apply the agreed-upon procedures to these cost items.

Cost items claimed by the carriers for setting up the increased PFC levels included charges for revenue accounting, training of reservations and ticket agents, fees to ATPCO, ARC, and CRS vendors, one-time information technology updates, and audit fees. One of these cost items, one-time information technology updates, accounted for 87 percent of the set-up costs. After analyzing the carrier data, FAA found the total set up cost for carriers was only $.0077 for each PFC collected. That means that carriers could recover the total cost of implementation with a one-year handling fee surcharge of less than one cent.

Although the independent accountants did not review the set up costs, the low cost claimed, particularly for reimbursement of computer service providers, was below FAA's expectations given the size of the reprogramming effort.

Analysis of Ticket Refund Rates

The data we received from the carriers reveals an overall average ticket refund rate of 10 percent. Because a carrier must handle refunded tickets twice, a higher volume of refunded tickets means higher costs for the carrier. The data format specified by FAA did not specifically ask the carriers to send data on the costs associated with refunded tickets because gathering the data would burden the carriers. Rather, the carriers included the costs associated with refunds in their overall cost data.

FAA notes that compensating carriers for each PFC collected compared to compensating them for each PFC remitted are equally valid means of compensation. Suppose total industry costs, minus interest earned, for handling PFCs were $50 million where carriers collected 500 million PFCs and remitted 416 million PFCs. In this example, carriers refunded 84 million PFCs after collections. The carriers collectively would receive the same compensation, $50 million, from collecting airports if the handling fee were set at $0.10 for each PFC collected or $0.12 for each PFC remitted. If all carriers had equivalent refund rates, all would receive equal compensation for the expenses associated with PFC refunds under either method.

FAA notes that selection of a standard fee for each PFC collected or for each PFC remitted may yield different amounts of compensation to individual carriers. In particular, a compensation standard for each PFC remitted, calculated from total industry handling costs and PFC remittances, assumes all carriers have the same PFC refund rates. Air carriers with higher ticket refund rates and higher PFC refund-related handling costs would receive less overall compensation relative to their actual costs than would carriers with low refund rates if compensated for each PFC remitted. This assumes everything else is equal. The data received from the carriers show that refund rates vary significantly among carriers. One large carrier reported a refund rate of only 5.4 percent, whereas another large carrier had a refund rate of 20.2 percent.

Section 40117 of title 49 of the U.S. Code requires FAA to set up a compensation fee that is uniform and reflects the average necessary and reasonable expenses incurred in collecting and handling the PFC, minus interest accrued before remittance. Therefore, FAA cannot set two or more compensation rates based on the different needs of each carrier. FAA does, however, have the choice of setting one fee to compensate carriers either for each PFC collected or each PFC remitted. If FAA elects to compensate carriers for each PFC collected, carriers with high refund rates would not be penalized, and carriers with low refund rates would not receive a windfall.

Calculation of PFC Handling Fee

The average PFC handling fee reported by the carriers was $0.0896 for each $3 PFC collected in 1999 and $0.0995 for each $3 PFC remitted in 1999. (*See* the 1999 actual costs at the bottom of Table 4). We propose to subtract interest earned on collected PFCs from this amount and excluded ''PFC absorption'' expenses. The amount also includes a downward adjustment for disclosure costs. Had a $4.50 PFC been in place that year at all airports where PFCs are collected, the carriers estimate the increase in their costs, minus interest, would have raised their overall cost to $0.1065 for each $4.50 PFC collected and $0.1184 for each $4.50 PFC remitted. (See the 1999 pro forma costs at the bottom of Table 4). A surcharge would be necessary to compensate carriers for the one-time cost of setting up the $4.50 PFC level.

Selecting the right compensation level clearly depends on the assumption made about what mix of $4.50 and $3 PFCs carriers will collect. FAA estimates that nearly 50 percent of all collected PFCs will be at $4.50 in 2002, 75 percent will be at $4.50 in 2003, and 90 percent will be at the $4.50 level in 2004, and almost 100 percent thereafter. Therefore, FAA proposes to phase in a new collection fee based on the estimated mix of $3 and $4.50 collections over the next several years. Table 5 summarizes FAA's proposal for compensating carriers for each PFC collected or each PFC remitted.

TABLE 5.—ACTUAL COSTS AND PROPOSED FEES

	Year 2002 [1]	Year 2003 [2]	Year 2004 [3]	Year 2005 [4]
Compensation Based on PFCs Collected:				
1999 Cost Per PFC Collected at $3 (Actual)	$0.0896	$0.0896	$0.0896	$0.0896
1999 Cost Per PFC Collected at $4.50 (Pro-Forma)	0.1065	0.1065	0.1065	0.1065
Weighted Cost Per PFC Collected (Actual)	0.0981	0.1023	0.1048	0.1065
Proposed Fee Per PFC Collected	0.1000	0.1000	0.1000	0.1100
Over/Under Collection Per PFC	00019	(0.0023)	(0.0048)	0.0035
Compensation Based on PFCs Remitted:				
1999 Cost Per PFC Remitted at $3 (Actual)	0.0995	0.0995	0.0995	0.0995
1999 Cost Per PFC Remitted at $4.50 (Pro-Forma)	01184	01.184	0.1184	0.1184
Weighted Cost Per PFC Remitted (Actual)	0.1090	0.1137	0.1165	01184
Proposed Fee Per PFC Remitted	0.1100	0.1100	0.1200	0.1200
Over/Under Collection Per PFC	0.0010	(0.0037)	0.0035	0.0016

[1] (Assumes 50% at $3 and 50% at $4.50)
[2] (Assumes 25% at $3 and 75% at $4.50)
[3] (Assumes 10% at $3 and 90% at $4.50)
[4] (Assumes 0% at $3 and 100% at $4.50).

FAA considered using fees involving fractional cents but opted to use whole cent units for ease of explanation and to prevent possible reprogramming expenses for carriers and airports. Table 5 shows that if carriers receive compensation for each PFC collected, the proposed rate would be $0.10 for each PFC collected, through calendar year (CY) 2004. In CY 2005 and beyond, the rate would increase to $0.11 and remain at that level. If carriers received compensation for each PFC remitted, the proposal would set the fee at $0.11 for each PFC remitted through CY 2003. Then, the rate would go to $0.12 for each PFC remitted in CY 2004 and beyond.

Based on data reported by the nine carriers for 1999, Table 6 shows that either method yields about the same compensation over a ten year period, measured by net present value using a 7 percent discount rate. FAA finds the discounted compensation over a 10-year period exceeds ongoing PFC handling expenses by roughly the amount needed to recover the one-time set up costs (adjusted to 2002 present value) for the $4.50 PFC. Excess compensation would be less than half of one percent of estimated carrier costs over the 10-year period. Air carriers would receive more compensation if the rate is set for each PFC collected instead of each PFC remitted, but the difference between the two methods is not significant.

TABLE 6.—COMPARISON OF COMPENSATION STREAMS, COLLECTED VS. REMITTED

	Per collected PFC		
	Weighted actual handling cost	Proposed compensation	Difference
PFCs Collected by Carriers Reporting Data—485,238,737			
Calendar Year:			
2002	$47,577,658	$48,523,874	$946,216
2003	49,627,792	48,523,874	(1,103,918)
2004	50,857,872	48,523,874	(2,333,998)
2005	51,677,925	53,376,261	1,698,336
2006	51,677,925	53,376,261	1,698,336
2007	51,677,925	53,376,261	1,698,336
2008	51,677,925	53,376,261	1,698,336
2009	51,677,925	53,376,261	1,698,336
2010	51,677,925	53,376,261	1,698,336
2011	51,677,925	53,376,261	1,698,336
Present Value 2002–11 (2002)	356,672,024	362,158,324	5,486,300
Present Value of One-Time $4.50 PFC Implementation Costs (2002)			3,707,357
Present Value of Net Compensation (Difference Less Implementation)			1,778,943
Percent Net Compensation of Total Weighted Actual Handling Costs			0.5%

	Per remitted PFC		
	Weighted actual handling cost [1]	Proposed compensation	Difference
PFCs Remitted by Carriers Reporting Data—436,659,521			
Calendar Year:			
2002	$47,574,055	$48,032,547	$458,492
2003	49,637,271	48,032,547	(1,604,724)

	Per remitted PFC		
	Weighted actual handling cost [1]	Proposed compensation	Difference
2004	50,875,201	52,399,143	1,523,942
2005	51,700,487	52,399,143	698,655
2006	51,700,487	52,399,143	698,655
2007	51,700,487	52,399,143	698,655
2008	51,700,487	52,399,143	698,655
2009	51,700,487	52,399,143	698,655
2010	51,700,487	52,399,143	698,655
2011	51,700,487	52,399,143	698,655
Present Value 2002–11 (2002)	356,790,337	360,134,767	3,344,430
Present Value of One-Time $4.50 PFC Implementation Costs (2002)			3,707,357
Present Value of Net Compensation (Difference Less Implementation)			(362,927)
Percent Net Compensation of Total Weighted Actual Handling Costs			(0.1%)

[1] Weighted actual costs for total remitted PFCs vary slightly from these shown for total collected PFCs (by 0.03) due to slightly different refund rates between the actual and pro-forma cost estimates.

Table 7 shows the proposed rates of compensation compared with the existing $0.08 rate of compensation for each PFC remitted over a ten-year period, from 2002 to 2011. Table 7 is calculated based on compensation for each remitted PFC because that is the method for the current $0.08 compensation level. However, the amount of increase in total compensation to carriers shown in Table 7 for the remitted PFC methodology is comparable to what would result from the collected PFC methodology. Under the proposed rates of compensation, the reporting carriers would receive $13 million more in compensation each year through 2003 than they would under the $0.08 rate of compensation. Then, they would receive more than $17 million in added compensation in 2004 and beyond.

FAA notes the data presented by the nine carriers represented 84 percent of the estimated total PFCs collected in 1999. When we estimated the total impact on the entire PFC program, including all PFC collections and remittances, we found that air carries would receive $16 million more in compensation in 2002 and 2003, and $21 million more in the years after. These estimates are based on 1999 enplanement levels.

By 2005, this added compensation would constitute less than 1 percent (0.89 percent) of the total PFC collection stream realized by the airports. The total compensation amount, including the $0.08 level existing, would constitute 2.67 percent of collections. Over a ten-year period, increased collection as measured in present value terms would be 0.87 percent of total PFCs collected.

TABLE 7—COMPENSATION COMPARISON: PROPOSED FEE VS. $0.08 HANDLING FEE

	Proposed fee per remitted PFC	$0.08 fee per remitted PFC	Difference	Value of PFCs collected
PFCs Remitted by Carriers Reporting Data—436,659,521				
Calendar Year:				
2002	$48,032,547	$34,932,762	($13,099,786)	$1,637,473,204
2003	48,032,547	34,932,762	(13,099,786)	1,801,220,524
2004	52,399,143	34,932,762	(17,466,381)	1,899,468,916
2005	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2006	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2007	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2008	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2009	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2010	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2011	52,399,143	34,932,762	(17,466,381)	1,964,967,845
Present Value (2002)	360,134,767	245,353,100	(114,781,667)	13,298,552,236
Increase as Percent of PV of PFCs Collected				0.8631%
Undiscounted Value	515,258,235	349,327,617	(165,930,618)	19,092,937,556
Increase as Percent of PFCs Collected				0.8691%

Note: This table does not compare fees based on PFC collections because the existing compensation fee ($0.08) is paid per remitted PFC. However, the two proposed compensation methodologies yield approximately the same level of new compensation.

Treatment of Inflation

Most of the nine carriers reporting handling costs also asserted that inflation affects costs. FAA has found, however, that the use of an inflation factor for handling fees is problematic for several reasons. First, the largest cost item, the credit card transaction fee, is not necessarily linked to inflation in the economy. Second, the long-term link between prevailing rates of wage compensation for reservations agents and other airline personnel, and productivity, such as the ability to handle ticket transactions more efficiently through e-ticketing from internet sites, is difficult to forecast. Should handling fees for each PFC rise significantly because of inflation, FAA notes that airlines should document this increase and provide the information to FAA in a petition to amend part 158.

Conclusion

Currently, FAA bases PFC handling fees on remitted PFCs rather than collected PFCs. However, as noted above, data show that refund rates vary significantly among carriers. Therefore, FAA proposes to compensate carriers for PFCs collected. Specifically, FAA proposes that carriers receive $0.10 for each PFC collected through CY 2004. From CY 2005 and beyond carriers will receive $0.11 for each PFC collected. FAA reminds all parties the current requirements of § 158.53 remain in effect unless FAA issues a final rule changing the PFC rule. Until changed through a final rule, carriers remain entitled to receive $0.08 for each PFC remitted. New fees, if any, set up in a final rule will not be retroactive from the date of that final rule, nor will a change in the basis for compensation be retroactive.

Paperwork Reduction Act

Information collection requirements in the amendment to part 158 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0557. Note that nine carriers voluntarily presented data to FAA for analysis before FAA began this rulemaking action.

International Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA determined there are no ICAO Standards and Recommended Practices that correspond to these proposed compensation adjustments.

Economic Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) has benefits which do justify its costs, is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are available in the docket.

Benefit—Cost Analysis

This proposed rule will amend part 158 to bring compensation for PFC collection and handling to levels necessary to meet cost increases resulting in part from the new statutory rules set up under AIR–21. AIR–21 allows airport authorities to increase the PFC level to $4 or $4.50 to collect more funds. Airport authorities will use these funds to (1) enhance the safety, security and capacity of their facilities; (3) reduce noise in nearby communities; and (3) enhance airline competition to the benefit of air travelers. The PFC statute requires that the Secretary of Transportation (whose authority has been delegated to FAA) establish by regulation a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs. This amount, referred to in 14 CFR part 158 as ''carrier compensation,'' is to be determined net of interest earned on PFC revenue between the time of collection and payment. The current compensation amount allowed by § 158.53 is $0.08 for each PFC remitted. However, the increase in the PFC level to $4 or $4.50 from the earlier $3 cap introduced new costs to carriers for which carriers do not receive compensation under the prevailing rate of $0.08 for each PFC remitted. In addition, some carriers and their trade organizations have argued that the $0.08 compensation amount is not enough even at the $3 for each PFC remitted level. FAA proposes a new amount of compensation at $0.10 for each PFC collected through calendar year 2004. In 2005 and beyond carriers would receive $0.11 for each PFC collected. Based on 1999 PFC collections, FAA estimates the change would increase carrier compensation by $21 million yearly in PFC funds. Otherwise, airports would have received this added compensation instead of the carriers. Once airports widely adopt the $4.50 PFC, this higher compensation amount would be less than one percent of estimated airport PFC receipts. This proposed amount would not erode airport authorized PFC collection amounts. Rather, airports would be able to recover this slightly higher compensation amount by minimal extensions of PFC collection periods. In addition, any impact on airport revenue streams caused by the higher compensation amount is an unavoidable result of providing a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs, as required by the PFC statute. Air travelers will not incur an increase in the cost of their tickets because of this adjustment. Air carriers may incur some minor costs (if any) of setting up the change of compensation amounts in their accounting programs, but the benefits of the higher compensation amounts would outweigh this cost.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 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 (RFA) as described in the Act.

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 RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The change to the compensation amount is necessary to conform with the PFC statute, which requires the Secretary to establish by regulation a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs (net of interest accruing to the carrier and agent after PFC collection and before remittance of the PFC to the airport public agency). Moreover, all costs to the small entity are fully recoverable through the PFC, if approved. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), FAA certifies this rule will not have a significant impact on a substantial number of small entities.

International Trade

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, FAA has assessed the potential effect of this proposed rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified at 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Executive Order 13132, Federalism

FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined this notice of proposed rulemaking would not have federalism implications.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

Environmental Analysis

FAA concludes that issuance of this proposed rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. The potential environmental effects of any project funded with PFC revenues are already addressed under § 158.29(b)(1)(iv), which requires all applicable requirements pertaining to the National Environmental Policy Act of 1969 (NEPA) to be satisfied before the Administrator may approve the project to use PFC funds. A copy of this assessment has been placed in the docket.

Energy Impact

We have assessed the energy impact of the proposed notice in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. We have determined the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 158

Air carriers, Airports.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 158 of title 14 of the Code of Federal Regulations as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC'S)

1. The authority citation for part 158 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40116–40117, 47106, 47111, 47114–47116, 47524, 47526.

2. Amend § 158.53 by revising the introductory text and paragraph (a) to read as follows:

§ 158.53 Collection compensation.

As compensation for collecting, handling, and remitting the PFC revenue, the collecting carrier is entitled to:

(a) Retain $0.10 of each PFC collected on or after (the effective date of the final rule) and before January 1, 2005, after which carriers are entitled to $0.11 of each PFC collected;

* * * * *

Issued in Washington, DC, on November 20, 2002.

Benito DeLeon,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 02–30103 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–13–P