

Under the Act, the Administrator is authorized to approve applications by public agencies to impose PFC's. The Federal Government has discretion only over the procedures governing the application for and approval of PFC authority and the collection, handling, and use of PFC revenue. In addition, PFC revenue will be generated only as a consequence of a state or local initiative to impose a PFC. Finally, all such revenue accrues to the public agencies, not the Federal Government. Therefore, although the total annual revenue raised by passenger facility charges (PFC's) could easily exceed the \$100 million per year threshold, the FAA, for several reasons, has determined that this rule is not "major" as defined in the executive order. As a result of this determination, the requirement of the Act is satisfied by a regulatory evaluation, rather than a full regulatory impact analysis.

Benefits and Costs of PFC-Funded Projects

This evaluation examines the impact of a final rule under which the FAA allows public agencies that control airports to impose PFC's. The rule requires that the air carriers collect these charges and remit them to public agencies that control commercial service airports. PFC revenue may be used to fund investments in various types of eligible projects.

A recent survey of airports indicated that total public spending on capital improvements, including items not eligible for Federal aid, was \$4.5 billion in 1989. (The FAA and others have estimated that future investment needs for airport expansion, including work not eligible for Federal grants, will continue at that level or more for the next 5 to 10 years.) PFC revenue of \$1 billion per year could, therefore, finance 20 to 25 percent more in airport capital investment. The benefits and costs of these projects are discussed below.

Capacity Expansion. A major purpose for which PFC revenue may be used is the expansion of airport capacity on both airside and landside. Such investments can be expected to reduce airport delays. Some indication of the magnitude of the potential savings can be derived by noting that, for 1987, the total airside delay costs associated with the 100 largest airports in the U.S. have been estimated to be on the order of \$11 billion. Landside delays, including those associated with on-airport roads and terminals would add significantly to the total of airport-related delays that were experienced.

A significant investment of PFC revenue for capacity expansion can be assumed to reduce airport-associated delay time. The benefits of capacity expansion vary with specific projects, but computer simulations for airport capacity planners have consistently shown very favorable benefit to cost ratios for major projects such as new runways. For example, if 20 percent of the estimated airport investments (about \$1 billion per year) were to reduce passenger airport delays by 10 percent, the value of time savings would be about \$1.1 billion per year and the PFC-funded projects would yield benefits in excess of costs. Further, it is likely that the delay reductions from funding 20 percent of the desired investments would be in excess of 10 percent of current delays for two reasons. (1) Airport operators would have an incentive to make the best use of their new revenue by selecting as their investments the projects that have the greatest incremental benefits for the funds spent. (2) A large amount of this development will probably occur at the busiest airports, which are also the most congested and in greatest need of expansion.

Noise Mitigation. The FAA estimates that approximately \$1.8 billion will be spent for noise mitigation or other environmental projects over the next 10 years. PFC revenue could be used to fund these noise mitigation projects. Like delays, noise impacts most often occur at the busiest airports. For example, 57 percent of the cost of noise mitigation projects planned over the next 10 years is concentrated at the 29 busiest primary airports.

When PFC's fund projects that benefit noise-impacted individuals, the investment (e.g., for soundproofing of existing structures or the purchase of impacted real estate) can be thought of as compensation to those individuals who have incurred an indirect cost of air travel. By financing these projects, travelers who pay PFC's are, in effect, reducing a subsidy that has been—or would otherwise be—involuntarily provided to them by noise-impacted individuals. Whether the avoided costs of noise pollution are less than the costs incurred for abatement can be estimated only on a case-by-case basis. To the extent that noise mitigation expenditures respond to expressed public concerns, there is an incentive to give priority to the projects that yield the greatest net benefits.

The availability of substantial PFC revenue is expected to facilitate investments in noise mitigation projects. Detailed benefit/cost analyses are problematical, however, because of the difficulty of fully expressing benefits in monetary terms. Individual projects, however, are carefully developed, analyzed, and discussed by public agencies and noise-impacted individuals to produce projects that address serious public concerns.

Enhanced Competition Among Air Carriers. Projects that furnish opportunities for enhanced competition between or among air carriers may be funded with PFC revenue. Benefits that may be conferred upon PFC payers as a result of enhanced competition are likely to be in the form of lower air fares and/or improved service that arise from the construction of gates at an airport that allow new entrants/new competition in a travel market. Such benefits to travelers are highly dependent on the policy followed by any new entrant and the reactions of competing carriers. For instance, a new entrant may offer significantly lower fares but be so constrained by the limited amount of available airport space that it is unable to increase its operations to the extent that other carriers are induced to lower their fares in order to compete. In the limiting case of a single dominant carrier and a small new entrant carrier, the dominant carrier may perceive that there is little to be gained by lowering fares. As a result, a new entrant may substantially duplicate existing fares and service. Lower fares are believed to be more likely in cases where the new entrant is able to provide substantial competition with incumbent carriers.

In the event that the use of PFC revenue, for instance for the construction of gates, results in enhanced competition and lower air fares at an airport, air carriers may suffer a reduction in profits. However, if the resulting lower prices result in a reduction in profits, much of the loss in profits is likely to become a benefit that is transferred to passengers. In addition, there may be a higher level of travel service provided so that the combined consumers' and producers' surplus for the airport would be increased.

Funds Shifted to Smaller Airports. Section 9111 of the Act requires that sponsors of airports that annually have more than 0.25 percent or more of total annual enplanements in the U.S. will have their Airport Improvement Program entitlement funds reduced by 50 percent of their projected PFC revenue—up to 50 percent of this entitlement. The funds released from entitlements to these large and medium hub airports are to be used under Section 9112 of the Act as follows: 25 percent for a discretionary fund of which half is for small hub airports and 75 percent for a Small Airports Fund for use by general aviation airports and nonhub commercial service airports. It may be argued that the overall national airspace system is improved by 1) the increased capacity at larger airports and 2) increased capacity at smaller airports that would be unlikely to occur in the absence of the diversion of entitlement funds from larger to smaller airports. Sponsors of smaller airports may be unable to finance substantially improved facilities from funds raised at their airports in the absence of funds from outside sources. However, improvements at smaller airports may yield benefits through improved operations at nearby larger airports that the small airport operators are unable to fully capture through increased fees and charges. This can occur because reduced congestion at larger airports may result from the diversion of general aviation traffic to the smaller fields.

Handling of PFC Revenue and Compensation for these Costs.

Under §§ 158.51 and 158.53 of the rule, carriers are to be compensated for handling PFC's through the retention of a fixed fee per PFC plus earnings on the revenue "float" for the PFC's that they collect. The fixed fee is set at \$0.12 per PFC for the first 3 years after the effective date of the rule, in order to provide compensation not only for collecting, handling, and remitting the revenue, but for the cost of establishing the system that carries out these functions. This fixed fee drops to \$0.08 per PFC after 3 years. The amount of interest accrued annually on an account held by a carrier for payment to an airport will equal the applicable annual interest rate multiplied by the average balance held by the carrier. The average balance held by a carrier for payment to public agencies will depend on the total fee revenue collected by the carrier, the payment schedule, and the applicable fixed fee. For example, with revenue of \$1 billion per year, if the applicable interest rate (or earnings on the balance held) were 10 percent, and the payment schedule were as specified in the rule (in which revenue collected during each month are paid to the airports at the end of the month after the end of each month of collection) annual earnings on the float could be approximately \$12 million.

It is noted that, should \$1 billion per year be collected in \$3 PFC's, 333 million PFC's would be handled. With earnings on the float of approximately \$12 million per year, interest earnings would be on the order of \$0.036 per PFC collected. Under these assumptions, compensation per \$3 PFC collected would be approximately \$0.156 during the initial 3-year period and \$0.116 thereafter.

The FAA has attempted to structure the rule so as to achieve maximum cost effectiveness in administration (i.e., in ticketing collection burdens, as well as reporting, recordkeeping and auditing requirements). For example, it is specified in Subpart C that all PFC's be collected and remitted by the issuing carrier, thus eliminating interline settlements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. This Act requires a

Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for operators of aircraft for hire for complying with review requirements in FAA rulemaking actions. The lowest of these categories is indicated to be \$3,300 per year in 1983 dollars for unscheduled operators of 9 or fewer aircraft. This level is approximately \$4,200 in 1990 dollars. Since provisions of the final rule allow the retention of a fixed fee plus the earning of interest on PFC revenue held in order to compensate carriers for the costs of administering PFC's, the net cost of collecting, handling, remitting, and reporting PFC's for such operators of aircraft should be small. There are numerous charter and air taxi operators that are believed to have 9 or fewer aircraft. Small carriers are provided protection against auditing costs by § 158.69(b) of the rule, which requires at least annual audits only for collecting carriers that collect more than 50,000 PFC's annually. This level of PFC collection implies compensation for PFC collection on the order of \$5,800 to \$7,800 per year. Further protection against PFC collection burden is given by § 158.11, which provides that "a public agency may request that collection of PFC's by any class of air carriers or foreign air carriers not be required, if the number of passengers enplaned by the carriers in the class constitute no more than 1 percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed." The conclusion is that the imposition of PFC's will not have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

The impact of PFC administration costs on small airports is not believed to be a problem, since PFC's are to be initiated by public agencies that control airports. These agencies are assumed to assess a PFC only if they have reason to expect that the revenue collected will be in excess of the costs of establishing the charge and managing the revenue that results.

Trade Impact Assessment

The provisions of this rule are expected to have little or no impact on trade for both U.S. firms (including air carriers) doing business in foreign countries and foreign firms (including air carriers) doing business in the United States. PFC's are not likely to cause a significant increase in costs for most international travel. It is noted that the \$3 per airport limitation on PFC's per enplaned passenger and the generally higher cost per ticket for international travel to or from the United States than for domestic travel make PFC's imposed on international travel a smaller proportion of the cost of international travel than domestic travel. Although PFC's will raise the amounts paid for tickets for international travel, in many cases, the airport capacity improvements financed with the resulting revenue may result in improvements in the amenities afforded travelers. These improvements may include reduced delay that is made possible by increased airport capacity that more than compensates passengers for the cost of the PFC. In addition, while the rule permits carriers to limit collection to the last airport at which a passenger enplanes before departing from the U.S. when a ticket is issued outside the U.S., this provision applies equally to air carriers and foreign air carriers. Likewise, for tickets issued in the U.S., the rule imposes the same requirements on foreign air carriers.

Federalism Implications

The regulations implement a new statute that authorizes state and local public agencies that control commercial service airports to impose PFC's at their airports. While the imposition of PFC's would be a local decision, the statute imposes Federal requirements on the airport operator (e.g., the local consultation requirement) and requires Federal oversight (through the approval and audit provisions).

The provisions of the regulations are intended to impose on state and local agencies the minimum restrictions and requirements that are mandated by the statute, including the Federal oversight role contemplated by the PFC statute and other legislation or regulations that would pertain to a PFC-financed project (e.g., environmental requirements).

The regulations proposed herein would not have substantial direct effects 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, in accordance with Executive Order 13612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. This rule is considered significant under DOT Regulatory

Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

The Final Rule

Accordingly, the FAA adds a new Part 158 of the Federal Aviation Regulations, 14 CFR Part 158, effective June 28, 1991.

PART 158—PASSENGER FACILITY CHARGES (PFC's)

SUBPART A—GENERAL

Sec.

- 158.1 Applicability.
- 158.3 Definitions.
- 158.5 Authority to impose PFC's.
- 158.7 Exclusivity of authority.
- 158.9 Limitations.
- 158.11 Public agency request not to require collection of PFC's by a class of air carriers or foreign air carriers.
- 158.13 Use of PFC revenue.
- 158.15 Project eligibility.

SUBPART B—APPLICATION AND APPROVAL

- 158.21 General.
- 158.23 Consultation with air carriers and foreign air carriers.
- 158.25 Applications.
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- 158.31 Duration of authority to impose a PFC after project implementation.
- 158.33 Duration of authority to impose a PFC before project implementation.
- 158.35 Extension of time to submit application to use PFC revenue.
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SUBPART C—COLLECTION, HANDLING, AND REMITTANCE OF PFC's

- 158.41 General.
- 158.43 Public agency notification to collect PFC's.
- 158.45 Collection of PFC's on tickets issued in the U.S.
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- 158.51 Remittance of PFC's.
- 158.53 Collection compensation.

SUBPART D—REPORTING, RECORDKEEPING AND AUDITS

- 158.61 General.
- 158.63 Reporting requirements: public agency.
- 158.65 Reporting requirements: collecting carrier.
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- 158.69 Recordkeeping and auditing: collecting carriers.
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SUBPART E—TERMINATION

- 158.81 General.
- 158.83 Informal resolution.
- 158.85 Termination of authority to impose PFC's.
- 158.87 Loss of federal airport grant funds.

SUBPART F—REDUCTION IN AIRPORT IMPROVEMENT PROGRAM APPORTIONMENTS

158.91 General.

158.93 Public agencies subject to reduction.

158.95 Implementation of reduction.

APPENDIX A—ASSURANCES

The authority citation for Part 158 reads as follows:

Authority: 49 U.S.C. App. 1513 (as amended by the Aviation Safety and Capacity Expansion Act of 1990, Pub. L. 101-508, Title II, Subtitle B, November 5, 1990); 49 U.S.C. App. 2206 (as amended by the Aviation Safety and Capacity Expansion Act of 1990); 49 U.S.C. App. 2218; section 9304(e) and 9307 of the Airport Noise and Capacity Act of 1990, Pub. L. 101-508, Title IX, Subtitle D.
