start-up costs but lesser on-going costs. Each carrier commenting on this issue submitted statements that costs could not be recovered by the float mechanism alone. Of the comments submitted by the carriers, the FAA received varying amounts of information on how the carriers estimated the costs of the PFC program. In particular, the FAA notes that no useful data was received from foreign carriers to support their claim that their costs are higher than those of U.S. carriers, or, indeed, to give any indication of what their costs might be. In the absence of such data, and without any other basis for a different conclusion, the FAA concludes that the cost of PFC collection is likely to be similar among carriers of similar size and levels of automation. Accordingly, the agency further concludes that there is no basis to believe that such costs would significantly alter the average of reasonable and necessary costs, which must be the basis of any uniform charge under the statute. Some of the individual airports comment that the float should be adequate to cover the administrative costs of PFC's. The joint submission agrees that the float would not be adequate compensation but could not agree on or recommend an appropriate level of compensation.

Final Rule: The quantitative data submitted to the docket was examined to determine the average necessary and reasonable costs necessary to compensate the industry. The FAA also attempted to adjust the carriers' cost estimates to reflect the requirements of the final rule. The data reveal variation from carrier to carrier. For example, carriers with the most complete automation of the ticketing and revenue accounting functions generally projected higher start-up costs than those with less automation. However, the operating costs of the more fully automated carriers are projected to be lower.

The statute requires collection compensation to reflect carriers' average costs. By definition, such an average cost figure will not fully reflect all of the variation among individual carriers. However, the FAA has carefully reviewed the data available and is satisfied that collection compensation provided in the final rule is a reasonable assessment of carriers' average costs based on that data. In addition to retaining the interest it may earn on PFC revenue from time of collection to time of remittance, the collecting carrier will be entitled to retain $0.12 of each PFC remitted on or before June 28, 1994. Thereafter, air carriers will be entitled to retain $0.08 of each PFC. The higher compensation in the early years of the program is intended to allow carriers to recoup start-up costs in a more timely fashion. The FAA encourages cooperative efforts among representatives of airports and air carriers to ascertain any future need for changes to this compensation level. We are particularly interested in methods for determining the appropriate fee without extensive ratemaking-type analysis by the FAA.

Subpart D

Subpart D specifies requirements for reporting, recordkeeping and auditing by the collecting carrier and the public agency. This subpart has been revised to minimize requirements while providing adequate information to protect each party.

§ 158.63 Reporting requirements: public agency. As proposed, this section would have required each public agency to report within 30 days of work beginning on a project and any substantial deviation from the estimated project schedule. It also proposed reporting costs and the agency's proposed corrective action, 60 days advance notice of project completion and receipt of 90% of total PFC revenue.

Comments: A number of commenters state it is impossible to know precisely 60 days in advance when project completion would occur and want the FAA to define "substantial deviation from the estimated project schedule." Many comments, including the joint submission, claim the reporting requirements are burdensome and recommend public agencies be required instead to submit regular progress reports or quarterly reports to the carriers. Two commenters recommend the public agency report any changes in its aircraft operating rules as they apply to the use of Stage 2 equipment. The later is a reference to requirements in the Airport Noise and Capacity Act of 1990 to local restrictions on the operation of Stage 2 and Stage 3 aircraft. See the FAA's NPRM (56FR 8644; February 28, 1991).

Final Rule: The public agency will provide quarterly reports to carriers collecting PFC's for the public agency, with a copy submitted to the appropriate FAA Airports office. The report will include PFC revenue received from collecting carriers, interest and expenditures for the quarter and cumulatively, current project schedule and the amount committed for use on projects already approved. The commenters believe the quarterly report will provide the carriers and the FAA with the sufficient information for oversight of PFC revenue. This section also includes a new requirement for airports enplaning 0.25 percent or more of the total annual enplanements. The public agency controlling such an airport must provide FAA with an estimate of PFC revenue to be collected in the next fiscal year. This must be done by August 1st of

each year, so the FAA can determine the reduction in AIP apportionment levels for these airports for the subsequent fiscal year.

This section does not require the public agency to report any changes in its aircraft operation rules as they apply to the use of Stage 2 equipment. This would be a burdensome requirement; only those actions not in compliance with 9307 and 9304(e) of the Airport Noise and Capacity Act (ANCA) would affect imposition of the PFC. As noted above, the FAA has proposed regulations to implement the ANCA, including actions necessary to counter illegal restrictions.

§ 158.65 Reporting requirements: collecting carrier. (Proposed: Reporting requirements: issuing carrier.) As proposed, this section would have required each issuing carrier collecting PFC's for a public agency to file quarterly reports to the public agency, unless otherwise agreed. The reports are to provide an accounting of funds collected and funds remitted to the public agency. The reports were to identify, by airport and air carrier, the total passengers enplaned, the passengers exempt from collection because of the EAS limitation (§ 158.9), limitations per one-way trip (§ 158.11), limitations regarding involuntary change in itinerary, and the number who were exempt due to purchase of tickets before the charge effective date. The report was also to identify any PFC's collected and remitted, but subsequently refunded to passengers due to changes in itinerary initiated by passengers.

Comments: Most commenters support the concept of quarterly reports, but several recommend monthly reports to accompany remittance of PFC revenue to the public agency. A number of commenters state the report needs to show only the amount of PFC's collected, the amount refunded, and the amount reimbursed. Carriers state that it would be nearly impossible to reconcile monthly passenger enplanements and revenue. One carrier states that only by collecting itinerary information from all passengers would a carrier be able to identify the enplaned passengers exempt from the PFC, and that, today, carriers collect complete itinerary data for only 10 percent of passenger itineraries. Some commenters recommend relaxed requirements for foreign carriers, and others recommend an annual report for carriers carrying a limited number of PFC passengers.

Final Rule: The reporting requirement has been simplified. Unless otherwise agreed to by the collecting carrier and the public agency, reports will be required to include the collecting carrier and airport involved, the total PFC revenue collected, the total amount of PFC revenue refunded to passengers, and the amount of revenue withheld by collecting carriers from the 12-cent or 8-cent fee for compensation and the total amount remitted to the public agency. The carrier does not have to report earnings from interest gained on PFC revenue between collection and remittance to the public agency. The FAA believes that the revised reporting requirements are not burdensome, will provide public agencies with necessary information in a timely fashion, and should be required of all carriers collecting a PFC.

§ 158.67 Recordkeeping and auditing: public agency. As proposed, this section would have required that each public agency keep unliquidated PFC revenue on deposit in an interest-bearing account. Revenue and interest earned was to be used to pay the allowable costs of the PFC-funded project. The public agency would have been required to establish and maintain for each approved application, a separate accounting record including revenue received and amounts expended on the project. Each public agency would have been required to provide for an independent audit at least annually of each project.

Comments: A number of commenters state that while airports should be required to account for PFC revenue separately, they should not be required to segregate those revenue in separate accounts. The consensus of comments is that it would be unnecessarily onerous to require independent audits for each PFC funded project. Many commenters believe the auditing requirements are too burdensome and costly and recommend that the public agency be allowed to provide for an audit under the Single Agency Audit Act as used for AIP projects, allowing for a combined audit for all PFC projects at the airport. Public agencies also want to recover auditing costs of PFC revenue as a part of the project cost. One commenter questions the purpose for requiring the public agency to provide copies of its audits to air carriers upon request. A number of commenters request that the term "unliquidated PFC revenue" be defined.

Final Rule: The final rule continues the requirement to keep any unliquidated PFC revenue on deposit in an interest bearing account, but adds that it may be deposited in other interest-bearing investment instruments used by the public agency's airport capital fund. Thus, PFC revenue may be commingled with other public agency airport capital funds. While a segregated PFC account is not required by the rule, an amount equal to the PFC revenue remitted by carriers and any interest earned must be retained in an airport's capital account until used on an approved project.

The auditing requirements in the final rule have been reduced to limit the cost while still ensuring that the public agency adequately protect PFC revenue. The audit shall be performed by an accredited independent public accountant who shall express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding and using PFC revenue, and shall express an opinion on whether the quarterly reports required in § 158.63 fairly represent the net transactions within the PFC account. As requested by a number of commenters, public agencies can provide for an audit under the Single Agency Audit Act as used for AIP projects, as long as PFC projects are specifically addressed by the auditor.

The rule continues to require that public agencies provide copies of their audits to air carriers upon request and to provide carriers with the assurance that the funds they collect for the public agency are being properly used and adequately accounted for. Air carriers must also provide public agencies with a copy of their audits upon request. Public agencies can recover auditing costs of PFC revenue as a part of the allowable project cost. The term "unliquidated PFC revenue" has been defined in subpart A.

§ 158.69 Recordkeeping and auditing: collecting carrier. (Proposed: Recordkeepping and auditing: issuing carrier.) As proposed, this section would have required that issuing carriers establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted and refunded. The accounting record was to identify the airport and carriers on which passengers were enplaned at the airport. Carriers were required to provide an independent audit of the PFC account annually and provide copies to each public agency upon request.

Comments: Carriers comments recommend that the amount of PFC revenue collected be recorded by airport and not include enplanement data by airline. A few commenters recommend allowing carriers to aggregate all airport accounts with fewer than 100 passengers per year into a single account. The general consensus of the carriers' request on audits is that the requirement be limited to focusing on whether the proper procedures are in place to ensure that the best effort is made to remit and report the fees due. A number of commenters object to the requirement for annual independent audits, because it would require a significant amount of work and expense. They recommend that the audit cover the PFC account of the carrier and not be a separate audit for each public agency for which the carrier collects a PFC. Smaller carriers and foreign carriers seek relaxed audit standards, with foreign carriers stating that the audit requirement would be difficult to enforce outside the U.S.

Final Rule: Both recordkeeping and audit requirements have been revised as a result of the comments. All carriers are required to establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted, and refunded, and the compensation retained from the 12-cent or 8-cent fee. As recommended in the comments, the record must identify the airport at which a passenger actually enplanes but there is no requirement to identify the carrier transporting the passenger.

The rule requires that a procedural audit be performed by an accredited independent public accountant who shall express an opinion of fairness and reasonableness of the carrier's process for accounting, collecting, holding, and remitting PFC revenue. The opinion would also address whether the quarterly reports required in § 158.65 fairly represent the net transactions of the PFC account. The audit is for the PFC account of the carrier; the rule does not require a separate audit for each public agency for which the carrier collects a PFC. The audit would only apply to PFC revenue once it has been paid to the carrier, either by the passenger or by an agent of the carrier. The rule does not require carriers with fewer than 50,000 PFC passengers a year to perform an audit, because the cost of the audit could exceed the carrier's collection fee. In those cases where an audit may be necessary for those carriers not providing an audit, it would be performed by the Administrator, the Secretary, or the Comptroller General as provided in § 158.71. Upon request, a copy of the audit must be provided to the public agency for which a PFC is collected.

§ 158.71 Federal oversight. (Proposed: Federal recordkeeping and auditing oversight.) As proposed, this section provided for periodic audit and/or review of the collection and remittance of PFC revenue by carriers and of the use of PFC revenue by public agencies. Audits and reviews could be performed by the Administrator, the Secretary, or the Comptroller General to ensure compliance with this regulation.

Comments: Commenters generally did not object to the proposed requirements in the NPRM. One airport comments that any requirement beyond an independent audit is an inefficient use of government and industry resources.