small or large spearmint oil producers and handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 5, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this proposal. This comment period is deemed appropriate so that a final determination can be made prior to June 1, 2006, the beginning of the 2006–2007 marketing year. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.225 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.225 Salable quantities and allotment percentages—2006–2007 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2006, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 878,205 pounds and an allotment percentage of 45 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,007,886 pounds and an allotment percentage of 46 percent.

Dated: January 27, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–948 Filed 1–30–06; 9:06 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. FAA–2006–23730; Notice No. 06–01]

RIN 2120–AI68

Passenger Facility Charge Program, Debt Service, Air Carrier Bankruptcy, and Miscellaneous Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to change the passenger facility charge program to add more eligible uses for revenue, protect such revenue in bankruptcy proceedings, and eliminate charges to passengers on military charters. These proposed actions respond to the Vision 100—Century of Aviation Reauthorization Act. In addition, the proposed action would revise current reporting requirements to reflect technological improvements; incorporate some existing practices and policies into current regulations; and clarify and update existing references and regulations. This proposal would further streamline the existing policies of the passenger facility charge program.

DATES: Send your comments on or before April 3, 2006.

ADDRESSES: You may send comments [identified by Docket Number FAA–2006–23730] using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sheryl Scarborough, Airports Financial Analysis & Passenger Facility Charge Branch, APP–510, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8825; facsimile: (202) 267–5302; e-mail: *sheryl.scarborough@faa.gov*; or Beth Weir, Airports Law Branch, AGC–610, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–5880; facsimile: (202) 267–5769.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to join in this rulemaking by filing written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets. This includes the name of the individual sending the comment (or signing the comment for an association, business, labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

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

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or

(3) Accessing 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 request 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.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40117. Under that section, the FAA, by delegation, is charged with prescribing regulations to impose a passenger facility fee to finance an eligible airport-related project. This regulation is within the scope of that authority because Vision 100 requires the FAA to change the PFC program. Many proposals in this document are taken from Vision 100.

Background

On March 23, 2005, the FAA published a final rule (2005 final rule) to create a 3-year pilot program for non-hub airports to test new application and application approval procedures for the passenger facility charge (PFC) program (70 FR 14928). The final rule contains several changes designed to streamline the PFC application and amendment procedures for all PFC applications and amendments to improve the entire PFC program.

The FAA published the 2005 final rule to address Congressional mandates in the Vision 100—Century of Aviation Reauthorization Act (Vision 100). The non-hub pilot program, with the PFC application streamlining procedures, however, was only one of six mandates specified in Vision 100. The FAA separated the non-hub program and related changes from the other mandates because Congress had required the FAA to publish proposed rules on the pilot program within 180 days of enactment of Vision 100.

This rulemaking addresses the remaining mandates in Vision 100. These mandates include:

(1) Making low-emission airport vehicles and ground support equipment eligible for PFC funding,

(2) Using PFCs to pay debt service on projects that are ''not an eligible airport-related project'' when there is a financial need at an airport,

(3) Clarifying the PFC status of military charters,

(4) Structuring PFC account requirements for carriers in bankruptcy, and

(5) Making eligible the use of PFC revenue as local share for projects under the air traffic modernization cost-sharing program.

In addition, the FAA is proposing other changes, two of which would streamline benefits beyond those contained in the 2005 final rule. These proposed changes would:

(1) Provide for the electronic filing of notices and reports;

(2) Provide a process for periodic review and change of the carrier compensation level; and

(3) Modify the content and due date for some public agency reports and notices.

Discussion of the Proposals

The NPRM is divided into three parts:

(1) Changes mandated by Vision 100;

(2) Changes associated with technological improvements; and

(3) Changes to streamline PFC procedures, codify PFC policies, or address issues or questions about the PFC program.

Changes Mandated by Vision 100

Low-Emission Airport Vehicles and Ground Support Equipment

Section 121 of Vision 100 establishes a voluntary program to reduce airport ground emissions at commercial service airports in air quality nonattainment and maintenance areas (49 U.S.C. 40117(a)(3) and (b)(5)). This program makes the cost of new or converted equipment or vehicles eligible for PFC funding. The intent of the program is not to cause the premature retirement of existing equipment or vehicles, but to provide incentives to buy replacements

or to convert existing equipment to meet lower emissions standards. The program helps airports meet their obligations under the Clean Air Act (42 U.S.C. 7501(2)) and helps regional efforts to meet health-based National Ambient Air Quality Standards. The program goal is to reduce the amount of regulated pollutants and other harmful air emissions produced by ground transportation sources at airports. The program also supports efforts to increase U.S. energy independence by emphasizing domestically produced alternative fuels that are substantially nonpetroleum based. The program provides public agencies with financial and regulatory incentives to increase their investment in proven low-emission technology. Use of alternative fuel vehicles and other low-emission technologies that are particularly suited to the airport environment are highly encouraged.

To address Vision 100, the proposed rule would add the definition of ''ground support equipment'' to § 158.3. Ground support equipment includes vehicles used for operations and maintenance of aeronautical activities, but does not include vehicles used to meet safety, security, and snow removal requirements. Baggage tugs, belt loaders, cargo loaders, forklifts, fuel trucks, lavatory trucks, and pushback tractors are among the types of vehicles that fit the definition of ground support equipment. In addition, battery recharging and alternate fueling stations are eligible under this program.

The low-emission vehicle program provides a funding mechanism to acquire low-emission technology, which often is more costly than conventional technology. The proposed rule would modify § 158.13 by setting the maximum allowable cost for certain low-emission technology projects. For new vehicle purchases, public agencies may only use PFC revenue for the added cost of the low emission technology above the cost of a conventional emission vehicle. For vehicles being converted to low-emission technology, public agencies may only use PFC revenue for the reasonable cost of the conversion.

The proposal would add paragraph (b)(8) to § 158.15 to provide the eligibility requirements for low-emission vehicle projects. To be eligible, the airport must be located in an FAA and Environmental Protection Agency designated air quality nonattainment or maintenance area. In addition, the airport must receive emission credits for completing the project from the appropriate State air quality agency.

Eligible projects must either (1) convert existing vehicles powered by diesel or gasoline engines to low-emission technology or the use of cleaner burning fuels, or (2) buy new vehicles that include low-emission technology or use cleaner burning fuels.

Interested parties are directed to the following Web site to obtain guidance on determining the eligibility of projects and how benefits to air quality must be demonstrated: *http://www.faa.gov/arp/environmental/VALE/Index.cfm.*

Use of Fees To Pay Debt Service

Section 122 of Vision 100 amended the statute to permit an exception to use PFC revenue to pay the debt service costs of airport-related projects that otherwise are not PFC-eligible if the public agency can show a financial need (49 U.S.C. 40117(b)(6)). The FAA expects that a public agency seeking relief under this provision wants to restore its financial stability and health. A proposed new definition, ''Financial need,'' would be added to § 158.3. This definition would tie the financial need of a public agency to its ability to meet operational and debt obligations and maintain at least a 2-month reserve fund. Such financial need typically results from a series of events that cumulatively weaken the financial condition of the public agency. The FAA defines ''financial need'' based on information collected from several airports regarding their capital reserve funds and broadly accepted principles of airport financial fitness.

Proposed paragraph (e) to § 158.13 would provide an exception permitting the use of PFC revenue to pay debt service costs for a noneligible project.

Proposed new § 158.18 would provide for the use of PFC revenue to pay debt service cost for noneligible projects. Financial need is based on severe financial constraints suffered by the airport or public agency. This adverse financial position usually results from one or more events beyond the reasonable control of the public agency, resulting in a financial crisis for the airport. These events may include:

(1) The bankruptcy of an air carrier serving the airport that results in rejecting leases for a significant portion of all air carrier gates at that airport;

(2) Significantly reduced service by one or more air carriers that accounts for a major portion of the enplaned passenger traffic at the airport; or

(3) Other dramatic changes in air carrier service patterns that undermine the ability of the public agency to pay for airport development already constructed.

Other events, such as natural disasters, may also create a financial need for the public agency.

A public agency should show that its financial recovery plan makes use of all available resources. The FAA would authorize an airport or public agency to impose a PFC under this paragraph only for the period necessary to cure the airport's or agency's financial need. Furthermore, the FAA expects the public agency to use any revenue saved by this PFC to return the airport to a state of financial fitness in as quick a period as possible. For example, use of the saved revenue to incur additional non-aeronautical debt or development costs would not return the airport to a state of financial fitness.

A public agency applying for PFC revenue under this provision must use the application procedures in § 158.25 and document its financial position by providing information regarding:

(1) A change in passenger enplanements for a carrier;

(2) Negative actions taken on the public agency's bond rating;

(3) The inability of the public agency to meet bond payments and associated requirements;

(4) Alternative sources of revenue available to the public agency, such as grant funds, state funds, concession revenue, vehicle parking fees, aircraft parking fees, other non-aviation fees, fuel taxes, and revenue from any other operators using the airport. (The submitted information must address whether these fees can be raised to create more revenue for the airport);

(5) The impact of any necessary increases to the rate base or landing fees for concession and carrier revenue because of the loss of revenue from a change in economic circumstances (e.g., the bankruptcy or financial troubles of a carrier);

(6) Actions taken by the public agency to reduce cost, such as operational changes, personnel actions, or capital project postponement;

(7) The source(s) of revenue currently used to pay bond cost;

(8) The current airport fee structure and methodology used to calculate rates and charges;

(9) The affect of the loss of an air carrier or adding a new carrier on the current fee structure;

(10) The planned use of revenue saved by using PFCs to pay the debt service and how this use will aid the return to financial fitness; and

(11) Any other information the public agency believes will document the financial need of the airport.

The FAA will use the procedures in § 158.27 to analyze the information

submitted by the public agency, and then issue its decision on a case-by-case basis under § 158.29.

Clarification of Applicability of PFCs to Military Charters

Section 123(c) of Vision 100 amended the PFC statute to prohibit collecting PFCs from passengers on military charter flights (49 U.S.C. 400117(e)(2)). Proposed paragraph (a) (6) to § 158.9 would clarify that passengers who do not pay directly for the air transportation due to Department of Defense charter arrangements or payments will not pay PFCs.

Financial Management of Passenger Facility Fees

Section 124 of Vision 100 added specific requirements to protect PFC revenue from creditors when air carriers file for bankruptcy protection after the date of enactment of Vision 100 (49 U.S.C. 40117 (m) (1–7)). Through this provision, Congress has specifically recognized and protected the trust fund status of PFC revenue and prohibited air carriers from using PFCs as security with third parties.

Air carriers historically have commingled PFC revenue in accounts with other revenue until it was time to remit the PFC revenue to the various public agencies. Before Vision 100, in situations where an air carrier filed for bankruptcy protection and owed PFC remittances, public agencies had difficulties recovering past due PFCs. In part, these difficulties arose because the PFC revenue was commingled and, thus, difficult for bankruptcy courts to identify and public agencies to recover. Section 124 prohibits the commingling of PFC revenue with other revenue for air carriers in bankruptcy. In addition, section 124 requires that air carriers in bankruptcy set up separate PFC accounts to handle PFC transactions—receipt of revenue from passengers and issuance of remittance to public agencies. This provision should enable bankruptcy courts to more easily identify PFC revenue for remittance to public agencies.

The proposed rule would add a definition of ''covered air carrier'' to § 158.3. The new definition states that a covered air carrier is an air carrier that has filed for bankruptcy protection or has had an involuntary proceeding started against it after December 12, 2003.

In addition, the proposed rule would modify paragraph (b) of § 158.49, which allows air carriers to commingle PFC revenue with an air carrier's other sources of revenue, so that this paragraph does not apply to covered air carriers.

A new paragraph (c) would be added to § 158.49 requiring a covered air carrier segregate the PFC revenue into a designated PFC account when it enters bankruptcy protection. A covered air carrier would be required to set up the PFC account dedicated solely to PFCs, with a deposit equal to the average month's balance, based on the air carrier's past 12 months of PFC collections net of any credits or handling fees allowed by law. A covered air carrier would be required to ensure the account balance never falls below this initial fixed deposit amount (''PFC Reserve''). Besides the method proposed in this rulemaking, the FAA considered requiring the covered air carrier to keep a rolling balance in the designated PFC account. This rolling balance was based on an average of the previous 12 month's collections recalculated monthly as a method to calculate an amount that would be a fair account balance. The monthly recalculation would have captured situations where an airport served by the air carrier started PFC collections or increased its level of PFC collections after the PFC account was established. However, the FAA eventually concluded that recalculation on a rolling basis would be too burdensome on the covered air carrier and difficult for the FAA and the public agencies to monitor.

The FAA recognizes that a covered air carrier may change its route structure during its bankruptcy and this change in route structure may, in turn, effect the average PFCs collected. Therefore, under the proposal a covered air carrier would be permitted to recalculate and reset the PFC Reserve and daily PFC amount on each successive anniversary date of its bankruptcy petition.

Proposed paragraph (c) to § 158.49 would allow a covered air carrier to deposit ticket sales revenue to its general operating account before separating the types of revenue. The proposal requires the covered air carrier to sweep its general operating account at least once a business day to take the PFC revenue initially deposited in this account and redeposit it in the PFC account. Through recent experience, the FAA has discovered that not all covered air carriers can judge the PFC collections on a daily basis. Accordingly, under the proposal, a covered air carrier that cannot accurately move the PFC revenue daily may elect to deposit into the PFC account daily, an estimated amount based on 1/30th of the PFC Reserve balance. A covered air carrier that sweeps with the estimated amount will be required to reconcile the PFC account for accuracy no later than the 20th of each month. This provision allows the covered air carrier to have an accurate PFC balance in place at the time of required PFC remittances.

The proposed paragraph reiterates Congress' mandate to protect the trust fund status of PFC revenue. Even if the covered air carrier fails to follow the procedures in this paragraph, this trust fund status shall not be defeated by an inability of any party to identify and trace precise amounts of PFC revenue in the air carrier's accounts. The proposed paragraph also prohibits a covered air carrier and its agents from granting a security or other interest in the PFC revenue to a third party.

Proposed paragraph (c) also provides that, if a public agency is forced to incur costs to recover PFC revenue because the covered air carrier failed to comply with these new PFC revenue-handling procedures, the covered air carrier is required to compensate the public agency for its costs. This provision applies to costs incurred by a public agency in pursuit of PFCs owed if a covered air carrier fails to make its PFC payments under the statute or rule (49 U.S.C. 40117(m)(4).

Proposed paragraph (b) to § 158.53 would state that a covered air carrier is entitled to keep the interest portion of the compensation only as long as the air carrier follows the procedures in § 158.49.

Proposed paragraph (b) to § 158.65 would require that, besides reporting to the public agencies, covered air carriers must send a copy of their quarterly report to the FAA. Covered air carriers also will be required to send a PFC account statement to the FAA on the fifth day of the month. The account statement will include the balance of their PFC account, the balance of their PFC reserve amount, total PFC funds deposited, and total PFC funds dispersed. This monthly report allows the FAA to monitor the covered air carrier's compliance with the requirements of § 158.49. The monthly report must continue while a covered air carrier remains in a bankruptcy proceeding.

Cost Sharing of Air Traffic Modernization Projects

Section 183 of Vision 100 set up a program to allow cost sharing of air traffic modernization projects (49 U.S.C. 44517(a)). This program is intended to improve aviation safety and the mobility of the Nation's air transportation system by encouraging non-Federal investment in critical air traffic control equipment and software. Under this program the

FAA may make grants to eligible sponsors to pay a portion of the cost of FAA-approved projects to procure and install air traffic facilities and equipment. The program is intended to allow sponsors to achieve accelerated deployment of eligible facilities and equipment and to help expand aviation infrastructure. The sponsor may fund the non-Federal portion of the project costs through various methods including the use of PFC revenue.

If a public agency wishes to use PFC revenue to pay for all or a portion of the non-Federal share of the project, the public agency must first obtain authority to impose a PFC and use PFC revenue under the procedures in §§ 158.25 or .30.

Currently, paragraph (d) of § 158.13 allows the use of PFC revenue to pay for the non-Federal share of costs for a project funded under the Federal airport grant program. This paragraph will be renumbered as paragraph (g) and expanded to include the FAA's ''program to permit cost-sharing of air traffic modernization projects.''

A new proposed paragraph (8) to § 158.15(b) would list a project approved under the FAA's program to allow cost sharing of air traffic modernization projects as PFC-eligible.

Changes Because of Technological Improvements

Major examples of technological improvements since the PFC program inception in 1990 are the use of electronic or paperless airline ticketing, the use of electronic mail to send documents, and web sites to post information.

The existing procedures for collection of PFCs from passengers were developed based on the assumption that ticket issuance would require a physical transaction, including the issuance of a paper airline ticket and a physical ticket issuance. Today, passengers can buy airline tickets using many methods, including the internet, and many air carriers no longer issue paper tickets. Furthermore, airline code-sharing and global alliances that have expanded ticketing options were not widely in place in 1990.

Currently, carriers have several options for PFC collection if the ticket is issued outside the U.S., including non-collection of any PFCs if the carrier does not serve a point in the U.S. Furthermore, airline code-sharing and global alliances, which were not common in 1990, have grown and created the potential for mistakenly administered and mishandled PFCs. A person living in the United States may buy airline tickets for domestic travel over the internet from a foreign carrier. Such transactions may confuse foreign carriers, especially those who do not have significant operations in the U.S., when determining the proper procedures to follow. To address these issues, the FAA is proposing several changes to part 158.

The proposal would define the ''point of issuance of airline tickets'' in § 158.3 to include electronic and other ticketing mediums. The definition of ''air travel ticket'' would be expanded to bring the definition in line with the varying methods of ticketing, including electronic records, boarding passes, and any other ticketing medium. In reference to a passenger's itinerary, the word ''complete'' would be removed since today's passengers may obtain documents, including a receipt showing the PFCs paid on each leg of their itinerary.

Proposed paragraph (a) of § 158.47 would clarify that U.S. and foreign air carriers must follow the requirements of § 158.45 when the itinerary is for travel within the U.S. regardless of the location of the ticket issuance.

The second technological improvement addressed by this proposal is the submission of information. Current air carrier quarterly reporting requirements in part 158 provide public agencies with information about PFC revenue remitted to the public agency, refunded to passengers, and retained by the air carrier. Air carrier quarterly reports allow public agencies to monitor their collections and identify any discrepancies in a timely manner.

The FAA has developed a national PFC database that stores information on PFC application and project approvals. Before issuing a final rule, the FAA expects to develop modules to collect the same types of information directly from the public agencies and air carriers for quarterly reports.

A comment submitted to the NPRM that was the basis of the 2005 final rule suggested the FAA eliminate the monthly and quarterly reports filed by air carriers to public agencies and, instead, create an air carrier annual report with currently required information. Since this comment was outside the scope of that notice, the FAA stated that it would consider the comment for inclusion in a future rulemaking.

Part 158 includes an air carrier reporting requirement to provide public agencies with information about the amount of PFC revenue remitted to the public agency, refunded to passengers, and retained by the carrier. The FAA determined that a quarterly report allows public agencies to monitor their collections and identify any discrepancies in a timely manner.

Paragraph (a) of proposed § 158.20 would permit public agencies and air carriers to send required documents such as letters, reports, and certifications of agreement/disagreement by e-mail, facsimile, courier, or regular mail. Paragraph (b) provides that public agencies and air carriers may use the PFC national database to post their quarterly reports. Thus, the FAA will not require public agencies and air carriers using this database to use U.S. Postal Services to send their quarterly reports to interested parties.

To accommodate the interests of as many public agencies as possible, the FAA will maintain the requirement in § 158.65 that the air carriers provide quarterly reports or input into the national PFC database. A public agency will be able to view these reports any time.

Changes To Streamline PFC Procedures, Codify PFC Policies, or Address Issues or Questions About the PFC Program

As the PFC program has developed, the FAA has recognized the need to streamline its existing policies. The discussions below identify certain areas where we are proposing changes to the current rule. Section 158.3 would redefine or add several definitions for terms currently in use. The first two definition changes result from new terms introduced with the nonhub program. The third new definition claries existing FAA policy.

- ''Approved project'' would be revised to ensure that projects acknowledged under the non-hub program are included in the definition. Under the non-hub program, the FAA ''acknowledges'' the notice of intent and the projects contained therein. However, there are many sections of part 158 that are applicable to projects being financed with PFC revenue and, thus, are applicable to both approved and acknowledged projects.
- ''Notice of intent (to impose a PFC or use PFC revenue)'' is a term used in the non-hub PFC authorization procedures. Public agencies receiving PFC authorization under the non-hub procedures must comply with all rules of the PFC program outside the authorization procedures in § 158.25. PFC authorizations for these other applications are identified as PFC applications and part 158 makes many references to ''PFC application'' or just ''application.'' Rather than adding the term ''notice of intent'' at every location where the term ''application'' is used,

the FAA is proposing to add a definition of ''notice of intent.'' The proposed definition would include a statement to clarify that, except for those sections of part 158 that deal with specific authorization procedures, the terms ''notice of intent'' and ''application'' should be used interchangeably.

• The FAA has been approving collection of PFC revenue to pay for a public agency's cost of administering its PFC program based on the existing definition of the allowable costs in part 158. However, part 158 does not include a definition of the types of costs covered under PFC administrative support costs. Adding a definition for ''PFC administrative support costs'' would clarify the types of costs that public agencies should identify as PFC administrative support costs.

About 10 years ago, the FAA adopted a policy of advising public agencies to apply for PFC administrative support costs as a separate project. This policy has allowed the FAA to monitor more closely the public agency's costs and review the scope of work. However, not all public agencies have complied with this policy. Some public agencies include their administrative support costs within their development projects, resulting in inaccurate cost estimates for both the development projects and the administrative costs. The proposed rule would add paragraph (b) to § 158.13 providing that public agencies may use PFC revenue to pay for allowable PFC administrative support costs. The new paragraph would direct that public agencies treat PFC administrative support costs as a separate and distinct PFC project in a PFC application or notice of intent.

The PFC program is available to States, territories, Commonwealths, and possessions of the United States. Initially, the Trust Territory of the Pacific Islands was a territory of the U.S. and, thus, was eligible to participate in the PFC program. The Compact of Free Association between the U.S., Marshall Islands, and Federated States of Micronesia provided that newly independent States would be eligible to participate in Federal programs, such as the PFC program, for 15 years after adopting the Compact. The 15-year period ended in 2001, and the Marshall Islands and Federated States of Micronesia are no longer eligible to participate in the PFC program. Therefore, the definition for ''State'' would be redefined to remove the Trust Territory of the Pacific Islands.

This proposal changes the current title of § 158.30 to ''PFC Authorization at Non-Hub Airports.'' This proposed change clarifies that PFC authorizations at non-hub airports relate to size of airport and not to aircraft pilots at non-hub airports. The sunset provision in paragraph (h) remains in effect (49 U.S.C. 40117(l)(7)).

The proposed editorial changes in § 158.31 clarify the intent of the original language.

Proposed paragraphs (a)(2), (c)(1), and (c)(2) of § 158.33 would clarify the term ''charge effective date.'' A public agency may only collect on one PFC decision at a time meaning the charge effective date for a subsequent application must be on or after the charge expiration date for the current application.

The FAA wrote § 158.33 to require public agencies to take certain actions within a prescribed period of time after the charge effective date of an application. However, a literal reading of the current regulation could lead to the belief that, for example, a project approved for collection in 2005 in an application with a charge effective date of 2016 need not be implemented for 11 years. The FAA interprets the timelines in § 158.33 with regard to the start of collections for an application as being either the charge effective date or the date the application was approved.

Section 158.37 requires a public agency to consult with air carriers and provide notice and the opportunity for public comment if the public agency is seeking to increase the PFC amount of a project by more than 25 percent of the originally approved amount. While the FAA believes the 25 percent threshold is reasonable, an excess of amendments could overburden the consultation and comment processes, requiring consultation for insignificant amounts. For example, the FAA has approved several projects for amounts of $1,000 or less. Under the current rules, an increase of $250 to a $1,000 project would trigger the need for consultation and public comment.

The FAA examined the existing universe of PFC projects and concluded that over 75 percent of these projects have a PFC cost below $1 million. Generally, these projects have well-established costs. Increases are often sought because of changes in quantities or differences in estimated or actual costs. Furthermore, the FAA rarely receives substantive comments from air carriers or the public on projects with PFC costs below $1 million. This proposed rule would modify § 158.37 to provide a minimum dollar threshold. For projects with originally approved amounts at or above this threshold, an increase of more than 25 percent would trigger the need for consultation and public comment. For projects with originally approved amounts below this threshold, public agencies will not need to consult with air carriers and provide the opportunity for public comment, regardless of the percentage increase in costs proposed. Paragraphs (b)(1)(i)(A), (b)(1)(ii)(C), (b)(1)(ii)(D), and (b)(5) would be modified to address this proposed threshold.

This proposed rule would clarify the language in paragraph (a) of § 158.39 by adding ''earned thereon'' after '' * * * plus interest.'' A public agency must include the PFC principal and the interest earned thereon in determining whether it has collected the total amount of PFC revenue authorized.

Proposed paragraph (d) of § 158.39 would delete ''under § 158.25(c)'' from the second sentence. As discussed earlier in the notice of intent definition, ''notice of intent'' may be used interchangeably with ''PFC application.''

Currently, paragraph (b)(3) of § 158.43 requires a public agency to set its charge effective date as the first day of a month at least 60 days from the date the notice was sent to air carriers. Since its beginning, however, air carriers have developed procedures for programming new PFC collections at airports and are able to perform this programming in 30 days. This proposal would change the requirement to 30 days in paragraph (b)(3) of § 158.43.

Current FAA policy requires at least 30 days notice to allow air carriers enough time to reprogram their systems. However, public agencies continue to make changes with less than 30 days notice. Occasionally, this results in the FAA not processing the change and the public agency's collection is either prematurely stopped or extended a month beyond the intended expiration date. The proposed rule would modify paragraph (c) of § 158.43 to require that public agencies notify air carriers and the FAA at least 30 days before changing the charge expiration date.

The proposed rule would modify paragraphs (a)(3) of § 158.45 and (c)(4) of § 158.47 to clarify that failure to travel on a nonrefundable or expired airline ticket is not a change in itinerary. Ticket purchasers holding nonrefundable or expired tickets are not entitled to a refund of any associated PFCs if the ticket purchaser is not entitled to any fare refund.

The PFC statute requires the FAA set up a uniform collection compensation amount reflecting the ''average reasonable and necessary expenses'' of the air carriers' collection and handling of the PFC (49 U.S.C. 40117 (i)(2)(C)). A periodic review of the collection compensation rate is fair and reasonable because of changing air carrier PFC

handling costs. The costs may include handling, reporting, escrow, collecting, and remittance fees. The proposed rule would provide for periodic review outside the formal rulemaking process.

In the future, the FAA plans periodically to publish a notice in the **Federal Register** asking that air carriers voluntarily provide data on their costs associated with the PFC program. Proposed paragraph (c) of § 158.53 would include a list of the 11 categories of cost data the FAA tentatively has determined represent the incremental costs directly associated with PFC collection, handling, remittance, reporting, recording keeping, and auditing by air carriers. If the FAA determines a new level is warranted, we would publish a second **Federal Register** notice seeking public comment. We would publish a third notice in the **Federal Register** providing a final determination.

The FAA has developed its national PFC database and identified the need for national consistency in the information reported. This database allows public agencies to input the revenue received on either a monthly or quarterly basis. The FAA chose the actual revenue received method rather than accrual basis method because actual basis is more closely tied to when PFC collections are completed. This proposal would modify paragraph (a) of § 158.63 to clarify that public agencies must report revenue actually received from the air carriers rather than on an accrual basis.

Currently, large and medium hub airports are required to file their annual PFC revenue forecasts by August 1. The FAA set the August 1 date based on when it usually received its first estimates on airport enplanements and, thus, could make the first estimates on AIP apportionments for the upcoming fiscal year. The FAA streamlined its process for gathering enplanement data and now makes its AIP apportionment estimates about July 1. The proposal would modify paragraph (c) of § 158.63 to specify July 1 as the date that large and medium hub airports report their forecast PFC revenue for the upcoming Federal fiscal year.

This proposal would delete § 158.97, Special rule for transitioning airports, which expired at the end of Federal fiscal year 2004.

Experience has shown that most PFC projects are physically completed long before they are financially completed. This contrasts with AIP grant projects where the financial completion of the project follows quickly after the project's physical completion. This proposal would modify assurance 10 of part B of Appendix A to part 158 to add ''physical and financial'' before ''completion'' in the first sentence to clarify the time public agencies need to retain their records.

The proposal would also update several authorization citations.

Location	Reference	
	From	To
§ 158.67(c)(2)	Single Agency Audit Act of 1984 (31 U.S.C. 7501–7).	Office of Management and Budget Circular A–133 (The Single Audit Act of 1984, P.L. 98–502, and the Single Audit Act Amendments of 1996, P.L. 104–156).
§ 158.81	Airport Noise and Capacity Act of 1990	49 U.S.C. 47523 through 47528.
Assurance 12 of part B of Appendix A	Airport Noise and Capacity Act of 1990	49 U.S.C. 47523 through 47528.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment Economic Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only on a reasoned determination 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 prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 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 the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, the FAA has determined this proposed rule (1) has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is not ''significant'' as defined in the DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would not have an effect on international trade; and (4) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the preliminary regulatory evaluation supporting today's rule, are summarized below.

Costs of This Rulemaking

Vision 100 mandates some changes to the PFC process that are not subject to the FAA's discretion. Changes other than those prescribed by Vision 100 are discretionary and the costs and cost savings are estimated in the table below.

Sector	Costs	Cost savings	Net cost savings	Present value
Airports	$17,100	$1,638,600	$1,621,500	$1,138,300
Airlines	63,000	1,481,100	1,418,100	993,000
FAA	971,500	235,900	(735,600)	(737,700)
Total	1,051,600	3,355,600	2,304,000	1,393,600

Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA 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 rulemaking action will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

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

The FAA believes that this proposal would not have a significant impact on a substantial number of entities. An airport operator (North American Industry Classification System (NAICS) 488119) is classified as a small entity if it has annual revenues of $6 million or less. The average revenue for these airports was $1.7 million, and the median revenue was $1.1 million for 2003. The entire cost to all airports is estimated to be $17,100. Thus, no small airport would experience a significant economic impact. A scheduled or nonscheduled passenger air carrier (NAICS 481111) is considered a small entity if it has 1,500 or fewer employees. The FAA has identified 57 air carriers with authorization to carry passengers that meet this classification. Small carriers that collect PFCs would not be adversely affected since any adjustments to modify ticketing or other administrative costs that small air carriers may incur as a result of this proposed rule are recoverable under the existing compensation provisions.

Therefore, the FAA Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in 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, they be the basis for U.S. standards. Foreign carriers would be required to collect PFCs on wholly domestic U.S. travel that U.S. carriers are already required to collect, and the foreign carriers would be entitled to the same compensation provisions as U.S. carriers. The FAA has assessed the potential effect of this proposed rule and determined that it would impose the same costs on domestic and international entities and, thus, have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The 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, and therefore would not have federalism implications.

Paperwork Reduction Act

This proposal contains the following new information collection requirements: Covered Air Carrier Monthly Escrow Account Report. In addition, the proposal contains changes in some existing public agency and air carrier reporting requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Passenger Facility Charge Program, Debt Service, Air Carrier Bankruptcy, and Miscellaneous Changes

International Compatibility

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. The FAA has determined there are no ICAO Standards and Recommended Practices that match these proposed regulations.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

Environmental Analysis FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 3f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this proposed rulemaking under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 158

Air carriers, Airports, Passenger facility charge, Public agencies, Collection compensation.

The Proposed Amendment

Because of the above, the Federal Aviation Administration proposes to amend part 158 of Title 14, Code of Federal Regulations, as follows:

PART 158—PASSENGER FACILITY CHARGES (PFCs)

Subpart A—General

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 § 158.3 as follows:

a. Revise the definitions for *Air travel ticket*, *Approved Project*, and *State* to read as set forth below.

b. Add definitions for *Covered air carrier, Financial need, Ground support equipment, Notice of intent (to impose a PFC or use PFC revenue), PFC administrative support costs,* and *Point of issuance for electronic tickets or other ticketing medium* in alphabetical order to read as set forth below.

§ 158.3 Definitions.

* * * * *

Air travel ticket includes all documents, electronic records, boarding passes, and any other ticketing medium about a passenger's itinerary necessary to transport a passenger by air, including passenger manifests.

* * * * *

Approved project means a project for which the FAA has approved using PFC revenue under this part. The FAA may also approve specific projects contained in a single or multi-phased project or development described in an airport capital plan separately. This includes projects acknowledged by the FAA under § 158.30 of this part.

* * * * *

Covered air carrier means an air carrier that files for bankruptcy protection, or has an involuntary bankruptcy proceeding started against it after December 12, 2003.

* * * * *

Financial need means that a public agency cannot meet its operational or debt service obligations and does not have at least a 2-month reserve fund.

* * * * *

Ground support equipment means service and maintenance equipment used at an airport to support aeronautical operations and related activities. Baggage tugs, belt loaders, cargo loaders, forklifts, fuel trucks, lavatory trucks, and pushback tractors are among the types of vehicles that fit this definition.

* * * * *

Notice of intent (to impose a PFC or use PFC revenue) means a notice under § 158.30 from a public agency controlling a non-hub airport that it intends to impose a PFC and or use PFC revenue. Except for §§ 158.25 through 30, ''notice of intent'' can be used interchangeably with ''application.''

* * * * *

PFC administrative support costs means the reasonable and necessary costs of developing a PFC application or amendment, issuing and maintaining the required PFC records, and performing the required audit of the public agency's PFC account. These costs may include reasonable monthly financial account charges and transaction fees.

Point of issuance of airline tickets means the billing address of the buyer's credit card or the physical location of a cash or check transaction.

* * * * *

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.

* * * * *

3. Amend § 158.9 by revising paragraphs (a)(4) and (5) and by adding paragraph (a)(6) to read as follows:

§ 158.9 Limitations.

(a) * * *

(4) On flights, including flight segments, between 2 or more points in Hawaii;

(5) In Alaska aboard an aircraft having a certificated seating capacity of fewer than 60 passengers; or

(6) Enplaning at an airport if the passenger did not pay for the air transportation that resulted in the enplanement because of Department of Defense charter arrangements and payments.

* * * * *

4. Amend § 158.13 by revising paragraphs (b), (c), (d), and (e) and adding paragraphs (f), (g), and (h) to read as follows:

§ 158.13 Use of PFC revenue.

* * * * *

(b) *PFC administrative support costs.* Public agencies may use PFC revenue to pay for allowable administrative support costs. Public agencies must submit these costs as a separate project in each PFC application.

(c) *Maximum cost for certain low-emission technology projects.* If a project involves a vehicle or ground support equipment using low emission technology eligible under 158.15(b), the FAA will determine the maximum cost that may be financed by PFC revenue. The maximum cost for a new vehicle is the incremental amount between the purchase price of a new low emission vehicle and the purchase price of a standard emission vehicle, or the cost of converting a standard emission vehicle to a low emission vehicle.

(d) *Bond-associated debt service and financing costs.*

(1) Public agencies may use PFC revenue to pay debt service and financing costs incurred for a bond issued to carry out approved projects.

(2) If the public agency's bond documents require that PFC revenue be commingled in the general revenue stream of the airport and pledged for the benefit of holders of obligations, the FAA considers PFC revenue to have paid the costs covered in § 158.13(b)(1) if—

(i) An amount equal to the part of the proceeds of the bond issued to carry out approved projects is used to pay allowable costs of such projects; and

(ii) To the extent the PFC revenue collected in any year exceeds the debt service and financing costs on such bonds during that year, an amount equal to the excess is applied as required by § 158.39.

(e) *Exception providing for the use of PFC revenue to pay for debt service for non-eligible projects.* The FAA may authorize a public agency under § 158.18 to impose a PFC for payments for debt service or indebtedness incurred to carry out an airport project that is not eligible if the FAA determines that such use is necessary because of the financial need of the public agency.

(f) *Combination of PFC revenue and Federal grant funds.* A public agency may combine PFC revenue and airport grant funds to carry out an approved

project. These projects are subject to the record keeping and auditing requirements of this part, as well as the reporting, record keeping and auditing requirements imposed by the Airport and Airway Improvement Act of 1982 (AAIA).

(g) *Non-Federal share.* Public agencies may use PFC revenue to meet the non-Federal share of the cost of projects funded under the Federal Airport Improvement Program or the FAA ''Program to Permit Cost-Sharing of Air Traffic Modernization Projects'' under 49 U.S.C. 44517.

(h) *Approval of project following approval to impose a PFC.* The public agency may not use PFC revenue or interest earned thereon except on an approved project.

5. Amend § 158.15(b) by revising paragraphs (5) and (6) and adding paragraphs (7) and (8) to read as follows:

§ 158.15 Project eligibility at PFC levels of $1, $2, or $3.

* * * * *

(b) * * *

(5) Noise compatibility measures eligible for Federal assistance under 49 U.S.C. 47504, without regard to whether the measures are approved under 49 U.S.C. 47504;

(6) Construction of gates and related areas at which passengers are enplaned or deplaned and other areas directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport. These areas do not include restaurants, car rental and automobile parking facilities, or other concessions. Projects required to enable added air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport have added eligibility. Such projects may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities next to the gate; or

(7) A project approved under the FAA's ''Program to Permit Cost-Sharing of Air Traffic Modernization Projects.'' under 49 U.S.C. 44517; or

(8) If the airport is in an air quality nonattainment area (as defined by section 171(2) of the Clean Air Act (42 U.S.C. 7501(2)) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a), and the project will result in the airport receiving appropriate emission credits as described in 14 CFR 47139, a project for:

(i) Converting vehicles and ground support equipment powered by a diesel or gasoline engine used at a commercial service airport to low-emission technology certified or verified by the Environmental Protection Agency to reduce emissions or to use cleaner burning conventional fuels; or

(ii) Acquiring for use at a commercial service airport vehicles and ground support equipment that include low-emission technology or use cleaner burning fuels.

* * * * *

6. Add § 158.18 to read as follows:

§ 158.18 Use of PFC revenue to pay for debt service for non-eligible projects.

(a) The FAA may authorize a public agency to impose a PFC on payments for debt service or indebtedness incurred to carry out an airport project that is not eligible if the FAA determines it is necessary because of the financial need of the public agency. The FAA defines financial need in § 158.3.

(b) A public agency may request authority to impose a PFC and use PFC revenue under this section using the PFC application procedures in § 158.25. The public agency must document its financial position and explain its financial recovery plan that uses all available resources.

(c) The FAA reviews the application using the procedures in § 158.27. The FAA will issue its decision on the public agency's request under § 158.29.

7. Add § 158.20 to read as follows:

§ 158.20 Submission of required documents.

(a) Letters and reports required by this part may be transmitted to the appropriate recipient (the public agency, air carrier, and/or the FAA) via e-mail, courier, facsimile, or U.S. Postal Service.

(1) Documents sent electronically to the FAA must be prepared in a format readable to the FAA. Interested parties can obtain the format at the local FAA Airports Office.

(2) Any transmission to FAA Headquarters, using regular U.S. Postal Service, is subject to inspection that may result in delay and damage due to the security process.

(b) Public agencies and air carriers may use the FAA's national PFC database to post their required quarterly reports, and, in that case, do not have to distribute the reports in any other way.

Subpart B—Application and Approval

8. Revise § 158.29(a)(1)(ii) and (b)(1)(ii) to read as follows:

§ 159.29 The Administrator's Decision.

(a) * * *

(1) * * *

(ii) The project will achieve the objectives and criteria set forth in § 158.15 except for those projects approved under § 158.18.

* * * * *

(b) * * *

(1) * * *

(ii) The project will achieve the objectives and criteria set forth in § 158.15 except for those projects approved under § 158.18.

* * * * *

9. Amend § 158.30 by revising the section heading to read as follows:

§ 158.30 PFC Authorization at Non-Hub Airports.

* * * * *

10. Amend § 158.31 by revising the introductory text and paragraph (b) to read as follows:

§ 158.31 Duration of authority to impose a PFC after project implementation.

A public agency that has begun implementing an approved project may impose a PFC until—

* * * * *

(b) The total PFC revenue collected plus interest earned thereon equals the allowable cost of the approved project;

* * * * *

11. Amend § 158.33 by revising paragraphs (a)(2), (c)(1) introductory text, and (c)(2) to read as follows:

§ 158.33 Duration of authority to impose a PFC before project implementation.

(a) * * *

(2) 5 years after the charge effective date, or the date of the FAA's decision on the application (if the charge effective date is more than 60 days after the decision date) if an approved project is not implemented.

* * * * *

(c) * * *

(1) 3 years after the charge effective date, or the date of the FAA's decision on the application (if the charge effective date is more than 60 days after the decision date) unless—

* * * * *

(2) 5 years after the charge effective date, or the date of the FAA's decision on the application (if the charge effective date is more than 60 days after the decision date) unless the public agency has obtained project approval.

* * * * *

12. Amend § 158.37 by revising the section heading, paragraphs (b)(1)(i)(A), (b)(1)(ii)(C), and (b)(5) and redesignating (b)(1)(ii)(D) and (b)(1)(ii)(E) as (b)(1)(ii)(E) and (b)(1)(ii)(F), respectively, and adding a new (b)(1)(ii)(D) to read as follows:

§ 158.37 Amendment of approved PFC.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) Amend the approved PFC amount for a project by more than 25 percent of the original approved amount if the amount was $1,000,000 or greater.

* * * * *

(ii) * * *

(C) To institute an increase of 25 percent or less of the original approved amount if the amount was more than $1,000,000;

(D) To institute an increase of any amount if the original approved amount of the project was less than $1,000,000.

* * * * *

(5) Justification, if the amendment involves a change in the PFC amount for a project by more than 25 percent of the original approved amount if that amount is $1,000,000 or greater, a change of the approved project scope, or any increase in the approved PFC level to be collected from each passenger;

* * * * *

13. Amend § 158.39 by revising paragraphs (a) and (d) to read as follows:

§ 158.39 Use of excess PFC revenue.

(a) If the PFC revenue remitted to the public agency, plus interest earned thereon, exceeds allowable costs of the project, public agencies must use excess funds for approved projects or to retire outstanding PFC-financed bonds.

* * * * *

(d) Within 30 days after the authority to impose a PFC has expired or been terminated, the public agency must present a plan to the appropriate FAA Airports office to begin using accumulated PFC revenue. The plan must include a timetable for submitting any necessary application under this part. If the public agency fails to submit such a plan, or if the plan is not acceptable to the Administrator, the Administrator may reduce Federal airport grant program apportioned funds.

Subpart C—Collection, Handling and Remittance of PFCs

14. Amend § 158.43 to revise paragraphs (b)(3) and (c) to read as follows:

§ 158.43 Public agency notification to collect PFCs.

* * * * *

(b) * * *

(3) The charge effective date will always be the first day of the month; however, it must be at least 30 days after the date the public agency notified the air carriers of the FAA's approval to impose the PFC.

* * * * *

(c) The public agency must notify air carriers required to collect PFCs at its airport and the FAA of changes in the charge expiration date at least 30 days before the existing charge expiration date or new charge expiration date, whichever comes first. Each notified air carrier must notify its agents, including other issuing carriers, of such changes.

* * * * *

15. Amend § 158.45 by revising paragraph (a)(3) to read as follows:

§ 158.45 Collection of PFCs on tickets issued in the U.S.

(a) * * *

(3) Issuing carriers and their agents shall collect PFCs based on the itinerary at the time of issuance.

(i) Any change in itinerary initiated by a passenger that requires an adjustment to the amount paid by the passenger is subject to collection or refund of the PFC as appropriate.

(ii) Failure to travel on a nonrefundable or expired ticket is not a change in itinerary. If the ticket purchaser is not permitted any fare refund on the unused ticket, the ticket purchaser is not permitted a refund of any PFC associated with that ticket.

* * * * *

16. Amend § 158.47 by revising paragraphs (a) and (c)(3) to read as follows:

§ 158.47 Collection of PFCs on tickets issued outside the U.S.

(a) For tickets issued outside the U.S., an air carrier or foreign air carrier may follow the requirements of either § 158.45 or this section, unless the itinerary is for travel wholly within the U.S. Air carriers and foreign air carriers must comply with § 158.45 where the itinerary is for travel wholly within the U.S. regardless of where the ticket is issued.

* * * * *

(c) * * *

(3) Issuing carriers and their agents shall collect PFCs based on the itinerary at the time of issuance.

(i) Any change in itinerary initiated by a passenger that requires an adjustment to the amount paid by the passenger is subject to collection or refund of the PFC as appropriate.

(ii) Failure to travel on a nonrefundable or expired ticket is not a change in itinerary. If the ticket purchaser is not permitted any fare refund on the unused ticket, the ticket purchaser is not permitted a refund of any PFC associated with that ticket.

* * * * *

17. Amend § 158.49 by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 158.49 Handling of PFCs.

* * * * *

(b) Collecting carriers must account for PFC revenue separately. PFC revenue may be commingled with the air carrier's other sources of revenue except for covered air carriers discussed in paragraph (c) of this section. PFC revenues held by an air carrier or an agent of the air carrier after collection are held in trust for the beneficial interest of the public agency imposing the PFC. Such air carrier or agent holds neither legal nor equitable interest in the PFC revenues except for any handling fee or interest collected on unremitted proceeds as authorized in § 158.53.

(c)(1) A covered air carrier must segregate PFC revenue in a designated separate PFC account. Regardless of the amount of PFC revenue in the covered air carrier's account at the time the bankruptcy petition is filed, the covered air carrier must deposit into the separate PFC account an amount equal to the average monthly liability for PFCs collected under this section by such air carrier or any of its agents.

(i) The covered air carrier is required to create one PFC account to cover all PFC revenue it collects. The designated PFC account is solely for PFC transactions and the covered air carrier must make all PFC transactions from that PFC account. The covered air carrier is not required to create separate PFC accounts for each airport where a PFC is imposed.

(ii) The covered air carrier must transfer PFCs from its general accounts into the separate PFC account in an amount equal to the average monthly liability for PFCs as the ''PFC reserve.'' The PFC reserve must equal a one-month average of the sum of the total PFCs collected by the covered air carrier, net of any credits or handling fees allowed by law, during the past 12-month period of PFC collections immediately before entering bankruptcy.

(iii) The minimum PFC reserve balance must never fall below the fixed amount defined in paragraph (c)(1)(ii) of this section.

(iv) A covered air carrier may continue to deposit its PFCs into its general operating accounts combined with ticket sales revenue. However, at least once every business day, the covered air carrier must remove all PFC revenue (''Daily PFC amount'') from those accounts and transfer it to the new PFC account. An estimate based on

1/30 of the PFC reserve balance is permitted in substitution of the Daily PFC amount.

(v) If the covered air carrier uses an estimate rather than the daily PFC amount, the covered air carrier shall reconcile the estimated amount with the actual amount of PFCs collected for the prior month (''Actual Monthly PFCs''). This reconciliation must take place no later than the 20th day of the month (or the next business day if the date is not a business day). In the event the actual monthly PFCs are greater than the aggregate estimated PFC amount, the covered air carrier will, within one business day of the reconciliation, deposit the difference into the PFC account. If the actual monthly PFCs are less than the aggregate estimated PFC amount, the covered air carrier will be entitled to a credit in the amount of the difference to be applied to the daily PFC amount due.

(vi) The covered air carrier is permitted to recalculate and reset the PFC reserve and daily PFC amount on each successive anniversary date of its bankruptcy petition using the methodology described above.

(2) If a covered air carrier or its agent fails to segregate PFC revenue in violation of paragraph (c) of this section, the trust fund status of such revenue shall not be defeated by an inability of any party to identify and trace the precise funds in the accounts of the air carrier.

(3) A covered air carrier and its agents may not grant to any third party any security or other interest in PFC revenue.

(4) A covered air carrier that fails to comply with any requirement of paragraph (c) of this section, or causes an eligible public agency to spend funds unnecessarily to recover or retain payment of PFC revenue, must compensate that public agency for those costs incurred to recover the PFCs owed.

(5) The provisions of paragraph (b) of this section that allow the commingling of PFCs with other air carrier revenue do not apply to a covered air carrier.

(d) All collecting air carriers must disclose the existence and amount of PFC funds regarded as trust funds in their financial statements.

18. Revise § 158.53 to read as follows:

§ 158.53 Collection compensation.

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

(1) $0.11 of each PFC collected.

(2) Any interest or other investment return earned on PFC revenue between the time of collection and remittance to the public agency.

(b) A covered air carrier that fails to designate a separate PFC account is prohibited from collecting interest on the account. Where a covered air carrier maintains a separate PFC account in compliance with § 158.49(c), it will receive the interest on PFC accounts as described in paragraph (a)(2) of this section.

(c)(1) Collecting air carriers may file collection cost data periodically to the FAA after the agency issues a notice in the **Federal Register** that specifies the information and deadline for filing the information. Submission of the information is voluntary. The requested information must include data on interest earned by the air carrier on PFC revenue and audited air carrier collection, handling, and remittance costs in the following categories:

(i) Credit card fees;

(ii) Audit fees;

(iii) PFC disclosure fees;

(iv) Reservations costs;

(v) Passenger service costs;

(vi) Revenue accounting, data entry, accounts payable, tax, and legal fees;

(vii) Corporate property department costs;

(viii) Training for reservations agents, ticket agents, and other departments;

(ix) Ongoing carrier information systems costs;

(x) Ongoing computer reservations systems costs; and

(xi) Airline Reporting Corporation fees.

(2) Any new compensation level determined by the FAA's analysis of data filed under paragraph (b)(1) of this section will replace the level identified in paragraph (a)(1) of this section.

Subpart D—Reporting, Recordkeeping and Audits

19. Amend § 158.63 by revising paragraphs (a) and (c) to read as follows:

§ 158.63 Reporting requirements: Public agency.

* * * * *

(a) The public agency must provide quarterly reports to air carriers collecting PFCs for the public agency with a copy to the appropriate FAA Airports Office. The quarterly report must include:

(1) Actual PFC revenue received from collecting air carriers, interest earned, and project expenditures for the quarter;

(2) Cumulative actual PFC revenue received, interest earned, project expenditures, and the amount committed for use on currently approved projects, including the quarter;

(3) The PFC level for each project; and

(4) Each project's current schedule.

* * * * *

(c) For medium or large hub airports, the public agency must provide to the FAA, by July 1 of each year, an estimate of PFC revenue to be collected for each airport in the following fiscal year.

20. Revise § 158.65 to read as follows:

§ 158.65 Reporting requirements: Collecting air carrier.

(a) Each air carrier collecting PFCs for a public agency must file quarterly reports to the public agency unless otherwise agreed by the collecting air carrier and public agency, providing an accounting of funds collected and funds remitted.

(1) Unless otherwise agreed by the collecting air carrier and public agency, reports must state:

(i) The collecting air carrier and airport involved,

(ii) The total PFC revenue collected,

(iii) The total PFC revenue refunded to passengers,

(iv) The collected revenue withheld for reimbursement of expenses under § 158.53, and

(v) The dates and amounts of each remittance for the quarter.

(2) The report must be filed by the last day of the month following the calendar quarter or other period agreed by the collecting carrier and public agency for which funds were collected.

(b) A covered air carrier must provide the FAA with:

(1) A copy of its quarterly report by the established schedule under paragraph (a) of this section, and

(2) A monthly PFC account statement delivered not later than the fifth day of the month. This monthly statement must include:

(i) The balance in the account on the first day of the month;

(ii) The total funds deposited during the month;

(iii) The total funds dispersed during the month; and

(iv) The closing balance in the account.

21. Amend § 158.67 by revising paragraph (c)(2) to read as follows:

§ 158.67 Recordkeeping and auditing: Public agency.

* * * * *

(c) * * *

(2) Conducted as part of an audit under Office of Management and Budget Circular A–133 (the Single Audit Act of 1984, Pub. L. 98–502, and the Single Audit Act Amendments of 1996, Pub. L. 104–156) provided the PFC is specifically addressed by the auditor.

* * * * *

Subpart E—Termination

22. Revise § 158.81 to read as follows:

§ 158.81 General.

This subpart contains the procedures for terminating PFCs or loss of Federal airport grant funds for violations of this part or 49 U.S.C. 40117. This subpart does not address the circumstances under which authority to collect PFCs may be terminated for violations of 49 U.S.C. 47523 through 47528.

§ 158.97 [Removed]

23. Remove § 158.97.

24. Amend appendix A by revising paragraphs 10 and 12 of section B to read as follows:

Appendix A to Part 158—Assurances

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B. * * *

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10. Recordkeeping and Audit. It will maintain an accounting record for audit purposes for 3 years after physical and financial completion of the project. All records must satisfy the requirements of 14 CFR part 158 and contain documentary evidence for all items of project costs.

* * * * *

12. Compliance with 49 U.S.C. 47523 through 47528. It understands 49 U.S.C. 47524 and 47526 require the authority to impose a PFC be terminated if the Administrator determines the public agency has failed to comply with those sections of the United States Code or with the implementing regulations published under the Code.

Issued in Washington, DC, on January 26, 2006.

Dennis E. Roberts,

Director, Office of Airport Planning and Programming.

[FR Doc. 06–896 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 203 and 205

[Docket No. 2005N–0428]

Distribution of Blood Derivatives by Registered Blood Establishments that Qualify as Health Care Entities; Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements and Administrative Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the regulations to allow certain registered blood establishments that qualify as health care entities to distribute drug products that are derivatives of blood (blood derivatives). This proposed rule, which is specific to registered blood establishments and the distribution of blood derivatives, if finalized, would amend certain limited provisions of the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA), as modified by the Prescription Drug Amendments of 1992 (PDA) and the FDA Modernization Act of 1997. As currently written, these regulations, among other things, restrict the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs purchased by hospitals and other health care entities.

DATES: Submit written or electronic comments on the proposed rule by May 2, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0428, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kathleen Swisher, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The PDMA (Public Law 100–293) was enacted on April 22, 1988, and was modified by the PDA (Public Law 102–353, 106 Stat. 941) on August 26, 1992. The PDMA, as modified, amended the Federal Food, Drug, and Cosmetic Act (the act) to establish restrictions and requirements relating to various aspects of human prescription drug marketing and distribution. Among other things, the PDMA prohibited, with certain exceptions, the sale, purchase, or trade (or offer to sell, purchase, or trade) of prescription drugs that were purchased by hospitals or other health care entities. Section 503(c)(3)(A)(ii)(I) of the act (21 U.S.C. 353(c)(3)(A)(ii)(I)). Section 503(c)(3) also states that ''[f]or purposes of this paragraph, the term 'entity' does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law * * *.''

In the **Federal Register** of March 14, 1994 (59 FR 11842), we issued a proposed rule to implement those PDMA sections that were not implemented by the final rule of September 14, 1990, that set forth Federal guidelines for State licensing of wholesale drug distributors (55 FR 38012). The proposed rule contained provisions on prescription drug reimportation; wholesale distribution of prescription drugs by unauthorized distributors; the resale of prescription drugs by hospitals, health care entities, and charitable institutions; and distribution of prescription drug samples. After consideration of comments, we issued a final rule in the **Federal Register** of December 3, 1999