Federal Aviation Administration

Memorandum

Date: January 12, 2021

To: Regional Airports Directors, 610 Branch Managers, and ADO Managers

From: Robert J. Craven, Director, Office of Airport Planning and Programming, APP-1

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Subject: INFORMATION: PFC Update, PFC 75-21

PFC 75-21. Eligibility of on-airport rail access projects

This PFC Update letter provides guidance on the *Passenger Facility Charge (PFC) Program: Eligibility of on-airport rail access*. This Policy amends FAA policy previously published in 2004, *Notice of Policy Regarding Eligibility of Airport Ground Access Transportation Projects for Funding Under the Passenger Facility Charge Program* (69 FR 6366) (the 2004 Policy), to make rail lines that do not exclusively serve the airport PFC eligible, and provides several methodologies for calculating the PFC-eligible costs. All other ground access projects using PFC funds continue to follow the 2004 Policy.

FAA's PFC Order (FAA Order 5500.1, Chapter 1, section 1-22(d)) notes differences between PFC and Airport Improvement Program (AIP) eligibility. This PFC Update further clarifies that when using PFC funds, rail line eligibility is now treated differently than when using AIP funds. There is no change to AIP policy on ground access project eligibility, as outlined in Table P-3 of the AIP Handbook.

This Update also modifies section 4-6(e) of the PFC Order, which currently states that airport ground access projects must be for the exclusive use of airport patrons and airport employees. Under the 2020 Policy, on-airport rail access projects no longer will be treated identically to road access projects, and a portion of a rail access project may be eligible even if the rail project in its entirety serves more than exclusively airport traffic.

For further information, please contact APP-510 at (202) 267-3831.

Background

Section 123(e) of Public Law 108-176, Vision 100-Century of Aviation Reauthorization Act (December 12, 2003) directed FAA to publish a policy on the eligibility of ground access projects for PFC funding. The 2004 Policy was published on February 10, 2004 (69 FR 6366). The 2004 Policy presented the relevant statutory requirements as well as FAA's regulations and guidance on PFC-funded ground access transportation projects in a consolidated form.

The 2004 Policy restated the agency's longstanding policy that a surface transportation project must meet the following conditions to be eligible for AIP or PFC (see also FAA Order 5100.38D, Appendix P, Table P-3) funding:

(1) the road or facility may only extend to the nearest public highway or facility of sufficient capacity to accommodate airport traffic;
(2) the access road or facility must be located on the airport or within a right-of-way acquired by the public agency; and
(3) the access road or facility must exclusively serve airport traffic.

In addition, the 2004 Policy stated that the "eligibility criteria for access roads" would be used "to judge eligibility of rail and fixed guideway systems." The first and second elements are relatively straightforward to apply and evaluate. The third element, exclusive use, requires more explanation. The origin of this exclusivity element is an FAA policy, later codified by Congress, that expressly applied only to roads. 49 U.S.C. 47102(28). The 2004 Policy stated that "exclusive use of airport patrons and employees means that the facility can experience no more than incidental use by non-airport users." 69 FR 6368.

The 2004 Policy also stated that "[r]elated facilities, such as acceleration and deceleration lanes, exit and entrance ramps, lighting, equipment to provide operational control of a rail system or people mover, and rail system or people mover stops at intermediate points on the airport are eligible when they are a necessary part of an eligible access road or facility…." 69 FR 6367. In addition, "the public agency must retain ownership of the completed ground access transportation project. The public agency may choose to operate the facility on its own or may choose to lease the facility to a local or regional transit agency for operation within a larger local or regional transit system." 69 FR 6367.

In the past, before and after the publication of the 2004 Policy, FAA found that almost all rail stations located on-airport were eligible for PFC funding under agency guidelines, because they were exclusively used by airport patrons and employees. However, under the 2004 Policy whether the right-of-way or rail line itself met the exclusive use element depended upon the configuration of the rail line. If the configuration terminated at the airport, then it met the exclusive use element. Thus, to meet the terms of the 2004 Policy, some on-airport stations were connected to an off-airport railway system via a spur line.

If the railway was a through-line where the airport station was not the terminus, however, it failed to meet the exclusive use element.

In 2014, FAA received a request for the use of PFC revenue to fund an on-airport rail station and related railway, where the railway would not exclusively serve airport traffic as interpreted in the 2004 Policy. The railway would not terminate at the airport station but continue beyond the airport property to other stations. The agency reconsidered whether the 2004 Policy's exclusive use element, as applied to rail access projects, is unduly limiting, restricting the approval of PFC funds for some airport ground access projects that are otherwise consistent with statutory limitations and the agency's mission to "encourage the development of intermodal connections on airport property between aeronautical and other transportation modes and systems to serve air transportation passengers and cargo efficiently and effectively and promote economic development." 49 U.S.C. 47101(a)(5).

FAA's consideration of the request highlighted the competing policy goals. When a public agency extends the railway beyond the airport, it provides more transit options for more travelers and increases the utility of the system. This positive outcome is consistent with FAA's policy of encouraging intermodal connections. A paradoxical consequence of this intermodal enhancement, however, is that funding options diminish pursuant to the 2004 Policy.

As noted earlier, the 2004 Policy was based on FAA Order 5100.38B (May 31, 2002) and related guidance that determined PFC and AIP eligibility for access roads. However, there are fundamental differences between railway systems and road systems. With road systems, all that is needed to facilitate efficient access to the air transportation system is a direct connection from the airport to a main thoroughfare or population center, as individual drivers can then choose their own path to their destination. The roads used by airport visitors are typically part of a broader system that may be funded, constructed, and maintained by multiple levels of government or private entities for multiple purposes and journeys. Given the open and variable nature of road systems, it is critical for FAA to apply strict eligibility criteria that tie the funding of the on-airport project to the exclusive use of the airport. Without such criteria, users of the infrastructure could benefit from federally approved funds designed to improve access to the national air transportation system without ever intending to visit, or actually visiting, the airport. Moreover, the exclusive use requirement as applied to roads is mandated by statute. 49 U.S.C. 47102(28).

On-airport rail access projects, on the other hand, are planned, funded, constructed, operated, and used differently than on-airport road projects. By their nature, passenger rail and rail transit aggregate passenger traffic along fixed routes with a limited number of stops, each with their own justification and purpose. Users of road infrastructure have more flexibility and control in determining their route than users of rail, who are limited in their options. Non-airport users of rail are not taking advantage of the airport portions

of a railway system by choice, but are likely to be passing through the airport because they cannot use the railway system to their destination without doing so. Thus, the distributed network of roads, as compared to the fixed path of rail, justifies the differentiated treatment that Congress has now ordained.

In addition, FAA has observed an increasing number of circumstances and physical configurations in which continued adherence to the 2004 Policy's interpretation of "exclusive use" for rail projects may not appropriately balance competing policy goals. Indeed, rigid application to rail projects of the exclusive use policy that is now mandated by statute for roadway systems has frustrated FAA's own objectives as set forth in 49 U.S.C. 47101(b)(5) and (6).

FAA's analysis is further informed by changes in population and demographic trends that have occurred since issuance of the 2004 Policy. Many airports that were originally constructed on the periphery of population centers are now ensconced as suburban growth has extended to and beyond the airport. It may no longer make sense for a downtown railway or transit line to terminate at the airport, where there exists a pool of potential users beyond the airport. However, under the 2004 Policy, which equates on-airport rail access projects with "access roads," extending railway access beyond the airport so that these populations can also access the airport precludes the use of federally approved funds, such as PFCs, for significant portions of the project since the line would go beyond the airport and no longer serves airport traffic exclusively.

To modify the exclusivity element for the on-airport portion of rail access projects, on May 3, 2016, FAA published a proposed policy titled Passenger Facility Charge (PFC) Program: Eligibility of Ground Access Projects Meeting Certain Criteria (81 FR 26611) (hereinafter 2016 Proposed Policy). In the Proposed Policy, FAA solicited comments on its proposal to amend the existing policy to consider the eligibility of rail access projects that are located on-airport but may not exclusively serve airport traffic. FAA's proposed amendment is consistent with the agency's mission to encourage the development of intermodal connections on airport property. The proposal also identified three proposed methodologies by which an airport could calculate PFC-eligible costs of a rail access project serving that on-airport station that then extends to serve off-airport stations.

Following publication of the 2016 Proposed Policy, the President signed the Reauthorization Act of 2018 (Pub. L. 115-254, section 123 (Oct. 5, 2018) (hereinafter "Reauthorization Act")). Section 123 of the Reauthorization Act provides:

> Not later than 6 months after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall, after consideration of all public comments, publish in the Federal Register a final policy amendment consistent with the notice published in the Federal Register on May 3, 2016 (81 FR 26611).

Discussion of Comments and Final Policy

FAA received comments from 40 commenters including air carriers, airport operators, government entities, rail authorities, transit authorities, trade associations, and private individuals (Docket number FAA-2016-6596). Commenters included:

- Trade Associations: Airlines For America (A4A), Southern Rail Commission, International Air Rail Organization, International Air Transport Association (IATA), Airports Council International - North America (ACI-NA), American Association of Airport Executives (AAAE), Regional Plan Association (RPA), United States Travel Association, and the American Society of Civil Engineers (ASCE)
- Air carriers: Delta Air Lines
- Airport operators: Greater Orlando Airport Authority (FL), San Diego Regional Airport Authority (CA), Los Angeles World Airports (CA), New Orleans International Airport (LA), Metropolitan Washington Airports Authority (DC), San Diego International Airport (CA), Phoenix Mesa Airport Authority (AZ), City of Phoenix Aviation Department (AZ), Lee County Port Authority (FL)
- Government entities: City of College Park (GA), City of Austin (TX), San Bernardino Associated Governments (CA), New York City Economic Development Corporation (NY)
- Rail Authorities: Louisiana Super Regional Rail Authority (LA), National Railroad Passenger Corporation (AMTRAK)
- Transit Authorities: Utah Transit Authority (UT), Los Angeles County Metropolitan Transportation Authority (CA)
- Thirteen Individuals

Most comments were supportive of the proposed policy. Some commenters expressed a preference for one methodology over another, but none offered alternatives, and none specifically argued against any of the three methodologies. Many commenters (including the Metropolitan Washington Airports Authority (MWAA), AMTRAK, Greater Orlando International Airport, New Orleans International Airport, the United States Travel Association, Utah Transit Authority, and Phoenix Mesa Airport) supported a change that would give public agencies the flexibility to determine the most efficient ways to use PFC revenues and, in doing so, encourage the development of intermodal transportation systems. Two members of AAAE stated that expanding PFC eligibility for certain on-airport rail access projects will allow airports to accommodate increasing passenger levels and reduce landside congestion.

However, some commenters (such as the Greater Orlando Airport) expressed concern that two of the methodologies would introduce ambiguity by analyzing a theoretical project that may never have been planned or analyzed in sufficient detail. Similar concern was expressed that the assumptions and costing methodologies used for the proposed project and a theoretical alternative could open arguments resulting in

conflicting conclusions. Some commenters were also concerned that the prorated methodology could result in skewed forecasts and inaccurate cost allocations over time. In some instances, commenters (such as Delta Air Lines and IATA) were concerned that this proposal could result in a subsidy to greater regional transit systems by airport users.

1. Concerns about Proposed Methodologies to Estimate Eligible Costs

In the 2016 Proposed Policy, FAA identified three methodologies by which an airport could calculate PFC-eligible costs of a railway serving an exclusive use, on-airport station that then extends to serve off-airport stations. The three methodologies were:

(1) a determination of a prorated amount based on a forecasted ratio of airport to non-airport users;
(2) a determination of the cost to build a hypothetical stand-alone people mover system connecting the airport's terminal(s) to a regional transit system, which would otherwise meet the requirements of the 2004 PFC Policy; or
(3) a determination of the incremental costs, calculated by comparing the cost of a through line configuration with the cost of a line that bypasses the airport.

Most of the comments dealt with the mechanics of how the assumptions involved in these methodologies would be developed and how they would be applied to ascertain PFC eligibility. Some commenters (San Diego County Regional Airport Authority, A4A and others) questioned FAA's reliance on cost estimates used for two of the three methodologies. Some commenters (Greater Orlando Airport Authority, San Diego County Regional Airport Authority) stated that cost estimates, and ultimately cost comparisons, will introduce ambiguity and variability resulting in disputed estimates and assumptions. They indicated that a cost estimate for a theoretical proposed layout may lack the robustness that one would need to make a proper cost analysis, thereby leading to over inflation of the eligibility of the project.

FAA response: FAA routinely makes determinations on cost reasonableness based on PFC Update 06-50.1, dated September 8, 2006. Independent cost estimates are another tool FAA has used when assessing uncertain cost data that could result in substantial shift in project costs (up or down). Furthermore, FAA routinely assesses potential alternative project costs and planning assumptions when reviewing airport master plans, and to some extent environmental studies. FAA anticipates its evaluation of the cost estimates and planning assumptions for rail access projects to be equally robust. FAA historically has relied on assistance from the Federal Transit Administration (FTA) when assessing cost estimates.

The Greater Orlando Airport Authority questioned the use of theoretical alternatives that may not have been envisioned as a means to determine project eligibility. Other commenters (including an individual and A4A) expressed similar concerns about conducting a cost analysis utilizing alternatives. They stated that the cost to serve the

airport would require more infrastructure and would inevitably cost more than a direct route that would bypass the airport. In their view, comparing the cost of a shorter bypass railway that may never really have been envisioned versus a longer route required to serve the airport will lead to a pre-determined outcome and blanket eligibility for higher PFC eligible costs.

FAA response: The preferred methodology determines PFC eligibility based on a prorated amount of airport to non-airport users. FAA has determined that this approach is the appropriate measure for PFC eligibility for most projects and should be the presumptive method used by the public agency. An alternative methodology should be used only in the event the public agency determines the preferred methodology is inadequate to establish eligible costs. To permit FAA to adequately consider PFC-eligible costs, a cost analysis using an alternative methodology would require documentation of sufficient planning and detailed, conceptual cost estimates.

MWAA asked FAA to clarify the second methodology, i.e., the cost for a stand-alone people mover system. MWAA argues the through-airport railway project should be eligible for up to the same level of PFC funding as the airport people mover project.

FAA response: MWAA's interpretation is consistent with FAA's intent. The stand-alone people mover system methodology is an approach that could potentially be used to identify eligible costs, and the eligibility would be based on the estimated people mover costs.

An individual commented that both a through-airport railway project and a people mover project will include an exclusive use airport station so the cost of the airport station should not be included in the calculations.

FAA Response: The public agency should prepare cost estimates for the on-airport portions of both the through-airport project and the people mover project. The people mover project may include one or more airport stations, and possibly an additional station on the regional transit system if that station is located within the airport boundary. The through-airport project may include one or more stations located close to the airport terminals.

An individual commented that the full cost of a dedicated people mover system providing access to the terminal should include any additional stops and stations such as passenger parking and rental car facilities in the cost methodology. Thus, the separate system methodology must consider these additional elements as well.

FAA Response: The theoretical case and the proposed case alternatives should be as comparable as possible, considering the same functional elements unless the physical and geometric realities of the alternatives dictate otherwise. In some cases, additional components may be necessary for purposes of the calculation.

Some commenters (A4A, San Diego County Regional Airport Authority, and Regional Plan Association) discussed the difficulty in determining a ridership percentage using a prorated forecast of airport to non-airport ridership, noting that it is difficult to predict ridership percentages before a project is developed.

FAA Response: FAA will base the prorated share of the project cost on the public agency's ridership forecast (e.g., a metropolitan planning organization's travel forecast models). FAA may coordinate ridership projections with FTA for its evaluation before PFC eligibility is determined.

MWAA suggested that additional clarification is needed for the definition, or application, of the term "ridership." MWAA's view is that ridership should be based on the ridership taking place within the boundaries of an airport, and should not include additional ridership occurring completely outside the airport and elsewhere on the regional transit system.

FAA Response: Only passengers riding to and from the airport station and the next immediate off-airport station (in either direction) should be included when counting or forecasting airport versus non-airport ridership.

A4A stated FAA should publish and accept comment on ridership forecasts that are used to support a prorated ridership PFC eligibility cost.

FAA Response: Ridership forecasts and any other supporting information must be included in the information presented in the PFC public notice and air carrier consultation meeting to meet the requirements of 14 CFR 158.23 and 158.24. Therefore, in accordance with 14 CFR 158.23(c)(2), carriers will have the ability to comment as A4A advocates. Furthermore, for capital-intensive programs such as a new railway system, public agencies are subject to public comment processes for environmental reviews or master planning activities as well. Interested parties will have the opportunity to comment through all those processes.

A4A stated that FAA should not adopt any methodology for determining PFC eligibility that is not described in the 2016 Proposed Policy, and that the agency must provide public notice and comment before any new eligibility solution is adopted.

FAA Response: This policy outlines three methodologies that may be used to determine PFC eligible costs for a railway serving an exclusive use, on-airport station that then extends to serve an off-airport station. FAA recognizes that it cannot anticipate every circumstance, so this policy preserves discretion to consider unique situations, thus correcting a significant shortcoming of the 2004 Policy. FAA may consider public notice and comment if a public agency proposes to use a substantially different methodology. Nevertheless, a unique methodology would have to be described and supported with

detailed information for the PFC public notice and air carrier consultation meeting to meet the requirements of 14 CFR 158.23 and 158.24.

2. Unintended Subsidies

Some commenters (Delta Air Lines, IATA) were concerned that the added eligibility for through-airport rail access projects would shift user fees intended for the airport system to other non-airport related infrastructure.

FAA Response: Airports have broad latitude to determine whether to impose a PFC and for which projects to use PFC revenues, with the notable caveat that, per 49 U.S.C. 40117(d)(4), airports must ensure airside needs are met before imposing a PFC above $3.00 for use on terminal and landside projects. Moreover, under 49 U.S.C. 40117(a) and (d), before a project can be funded with PFC revenue, it must meet certain eligibility requirements and must be supported with adequate justification. Landside access projects, such as a railway to an on-airport station, can meet the justification standard if the project preserves or enhances capacity in accordance with 49 U.S.C. 40117(d) and 14 CFR 158.15. The project can do this by providing additional capacity to support airside and terminal capacity or reducing roadway traffic congestion, thus making the airport more attractive to airline passengers, particularly in an area with multiple airports.

IATA commented that revenue generated from airport user-funded rail access projects should be recovered and distributed to the airport and its users.

FAA Response: The passengers who choose to use the railway system to get to the airport (and the airlines they patronize) benefit from the overall system. FAA acknowledges it may be administratively difficult to ask the transit system operator to segregate revenues or expenses on any individual segment of the system. While FAA is not including the revenue segregation as IATA suggested, nothing in this policy precludes a public agency and its local transit system operator from entering into such an agreement.

Delta Air Lines commented that an airport sponsor's grant assurances prevent revenue from being used for non-aviation purposes. It stated that PFC revenue should not be used for intermodal projects if there are airside or terminal projects that will provide greater and more direct benefits to the aviation passengers paying those fees.

FAA Response: FAA may approve PFC-eligible ground access projects only if those projects are adequately justified and have met at least one PFC objective (in accordance with 49 U.S.C. 40117(d) and 14 CFR 158.15). In addition, when a public agency requests PFC approval of an eligible surface transportation project funded by a PFC above $3.00, FAA is required to determine that the public agency has made adequate provision for financing the airside needs of the airport (including runways, taxiways, aprons, and aircraft gates). 49 U.S.C. 40117(d)(4); 14 CFR 158.17(a)(3).

3. Significant Contribution

A4A asked that "FAA reiterate in the final policy that that both the 'adequate justification' and 'significant contribution' conditions (depending on the proposed PFC level and size airport) are legal requirements that must be met in order to approve a PFC application, and also should ensure these criteria are strengthened and strictly applied in light of the proposal to loosen exclusivity." In addition, A4A commented that "FAA must apply its 'adequate justification' requirement separately to all sections of the proposed on-airport tracks." It also expressed concern that FAA has not established definitive guidance on the significant contribution criteria and that such criteria threshold needs to reflect a higher burden.

FAA Response: For all projects being considered for PFC funding, FAA must determine that it is PFC eligible, adequately justified, and will meet at least one PFC objective per 49 U.S.C. 40117 and 14 CFR 158.15. As stated previously, ground access projects, such as a railway to an on-airport station, can meet the justification standard if the project preserves or enhances capacity in accordance with 49 U.S.C. 40117(d) and 14 CFR 158.15. If the railway project consists of multiple sections, FAA will consider the specific factors of each section, as well as the methodology used, to determine that the project is adequately justified.

Section 121 of the Reauthorization Act has amended the PFC statute by eliminating the significant contribution test. FAA is still required to determine that the public agency has made adequate provision for financing the airside needs of the airport (including runways, taxiways, aprons, and aircraft gates), 49 U.S.C. 40117(d)(4), when reviewing eligible surface transportation projects funded by PFCs above $3.00.

Delta Air Lines expressed concern about approving all projects in a PFC application with a calculated PFC level greater than $3.00 when the significant contribution criteria was met with airside projects at one airport, but the ground access project not meeting the significant contribution criteria is at a different airport controlled by the same public agency.

FAA Response: As stated previously, section 121 of the Reauthorization Act eliminated the significant contribution test. Nevertheless, FAA must be able to determine that it is PFC eligible, adequately justified, and will meet at least one PFC objective as per 49 U.S.C. 40117(d) and 14 CFR 158.15.

4. General

Some commenters (San Diego County Regional Airport Authority (SDCRAA), A4A) were concerned that adding more PFC eligibility for rail access projects may bring added pressure from local authorities to seek PFC funding for non-economically justified projects that are not a high priority. SDCRAA stated "without strict controls on the use

of PFCs, airports – whether municipal/county-owned or governed by an independent authority – could be pressured to use PFC revenues to build projects that have little or no value to airports and their stakeholders. City or county-owned airports, in particular, could be subject to local influence by elected officials and regional leaders."

FAA Response: As stated previously, the public agency retains the authority regarding the proposed use of its PFC revenue to address its short and long-term capital needs at the airport. All projects must be PFC eligible, adequately justified, and meet at least one PFC objective per 49 U.S.C. 40117(d) and 14 CFR 158.15.

The Southern Rail Commission recommended FAA expand the eligibility requirements to include operating assistance to local transit agencies, passenger rail authorities, and State governments based on the proration method to be used for rail access project eligibility.

FAA Response: Under 49 U.S.C. 40117(a)(3) and (b), operating assistance is not eligible for PFC funding. There is one statutory exception that allows for PFC revenue to be used for certain "routine work to preserve and extend the useful life of runways, taxiways, and aprons at nonhub airports and airports that are not primary airports, under guidelines issued by the Administrator …." 49 U.S.C. 47102(3)(H). But, that statutory exception is not broad enough to permit FAA to expand the requirements as the Southern Rail Commission recommends.

One AAAE member commented that expanded rail eligibility without an increase in the PFC collection level would limit the effectiveness of the proposed policy.

FAA Response: An increase to the PFC collection level is outside the scope of this policy, as it requires congressional action. Nevertheless, FAA has determined a primary benefit of this policy is that a public agency may be able to use PFC revenue more cost-effectively than before because it could avoid the need to construct a PFC-eligible spur line or separate on-airport people mover system to connect to the regional transit system.

The New York City Economic Development Corporation asked that FAA consider whether the absolute prohibition on funding train tracks off airport property makes sense considering the vast differences in airport sizes. The restriction would place a burden on airports with smaller footprints even though the deviation off airport property may be significantly less than that required to serve an airport with a larger footprint.

FAA Response: The policy is consistent with FAA's statutory authorities. Airport development is defined, in part, to include "constructing, reconstructing, or improving an airport … for the purpose of transferring passengers, cargo, or baggage between the aeronautical and ground transportation modes on airport property." 49 U.S.C. 47102(3)(I) (emphasis added).

5. Suggested Special Approval Conditions

A4A urged FAA to make clear certain policy conditions will apply upon approval of the final policy. It asked FAA to stipulate the following:

(1) this new policy is limited to on-airport rail access projects only, and no changes are being made for other ground access projects such as roadways;
(2) this new policy will only affect future project approvals;
(3) adequate justification and significant contribution are legal requirements that must be met; and
(4) the new policy does not apply to eligibility and funding under the AIP program.

FAA Response: Two of the policy conditions requested by A4A are incorporated into this final policy: 1) this policy is limited to on-airport rail access projects only, and no changes are being made for other ground access projects, such as roadways; and 2) this new policy will only affect future project approvals. Regarding the other two policy conditions, note first that the significant contribution test was eliminated by the Reauthorization Act. Second, this policy is intended to be narrowly focused on the use of PFC funds. Even though the 2016 Proposed Policy indicated this approach would apply to both PFC and AIP, AIP requirements and prioritization limit funding for rail access projects. In addition, since the publication of the Proposed Policy, most of FAA's focus and the focus of public comment has been in the area of PFCs. In summary, FAA does not contemplate a broader use of AIP funds under this policy.

A4A also commented that FAA should consider providing an agency legal opinion in the docket rescinding the previous opinions referenced in the 2004 Policy and clarifying that railway and roadway projects have different eligibility criteria, at least as to exclusivity.

FAA Response: The legal opinions referenced or cited in the 2004 Policy, such as the PFC Record of Decision, Application No. 96-03-U-00_EWR (Nov. 6, 1996) and the FAA Assistant Associate General Counsel Letter, ADAP Eligibility of High-Speed Rail Service On-Airport (Mar. 15, 1971), remain relevant only to the extent they are consistent with the statement of policy that we promulgate today.

In accordance with the preceding discussion, though consideration of the various stakeholders' comments helped clarify this policy amendment, FAA adopts the 2016 Proposed Policy without material changes. This final policy is consistent with the mandate under section 123 of the Reauthorization Act and with intermodal policy under 49 U.S.C. 47101(b)(5) and (6).

This policy amends the 2004 Policy for consideration of an application to use PFC revenue for a rail access project serving an exclusive use, on-airport station that then extends to serve additional stations beyond the airport. Under this policy, FAA treats rail

access projects differently from roads, which is consistent with 49 U.S.C. 40117(a)(3) and (b), 47102(28), 47119(a), and section 123 of the Reauthorization Act. Nevertheless, both exclusive-use stations and tracks (i.e., the railway and related infrastructure) are PFC-eligible costs under either the 2004 Policy or this policy.

Regarding rail stations, those stations located on-airport remain fully eligible for PFC funding. Regarding railway and related infrastructure, those projects that i) are located on-airport and ii) exclusively serve airport traffic remain fully eligible for PFC funding. This policy expands potential eligibility to include the on-airport portion of rail lines even if the railway and infrastructure serve stations other than those on the airport, provided the public agency's cost analysis demonstrates the portion of the proposed project adequately estimates the eligible costs that exclusively serves the airport.

This policy provides three preferred methodologies for calculating the portion of such projects eligible for PFC funding, but a public agency could use a different methodology to demonstrate the portion of the proposed project that exclusively serves the airport. The three methodologies are:

(1) prorating the eligible cost based on the forecast ratio of airport to non-airport ridership;
(2) calculating the cost to build a hypothetical stand-alone people mover system connecting the airport's terminal(s) to a regional transit system, which would otherwise meet the elements of the 2004 PFC Policy; or
(3) calculating the difference between the cost of a line that bypasses the airport and the cost of a through-line configuration.

FAA has determined, and most commenters agree, that the proration methodology is the most straightforward approach. This approach using forecasts that are reasonably justified should be adequate for most projects and should be the presumptive method used by the public agency. If, however, the public agency determines that the proration methodology would not adequately estimate the eligible costs, then the public agency may use one of the other two methodologies provided for in the 2020 Policy discussed in the "Statement of Policy." FAA anticipates using another methodology will require significant planning, cost detail, and justification for FAA to make an eligibility determination. In addition, FAA may consider other cost eligibility methodologies on a case-by-case basis if unique circumstances warrant.

The options provided are permissive, not mandatory, and are non-exclusive. This guidance does not constitute a regulation, and is not legally binding in its own right. It will not be relied upon as a separate basis by FAA for affirmative enforcement action or other administrative penalty. This guidance will not affect rights and obligations under existing statutes and regulations

This guidance will not impose any additional costs, significant or otherwise, on public agencies seeking to use Passenger Facility Charges. Airports or local transit agencies will have already conducted extensive alternatives analysis for a through-airport rail line, including the preparation of station-level ridership forecasts conceptual or schematic cost estimates, and therefore the use of the preferred methodology for calculating PFC eligibility would not create any extra workload or cost for the airport or any other entity. Airports that choose to use the stand-alone people mover system or incremental cost methodologies would also presumably do so only if such estimates were readily available from other studies, rather than developing them only for the purpose of calculating PFC eligibility.

Policy Statement

I. Applicability

The following policy is applicable only to PFC funding for rail access projects that serve an exclusive use, on-airport station and then extend to serve off-airport stations. The use of PFC revenue to finance rail access projects that terminate at an airport, and all other ground access projects, continues to follow FAA's Notice of Policy Regarding Eligibility of Airport Ground Access Transportation Projects for Funding Under the Passenger Facility Charge Program (69 FR 6366) published on February 10, 2004.

II. Eligibility

Historically, on-airport railway stations are eligible for PFC funding, because they are for the exclusive use of airport patrons and employees. However, eligibility for the right-of-way or railway itself depended upon the configuration of the railway. If the configuration terminated at the airport, such as a spur line, FAA found that it was eligible for PFC funding. If the railway was a through-line where the airport station was not the terminus, it was not.

FAA has reconsidered this interpretation and determined the 2004 exclusive use policy is unduly limiting. FAA supports the use of PFC funds to "encourage the development of intermodal connections on airport property between aeronautical and other transportation modes and systems to serve air transportation passengers and cargo efficiently and effectively and promote economic development." 49 U.S.C. 47101(a)(5). Consistent with the statutory and regulatory limitations of the PFC program, on-airport railway stations, right-of-way, and railways are eligible for PFC funding as described in this policy.

III. PFC eligibility for a railway serving an exclusive use, on-airport station and then extending to serve additional stations beyond the airport

Airport rail access projects serving an exclusive use, on-airport station and then extending to serve additional stations beyond the airport may be eligible for PFC funding. The 2004 Policy was issued in question and answer format. FAA stated under the heading "How Is PFC Eligibility Established?" that as a matter of policy: an eligible airport ground access project is one meeting the following conditions:

(1) The road or facility may only extend to the nearest public highway or facility of sufficient capacity to accommodate airport traffic;
(2) the access road or facility must be located on the airport or within a right-of-way acquired by the public agency; and
(3) the access road or facility must exclusively serve airport traffic.

69 FR 6366, 6367.

Under this new policy, on-airport rail access projects no longer will be treated identically to road access projects, and a portion of a rail access project may be eligible even if the rail project in its entirety serves more than exclusively airport traffic. Three preferred methodologies for calculating the portion of the project eligible for PFC funding are:

(1) prorating the eligible cost based on the forecast ratio of airport to non-airport ridership;
(2) calculating the cost to build a hypothetical stand-alone people mover system connecting the airport's terminal(s) to a regional transit system, which would otherwise meet the requirements of the 2004 PFC Policy; or
(3) calculating the difference between the cost of a line that bypasses the airport and the cost of a through-line configuration.

FAA has determined the proration methodology is the most straightforward and reliable methodology and, therefore, it should be the presumptive method used by the public agency. If, however, the public agency determines that using a prorated amount based on ridership methodology would not adequately estimate the eligible costs, the public agency may use one of the other methodologies. A cost analysis using another methodology should be supported with documentation of sufficient planning and defensible, conceptual cost estimates for FAA to make an eligibility determination. FAA may consider other cost eligibility methodologies on a case-by-case basis if unique circumstances warrant.

IV. Calculating eligible PFC funding using a prorated ridership methodology

Prorating the cost of a railway project serving an exclusive use, on-airport station and then extending to serve off-airport stations based on a forecast ratio of airport to non-airport ridership is generally the most straightforward and reliable methodology to use in

calculating the cost of the project eligible for PFC funding. Its reliability is based, in part, on its simplicity. The proration method looks only to ridership and avoids the consideration of hypothetical rail configurations; configurations that should be vetted for reasonableness in the first instance, and also that should be accompanied by reliable cost estimates. Because this methodology relies on a forecast of future ridership, the forecast should be based on reasonable assumptions. FAA will rigorously review the proposed forecast and applied ratio of airport to non-airport ridership.

In addition, FAA may seek advice from other Federal agencies as to the reasonableness of the forecast and may publish the forecast for public comment. Therefore, it is critical for the public agency to submit the forecast well in advance of submitting the PFC application. The public agencies using this methodology should make the forecast available during the public notice and air carrier consultation process. The burden of justifying the forecast is on the public agency.

V. Calculating eligible PFC funding using a cost analysis of a separate stand-alone people mover system

In limited circumstances, a public agency or FAA may conclude that a prorated ridership methodology does not adequately estimate the PFC-eligible cost of a project given local circumstances and considerations.

An alternative cost analysis could analyze the cost of a people mover system that connects with the regional transit system. The analysis should only include the capital development and related planning, environmental, and design costs of each option. The eligible cost is the cost of the through option not to exceed the cost of the hypothetical people mover system.

FAA will analyze, and make a determination based on, the materials in the airport's PFC application. Limiting costs for the analysis to those for capital development and related planning, environmental, and design costs ensures that the analysis is made consistent with PFC eligibility and allowable cost criteria in 14 CFR part 158. The burden of justifying the underlying assumptions and costs in this approach is on the public agency.

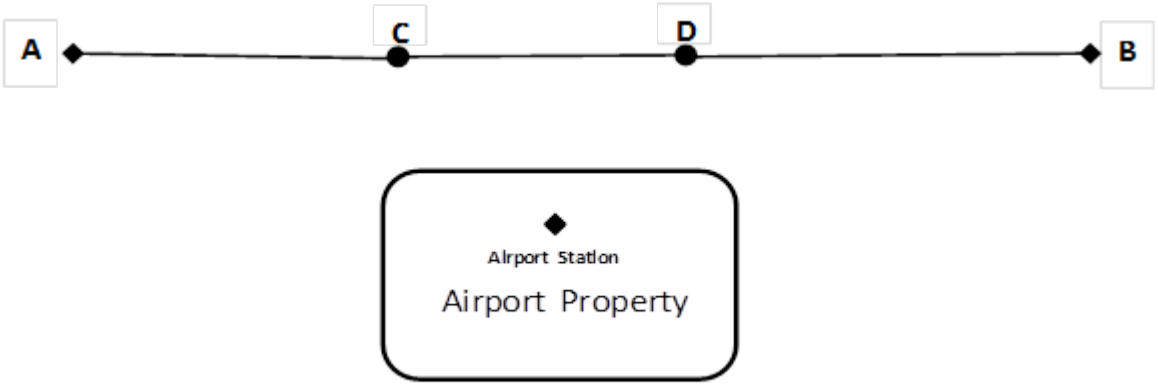
VI. Calculating eligible PFC funding using a calculation to determine the incremental costs of a railway that would benefit only the airport passengers and employees

A public agency may have better planning and cost detail from a metropolitan transit agency for a bypass option that does not serve the airport than it would for a separate people mover system serving the airport. In such instances, the public agency could use an approach that calculates those project related costs that are directly related to benefiting only the airport passengers and employees.

Detailed Discussion of Incremental Cost Alternative:

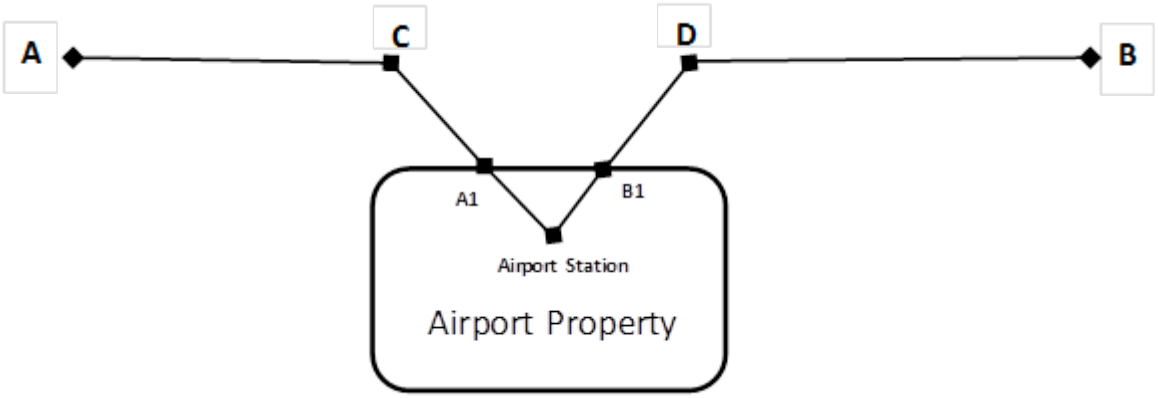
- For this alternative, FAA considers a rail line that bypasses the airport (C to D)

Track that Bypasses the Airport



- FAA then considers a proposed modification of that line which does serve the airport (C-A1-Airport Station- B1-D).

Track that Includes the Airport Station



- The cost difference between the two scenarios would be the costs specifically attributed to serving the airport passengers and airport employees (i.e., incremental costs). This cost difference is determined and that amount caps the eligibility. 14 CFR 158.13(a).
- The eligible amount then equals the costs of the on-airport property rail lines not to exceed the calculated cap (A1-Airport Station-B1).

The public agency should provide sufficient planning and cost detail for both options for FAA to determine the accuracy and reasonableness of the incremental costs. Such information should include cost elements such as the land or right-of-way acquisition

costs as well as the railway and supporting infrastructure costs. The burden of justifying the underlying assumptions and costs in this approach is on the public agency.

VII. Review of ridership forecasts

A key consideration in determining the PFC eligibility is the forecast of future airport and non-airport ridership for airport use rail access projects. FAA will evaluate, but not approve or disapprove, the forecasts provided by the public agency. FAA will consider the reliability of the forecast to complete the project evaluation. FAA will use the following considerations typically used by the Federal Transit Administration (FTA) when reviewing project forecasts:

1) the properties of the forecasting methods;
2) the adequacy of current ridership data to support useful tests of the methods;
3) the successful testing of the methods to demonstrate their grasp of current ridership;
4) the reasonableness of inputs (demographics, service changes) used in the forecasts; and
5) the plausibility of the forecasts for the proposed project.

FTA provides guidance on forecast methods and related review timelines on its website, https://www.transit.dot.gov/funding/grant-programs/capital-investments/travel-forecasts. Public agencies should consider the difficulty in accurately predicting airport versus nonairport ridership. If the forecast is not carefully developed and overstates airport ridership, it can result in the PFC revenue being improperly used for the prorated airport ridership cost, creating an unwanted subsidy. On the other hand, the forecast could underestimate airport ridership potentially underutilizing PFC funding. In determining a prorated ridership ratio, the forecast should only consider the ratio of airport to nonairport ridership to and from the airport terminal station and the next immediate off-airport station in both directions, not the entire railway ridership. To the extent possible, ridership forecasts should be supported with passenger surveys. FAA may consult FTA or other agencies in its review of ridership forecasts.

VIII. Rail Access and Airport Land Acquisition

In applying this policy, FAA will work to ensure that airports do not use PFCs to acquire land and expand rail access beyond what is eligible, adequately justified, and meets at least one PFC objective as per 49 U.S.C. 40117(d) and 14 CFR 158.15. PFC eligible costs are limited to on-airport, railway access projects. All PFC approvals are subject to evaluation under the National Environmental Policy Act. FAA already has safeguards in place to ensure that PFCs are not used to acquire land for rail access that is not for airport use. Further, airports are expected to ensure their airside needs are met before using PFC revenues for terminal and landside projects (49 U.S.C. 40117(d)(4)).