

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 158**

Docket No. FAA-2004-17999; Amendment No. 158-3

RIN 2120-A115

Passenger Facility Charge Program, Non-Hub Pilot Program and Related Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations to create a pilot program to test new application and application approval procedures for the passenger facility charge (PFC) program. This pilot program will run for 3 years from the effective date of this rule and is available to non-hub airports. Besides the pilot program, this final rule also 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 is enacting these changes in response to Congressional direction found in the Vision 100—Century of Aviation Reauthorization Act.

DATES: This final rule becomes effective May 9, 2005.

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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. The vast majority of the changes in this final rule are taken

from Vision 100. The remaining changes not required by Vision 100 are changes to process, which must be made to effect the changes required by Vision 100.

SUPPLEMENTARY INFORMATION:**Availability of Rulemaking Documents**

You can get an electronic copy of this final rule 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 Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; 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. To promote a prompt response, please make sure to identify the docket number, notice number, or amendment number of this rulemaking in your request.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question about this document, you may contact your local FAA official or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our Web site: <http://www.faa.gov/avr/arm/sbrefa.htm>, or by e-mailing us at 9-AWA-SBREFA@faa.gov.

Applicability

All applications and amendments submitted after the effective date of this rule must comply with and will be processed by the FAA under these new rules. Applications and amendments submitted before the effective date will be processed under the current rules.

Background*History*

On December 12, 2003, President Bush signed the Vision 100—Century of Aviation Reauthorization Act (Vision 100) into law. Vision 100 mandated many changes to the PFC program and this final rule addresses several of these changes. This final rule revises part 158 to implement a 3-year non-hub pilot

program and related streamlining provisions. Vision 100 required the FAA to propose regulations establishing the pilot program within 180 days of enactment of the Vision 100 pilot program section. The FAA issued proposed regulations on June 9, 2004 (meeting the 180-day statutory deadline), to implement the pilot program. The notice of proposed rulemaking (NPRM) requested public comment on the proposed regulations and the comment period ended on August 9, 2004 ("Passenger Facility Charge Program, Non-Hub Pilot Program and Related Changes" (69 FR 32298, June 9, 2004)).

A separate rulemaking in the future will address the other statutory and non-statutory changes to the PFC program that are not subject to the statutory deadline.

Discussion of Comments

The FAA received seven comments in response to the notice. All of these comments express general support for the efforts and objectives of the FAA in proposing the changes to the PFC program in the NPRM. Despite this support, most of these commenters also recommended specific changes to the NPRM's language.

Five of the comments are from public agencies: Yakima Air Terminal, Yakima, WA; Pangborn Memorial Airport, Wenatchee, WA; Metropolitan Washington Airports Authority, Alexandria, VA; Norman Y. Mineta San Jose International Airport, San Jose, California; and Massachusetts Port Authority, Boston, MA. Two comments are from aviation industry groups: the Air Transport Association of America; and a joint submission by the Airports Council International—North America and the American Association of Airport Executives.

In the "Discussion of Comments" section below, the following applies:

(1) *Acronyms:* The FAA uses the following acronyms or shortened names to identify the associated commenters:

- Air Transport Association of America (ATA)
- Airports Council International—North America/American Association of Airports Executives (ACI/AAAE)
- Massachusetts Port Authority (Massport)
- Metropolitan Washington Airports Authority (MWAA)
- Norman Y. Mineta San Jose International Airport (San Jose)
- Pangborn Memorial Airport (Wenatchee)
- Yakima Air Terminal (Yakima)

(2) *Section References:* When addressing rule language, all section

references will refer to either Title 14 of the Code of Federal Regulations or the sections of this final rule as numbered in the NPRM.

The FAA considered all comments received and addresses each of these below (although some comments about the same issue are grouped together). After reviewing all the comments, the FAA decided to adopt the final rule as proposed with some minor changes.

General Comments

Besides the comments expressing general support for the proposed rule, the FAA received two general comments about the PFC program.

Elimination of Monthly and Quarterly Reports

MWAA suggests the FAA consider eliminating the monthly and quarterly reports filed by air carriers to public agencies. In place of these reports, MWAA suggests changing the requirement to an annual report containing all information currently found in the monthly and quarterly reports.

FAA Response: MWAA's comment addresses an area that is outside the scope of this rulemaking. The vast majority of the changes in this final rule are taken from Vision 100. The remaining changes not required by Vision 100 are changes to process, which must be made to effect the changes required by Vision 100. Reporting requirements were not included in the NPRM. Therefore, these requirements cannot be considered here because the public did not have notice or the opportunity to comment on this issue. The FAA will consider MWAA's suggestion as a part of a subsequent rulemaking to incorporate the remaining provisions of Vision 100 that are not included in this final rule.

Besides any future rulemaking efforts, the FAA is developing a Web-based PFC data management system. The FAA plans to have a national repository for both public agency and air carrier quarterly reports as a part of this data management system. The FAA will provide more information on this system in the future as the system moves closer to operation.

Eliminate Federal Approvals

ACI/AAAE states the most efficient step for the PFC program would be to eliminate all Federal approvals associated with the PFC program, making it similar to how airports and airlines interact on airline rates and charges. ACI/AAAE states that such a strategy would be part of a greater effort toward regulatory simplification and

economic deregulation of airports that would benefit the entire aviation industry.

FAA Response: ACI/AAAE's proposal would require statutory changes that are beyond the scope of this final rule. The FAA will consider ACI/AAAE's proposal as part of a subsequent rulemaking to incorporate the remaining provisions of Vision 100 that are not included in this final rule.

Section-by-Section Comments

Section 158.3—Definitions—Small Hub Airport

ATA questions the FAA's decision not to define "small hub airport" in this rulemaking. ATA points out that this is the only airport size category not defined in the PFC regulation.

FAA Response: The FAA will not include a definition of "small hub airport" in the final rule. Currently, the PFC program does not contain procedures or requirements specific to small hub airports. Therefore, there is no need to define "small hub airport" in part 158. The FAA will consider ATA's proposal as part of a subsequent rulemaking to incorporate the remaining provisions of Vision 100 that are not included in this final rule.

Section 158.3—Definitions—Significant Business Interest

MWAA expresses concern that the proposed definition of "significant business interest" might be broader than the existing consultation requirement. Currently, the regulation requires public agencies to consult with all air carriers and foreign air carriers that operated at the airport during the previous year. Specifically, MWAA's concern is with the proposed requirement to consult with all air carriers that provide scheduled service at the airport. MWAA believes it would be better to limit consultation to air carriers with at least 1 percent of passenger boardings or at least 25,000 passenger boardings during the prior calendar year and which currently provide scheduled service at the airport.

FAA Response: The FAA took the definition of "significant business interest" in the NPRM verbatim from Vision 100. The FAA does not have the authority to redefine it and the proposed definition remains unchanged. The FAA notes that the "significant business interest" definition limits the number of carriers the public agency must consult with by eliminating most on-demand, non-scheduled carriers from the consultation requirement.

Changes: The FAA made no changes to § 158.3 because of the comments received on this section.

Section 158.23—Consultation With Air Carriers and Foreign Air Carriers

ATA supports the proposal to limit PFC consultation to those airlines with a significant business interest at the airport. ATA further notes that this change will reduce the administrative burden for both airlines and airports.

ACI/AAAE states that reducing the airline consultation requirement to carriers with a significant business interest at the airport is a modest step in the right direction. ACI/AAAE believes the practical effect of this change will be to eliminate consultation with some charter or on-demand operators.

FAA Response: The FAA agrees with these comments.

Changes: The FAA made no changes to § 158.23 because of comments received on this section.

Section 158.24—Notice and Opportunity for Public Comment

Yakima states that PFC projects are already subject to public scrutiny through the master planning, airport layout plan, and/or environmental processes before those projects are submitted for PFC approval. Yakima expresses concern that allowing additional public participation will provide project opponents the opportunity to stop or delay projects they oppose. Yakima suggests the rule be changed to allow for the waiver of the public comment provision if a project has previously been through a public review process. ACI/AAAE makes a similar recommendation.

Wenatchee requests that PFC projects intended to provide the local matching funds for Airport Improvement Program (AIP) grants not be required to go through a public comment process because they already have FAA approval.

MWAA argues that adding a requirement for public consultation will further lengthen and complicate the PFC process for airports.

Massport proposes that the FAA waive the PFC public notice process for projects that have already undergone significant environmental review. If that is not possible, Massport suggests the FAA consider allowing a public agency to consolidate the PFC public comment period with the public comment period undertaken during the environmental review process.

FAA Response: The public notice and comment period are statutory requirements for all PFC applications. Thus, the FAA cannot waive this requirement for any projects. This is the case even if the project has previously

undergone a comment period because of master planning or environmental processes or is included in an AIP grant.

As stated in the NPRM, reasonable public notice should not require the public agency to duplicate other processes. Thus, neither the NPRM nor the final rule preclude the possibility of a public agency using its master planning or environmental comment process as its PFC public comment period. However, § 158.24 does require the public notice to contain certain specific PFC information. Therefore, a consolidated PFC and master planning or environmental notice, must at a minimum, contain the information required by § 158.24.

The FAA considers air carrier consultations to be valid for six months (see paragraph 2–11 of FAA Order 5500.1, Passenger Facility Charge (August 9, 2001)). The FAA is extending that six-month validation policy to the public comment process of § 158.24. Occasionally, the master planning or environmental comment process may occur several years before the filing of a PFC application. Therefore, the public agency may not be able to rely on a consolidated comment period.

A public agency may also use its responses to comments developed during the master planning or environmental process as a basis for its response to similar comments filed because of a PFC public notice.

However, the AIP process, in and of itself, does not provide for any public comment opportunity, and thus cannot be consolidated with a PFC comment period. In addition, many projects in AIP grants are not required to undergo an environmental process that would result in a public comment period. The public may not be aware of, or have the opportunity to comment on, a project in an AIP grant.

Finally, a public agency may opt to hold the public notice and comment period concurrently with the air carrier consultation period. The public agency may consolidate the PFC process with ongoing master planning or environmental processes. Therefore, the FAA does not believe the public comment process will lengthen the overall PFC application process.

Changes: The FAA made no changes to § 158.24 because of the comments received on this section.

Section 158.25—Applications

Massport points out a typographical error in line 10 of § 158.25(b)(7)(i). Specifically, Massport believes the FAA should delete the word “excepted” and substitute the word “expected” in its place.

FAA Response: The FAA agrees.

Changes: Based on the comment received, the FAA changed the language of § 158.25(b)(7)(i) in the final rule by deleting the word “excepted” and substituting the word “expected” in its place.

Section 158.27—Review of Applications—Federal Register Notice

Yakima expresses concern that a special interest group could use a negative response campaign to try to create the illusion that a project is highly controversial. This would then trigger a **Federal Register** notice request for comments. Yakima argues that this would further delay a project.

MWAA asks the FAA to include in the final rule clear standards under which the FAA will determine whether a particular PFC application will require publishing a **Federal Register** notice. MWAA expresses concern that the FAA will be pressured by third parties to publish **Federal Register** notices for PFC applications that are not significant or controversial. This would then further delay PFC application implementation.

ATA cautions the FAA to scrutinize every application to ensure that potential controversy or significance, even for an AIP-eligible project, is not overlooked.

FAA Response: As stated in the preamble to the NPRM (69 FR 32298, June 9, 2004), the FAA expects to publish a notice in the **Federal Register** only for those applications with significant issues or public controversy. The FAA has decided against including any standards in the final rule about when the FAA will require a **Federal Register** notice. This approach preserves the statutory flexibility provided by making the **Federal Register** notice optional. The FAA will decide to publish a **Federal Register** notice on a case-by-case basis. The FAA will consider all available information, not just air carrier consultation or public comments, to determine whether the FAA will publish a **Federal Register**. Therefore, the FAA will scrutinize every application using all available sources to ensure significant issues are not overlooked and insignificant issues are not exaggerated.

Section 158.27—Review of Applications—Processing Time

MWAA requests that, for those applications where a **Federal Register** notice is not published, the FAA should reduce its maximum application processing time from 120 days to 60 days.

FAA Response: The 120-day FAA processing time for PFC applications (except for the non-hub pilot program) is statutory. Therefore, the FAA cannot change it. However, the FAA strives to issue PFC decisions efficiently and the FAA often issues those decisions in less than the maximum allowed time.

Changes: The FAA made no changes to § 158.27 because of the comments received on this section.

Section 158.30—Pilot Program for PFC Authorization at Non-Hub Airports

Massport supports the proposed non-hub pilot program. Massport urges the FAA to monitor the results of the pilot program so the pilot program streamlining provisions can eventually be extended to all airports.

ATA also supports the non-hub pilot program. ATA cautions the FAA to be diligent in requiring the participating non-hub airports to follow the pilot program rules and to not allow any further shortcuts in the process. ATA also urges the FAA to remind participating non-hub airports that, although the approval process may be streamlined, there are still notice requirements for the actual start and stop of collections. ATA points out that the notice requirements are necessary to allow airlines to program and account for ticket sales and PFC collections properly.

ACI/AAAE hopes the FAA will use the 3-year pilot program as part of its continuing efforts to streamline the PFC process for all commercial service airports.

FAA Response: The FAA does plan to monitor the implementation of the non-hub pilot program closely. The FAA intends to identify those provisions of the program that work well for non-hub airports and could potentially be expanded to larger airports. The FAA will also identify those provisions that may need adjusting to meet the intent of the statute better.

In addition, the FAA’s pilot program acknowledgement letter will include specific reminders that the public agency must follow all requirements of the PFC regulation, except for § 158.25. In the letter, the FAA will emphasize the requirement to provide adequate notice to the carriers to start PFC collections. The letter will also stress the procedure to change the charge expiration date in a timely manner.

Changes: The FAA made no changes to § 158.30 because of the comments received on this section.

Section 158.37—Amendment of Approved PFC—Text Clarifications

MWAA believes the term “increase the PFC level” in § 158.37(b)(1)(i)(C) is unclear. As an alternative, MWAA suggests the term “increase the PFC level to be charged to a passenger.”

Massport suggests two minor clarifications to make the new language clearer. The first of these clarifications is in the use of the term “amend an approved PFC.” Massport believes that “approved PFC” refers to the charge collected and not the public agency’s PFC program as approved in a specific Final Agency Decision. Massport suggests the FAA change the term “approved PFC” to either “the authority to impose and use a PFC” or “the FAA’s decision with respect to an approved PFC.” The second clarification involves § 158.37(b)(5). Massport believes the last clause is redundant and likely incorrect.

FAA Response: In response to comments, the FAA made revisions to all three phrases.

Rather than adopting the exact phrase suggested by MWAA for § 158.37(b)(1)(i)(C), the FAA changed the phrase to “increase the PFC level to be collected from each passenger.” The FAA did this to clarify the clause and to be consistent with the language used elsewhere in § 158.37.

The FAA also changed the term “approved PFC” to “the FAA’s decision with respect to an approved PFC” wherever appropriate throughout § 158.37 to provide the clarification Massport requested.

Finally, the FAA agrees the last clause in § 158.37(b)(5) is incorrect. The FAA has changed it to “any increase in the approved PFC level to be collected from each passenger.” to clarify the original intent of the paragraph.

Section 158.37—Amendment of Approved PFC—Financing Costs

MWAA requests the FAA to change the regulation to include all financing costs in a separate project in an application. The FAA’s current policy is to require public agencies to include financing costs with construction costs in each project application. MWAA comments that changes in financing costs necessitate filing multiple amendments. According to MWAA, one of the benefits of allowing all financing costs in a single project is that remaining project costs in each application reflect hard construction costs, which are less likely to change over time. A second benefit would be that only the lump sum financing cost project would need amending if financing costs change.

ACI/AAAE also expresses concern about current FAA policy requiring financing costs to be tied to the projects they finance and not shown as a lump sum project. ACI/AAAE believes this will result in numerous amendments due to changes in financing costs resulting from market conditions.

FAA Response: The FAA will not allow a public agency to lump financing costs into a separate project. The requirement that financing costs be tied to individual projects comes from the FAA’s need to know how much PFC revenue is spent on each project. This includes the revenue spent to finance the project. However, the new amendment rules distinguish between actions that trigger air carrier consultation and public notice and comment and those actions that do not. The new rules do not require a change to the current public agency practice of consolidating multiple amendment actions on a PFC decision into a timely and reasonable single amendment. The FAA does not intend that public agencies file separate amendments for each individual project when the action is taking place in the same time period.

Section 158.37—Amendment of Approved PFC—Summary of Process

ACI/AAAE summarizes its understanding of the changes in the amendment process. ACI/AAAE states that, for non-controversial amendments, the FAA will issue its decision in 30 days. However, if the amendment is controversial, the FAA may publish a **Federal Register** notice seeking comment. For controversial amendments, the FAA will issue its decision in no later than 120 days.

FAA Response: ACI/AAAE’s analysis of the FAA’s processing of amendments reflects the current rules. Under the new rules, the FAA will process all amendments, regardless of consultation status, within 30 days of receipt. The new rules do not provide for the FAA to request public comment through **Federal Register** notices. The only public comment required by the new amendment process is by the public agency for an increase over 25 percent of a PFC project, an increase in the PFC level that passengers are charged, or a project change of scope. If a public agency is required to conduct public comment, it must file copies of the comments with the FAA for consideration with its amendment request.

Section 158.37—Amendment of Approved PFC—Air Carrier Consultation, Public Notice and Comment

ATA objects to requiring air carrier consultation and public notice and comment for increases in a project’s cost of more than 25 percent but not on changes of less than 25 percent. ATA believes air carrier consultation should occur on any proposed increase of 15 percent or more of any element of a PFC program.

In addition, ATA states that full justification for such large cost increases must be provided to all interested parties. Finally, ATA is concerned the new rules will allow a public agency to unilaterally amend a PFC program by less than 25 percent.

FAA Response: The FAA notes that the 15 percent threshold in the current rule is based on 15 percent of an application’s total approved amount (When the FAA uses the term “application” in this document, the FAA is referring to an application for authority to collect and/or use PFC revenue). In contrast, this final rule bases its 25 percent threshold on the original approved amount of each project. Thus, under the new rule, airlines and the public will have the opportunity to comment on more changes in cost. For example, a public agency with an application approved at \$500 million wishes to increase a \$10 million project to \$50 million, which is a 500 percent increase in the project’s cost. Under the new rules, the threshold for determining the need for consultation is 25 percent of the \$10 million project cost or \$2.5 million. Under this threshold, air carriers and the public will be given the opportunity to comment on this increase from \$10 million to \$50 million or a 500 percent cost increase. However, under the current rules, the threshold for determining if consultation is required is 15 percent of \$500 million (\$75 million). Therefore, the public agency would not have to consult on this amendment under the current rules.

The final rule includes a requirement in § 158.37(b)(5), that public agencies provide justification for any amendment at or above the 25 percent of project threshold that triggers additional airline consultation and public notice.

Furthermore, the FAA modeled the 25 percent threshold on a common contracting practice that allows up to a 25 percent increase in the total contract cost or the total cost of any major contract item. This contracting practice requires a supplemental agreement or an amendment to the contract for increases

above 25 percent (see, for example, Advisory Circular 5370–10A, Standards for Specifying Construction of Airports, as revised (February 17, 1989)).

To ATA's comment on unilateral public agency amendments, the new rule under § 158.37(c) requires the FAA to approve or disapprove all amendment requests. Under the old rule, amendments for certain actions, including an increase to the public agency's PFC program of less than 15 percent, could be adopted without any FAA action (see paragraph 11–6c of FAA Order 5500.1, Passenger Facility Charge (August 9, 2001)). The FAA expects to revise FAA Order 5500.1 to conform to these new regulations in the near future.

Section 158.37—Amendment of Approved PFC—Applicability to Existing Applications

San Jose believes the changes to be implemented for the amendment process in this final rule should only apply to PFC programs approved after publication of this final rule. In addition, San Jose argues that the current amendment rules should apply to any PFC programs (versus projects) approved before the final rule is published. Thus, any subsequent amendments to the approved PFC program should continue to fall under the current amendment rules. San Jose states that the airport's procedures for monitoring and completing current projects are based on the current amendment rules.

FAA Response: The FAA does not agree that amendments to PFC programs approved before the effective date of this final rule should continue to be processed under the current rules. The major change in the new rules involves determining when additional consultation and public notice and comment are required. The new rules do not affect the types of actions permissible under the amendment process. As the PFC program transitions from the old to the new rules, there may be instances where a public agency delayed an amendment action on one project. This delay may have occurred while waiting for actions on other projects to be completed. However, the FAA does not agree that these transitioning situations will negatively impact a public agency. At most, the public agency may be required to hold air carrier consultation and public comment for an amendment action that previously did not require such consultation. In addition, this rule is not effective immediately. Public agencies will have at least 30 days to review the changes before they become effective.

Also, given that San Jose requests that all current PFC programs be grandfathered, the FAA could be faced with applying the current rules to amendment requests for existing PFC programs for more than 40 years. Meanwhile, other public agencies would be required to apply the new rules immediately.

Changes: Based on all the comments received for § 158.37, the FAA changed the language of § 158.37(b)(1)(i)(C) in the final rule by adding “to be collected from each passenger” to the end of the phrase. In addition, the FAA changed the phrase “approved PFC” to “the FAA’s decision with respect to an approved PFC” where appropriate throughout § 158.37. Finally, the FAA changed the last clause in § 158.37(b)(5) from “an increase in total approved PFC revenue for the project” to “any increase in the approved PFC level to be collected from each passenger.”

Discussion of FAA Clarifications

Section 158.25—Applications—Application for Authority To Use PFC Revenue

While reviewing the NPRM, the FAA discovered that it made three typographical errors in § 158.25(c). These errors occurred when the FAA transferred this section to the NPRM to make the update conform to the rest of the changes in § 158.25. Specifically, the FAA inserted several paragraphs in this section in incorrect locations. As it reads in the NPRM, paragraphs 158.25(c)(1)(i) through (iii), which only discuss PFC use authority, are inapplicable to § 158.25(c)(1), which discusses a joint impose and use authority application. The FAA should have inserted these provisions in §§ 158.25(c)(2)(iii)(A) through (C). Paragraphs 158.25(c)(1)(iv) and (v) are also applicable to § 158.25(c)(2) and must be inserted in the appropriate section. The FAA is correcting these typographic errors and renumbering the section accordingly in this final rule.

Changes: The FAA moved paragraphs 158.25(c)(1)(i) through (iii) to §§ 158.25(c)(2)(iii)(A) through (C). The FAA also restored § 158.25(c)(1)(i) to read as it does in the current regulation.

As a result of moving the aforementioned paragraphs, the FAA renumbered the following existing paragraphs as indicated:

- (1) §§ 158.25(c)(1)(iv) and (v) to §§ 158.25(c)(1)(ii) and (iii);
- (2) §§ 158.25(c)(1)(i) through (iii) to §§ 158.25(c)(2)(iii)(A) through (C); and
- (3) §§ 158.25(c)(1)(iv) and (v) to §§ 158.25(c)(2)(iv) and (v).

Section 158.37—Amendment of the FAA’s Decision With Respect to an Approved PFC—Types of Amendments Which Do Not Require Consultation or Public Notice and Comment

The allowable types of amendment actions are subdivided into two groups. The first group, § 158.37(b)(1)(i), lists those actions that require the public agency to conduct additional consultation and public notice and comment. The second group, § 158.37(b)(1)(ii), lists those actions that do not require additional consultation or public notice and comment. While reviewing the NPRM, the FAA discovered that it had inadvertently left the action to delete a project from the list of actions in § 158.37(b)(1)(ii).

Changes: The FAA modified § 158.37(b)(1)(ii)(C) by deleting “or” from the end. The FAA also modified § 158.37(b)(1)(ii)(D) by adding “or” to the end. Finally, the FAA added a new § 158.37(b)(1)(ii)(E) listing the action to delete a project.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no current new information collection requirements associated with this final rule.

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 that there are no ICAO Standards and Recommended Practices that correspond to these final regulations.

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

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary

obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this 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 DOT’s Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the

private sector. These analyses, available in the docket, are summarized below.

Total Costs and Benefits of This Rulemaking

The estimated net cost saving of this final rule is \$3.8 million (or \$2.7 million discounted). Although the pilot program would terminate after 3 years, the other changes will continue. Airports are estimated to have net cost savings over the next ten years of \$3.3 million (or \$2.4 million discounted). The FAA is estimated to have net cost savings over the next ten years of \$475,000 (or \$333,600 discounted). Air carriers would incur only minimal costs in adjusting to the proposed changes to part 158.

Who Is Potentially Affected by This Rulemaking

Commercial airports, air carriers servicing these airports and the traveling public using these airports.

Our Cost Assumptions and Sources of Information

- Discount rate—7%.

- Period of analysis—2005–2007 for savings associated with the pilot program and 2005–2014 for proposed regulatory changes.

- Monetary values expressed in 2003 dollars.

Changes From the NPRM to the Final Rule

In the NPRM, the FAA did not distinguish between the cost savings to airports for filing a PFC notice and comment amendment with the cost savings from filing a PFC non-notice and comment amendment. The assumption was that there would have been a savings of \$1,667 for each amendment regardless of the type filed. However, in the final rule, the FAA did distinguish the difference in cost savings of filing a PFC notice, and a PFC non-notice, and the savings are \$2,500 and \$1,250 per amendment, respectively. This change resulted in a slight increase of cost savings over the analysis period.

Costs (per Individual Action)

Airport cost to notify and consult with an air carrier regarding a PFC application	\$175
Airport cost to solicit and include public comment on PFC application	600
Airport cost (non-hub airports) to file a PFC application	5,000
Airport cost-savings for PFC use application	5,000
Airport cost-savings for PFC notice and comment amendment	1,250
Airport cost-savings for PFC non-notice and comment amendment	2,500
FAA cost of <i>Federal Register</i> notice	500

These cost figures are based on the results of a study conducted by the FAA, the FAA’s experience with the administration of the PFC program, and as part of figures determined for paperwork reduction analysis.

Alternatives We Considered

The FAA hired a consultant to review past PFC records of decisions and other related materials to assess whether certain PFC procedures could be streamlined. On the basis of the study, the FAA put forward several ideas for streamlining the PFC process as part of the Administration’s Reauthorization proposal. Many of these proposals were incorporated into the Vision 100 law.

Benefits of This Rulemaking

The FAA estimates that the net effect of the changes would be a decrease in cost for airports and a neutral effect on air carriers and airline passengers.

Cost of This Rulemaking

The net cost savings of this final rule for public agencies over the next ten years is estimated at \$3.3 million (or \$2.4 million discounted). The FAA is

estimated to have net cost savings over the next ten years of \$475,000 (or \$333,600 discounted).

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principal 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 solicit and consider flexible regulatory proposals and to explain the rationale for their actions. 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 proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a

regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 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 has determined that the costs imposed on small commercial service airports by this final rule will not have a significant economic impact. Any costs associated with this final rule will be limited to only what is authorized by statute. Moreover, actual PFC collection authority is not affected by the final rule and all costs are fully recoverable through the PFC, if necessary, by small adjustments in the period of PFC collection. The FAA estimates that a small airport will realize net cost-savings of approximately \$9,500 annually under the final rule.

The FAA conducted the required review of this final rule and determined that it will not have a significant economic impact. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this final rule will not have a significant impact on a substantial number of small entities. As part of the public comment process for the Notice of Proposed Rulemaking (NPRM), the FAA sought public comments regarding this finding in the regulatory evaluation supporting the NPRM. The FAA did not receive any comments during the public comment period regarding this finding.

International Trade Impact Assessment

The Trade Agreement 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, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that, to the extent it imposes any costs affecting international entities, it will impose the same costs on domestic and international entities for comparable services, and thus has 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 final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final 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.

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 regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the 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 regulations?

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

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 rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule 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 Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 158 of Title 14, Code of Federal Regulations, as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC'S)

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

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

■ 2. Amend § 158.3 to add the following definitions:

§ 158.3 Definitions.

* * * * *

Non-hub airport means a commercial service airport (as defined in 49 U.S.C. 47102) that has less than 0.05 percent of the passenger boardings in the U.S. in the prior calendar year on an aircraft in service in air commerce.

* * * * *

Significant business interest means an air carrier or foreign air carrier that:

(1) Had no less than 1.0 percent of passenger boardings at that airport in the prior calendar year,

(2) Had at least 25,000 passenger boardings at the airport in that prior calendar year, or

(3) Provides scheduled service at that airport.

* * * * *

■ 3. Amend § 158.23 by revising paragraph (a) introductory text to read as follows:

§ 158.23 Consultation with air carriers and foreign air carriers.

(a) Notice by public agency. A public agency must provide written notice to air carriers and foreign air carriers having a significant business interest at the airport where the PFC is proposed. A public agency must provide this notice before the public agency files an application with the FAA for authority to impose a PFC under § 158.25(b). In addition, public agencies must provide this notice before filing an application with the FAA for authority to use PFC revenue under § 158.25(c). Public agencies must also provide this notice before filing a notice of intent to impose and/or use a PFC under § 158.30.

Finally, a public agency must provide this notice before filing a request to amend the FAA's decision with respect to an approved PFC as discussed in § 158.37(b)(1). The notice shall include:

* * * * *

■ 4. Add § 158.24 to read as follows:

§ 158.24 Notice and opportunity for public comment.

(a)(1) Notice by public agency. A public agency must provide written notice and an opportunity for public comment before:

(i) Filing an application with the FAA for authority to impose a PFC under § 158.25(b);

(ii) Filing an application with the FAA for authority to use PFC revenue under § 158.25(c);

(iii) Filing a notice of intent to impose and/or use a PFC under § 158.30; and

(iv) Filing a request to amend a previously approved PFC as discussed in § 158.37(b)(1).

(2) The notice must allow the public to file comments for at least 30 days, but no more than 45 days, after the date of publication of the notice or posting on the public agency's Web site, as applicable.

(b)(1) Notice contents. The notice required by § 158.24(a) must include:

(i) A description of the project(s) the public agency is considering for funding by PFC's;

(ii) A brief justification for each project the public agency is considering for funding by PFC's;

(iii) The PFC level for each project;

(iv) The estimated total PFC revenue the public agency will use for each project;

(v) The proposed charge effective date for the application or notice of intent;

(vi) The estimated charge expiration date for the application or notice of intent;

(vii) The estimated total PFC revenue the public agency will collect for the application or notice of intent; and

(viii) The name of and contact information for the person within the public agency to whom comments should be sent.

(2) The public agency must make available a more detailed project justification or the justification documents to the public upon request.

(c) Distribution of notice. The public agency must make the notice available to the public and interested agencies through one or more of the following methods:

(1) Publication in local newspapers of general circulation;

(2) Publication in other local media;

(3) Posting the notice on the public agency's Internet Web site; or

(4) Any other method acceptable to the Administrator.

■ 5. Revise § 158.25 to read as follows:

§ 158.25 Applications.

(a) General. This section specifies the information the public agency must file when applying for authority to impose

a PFC and for authority to use PFC revenue on a project. A public agency may apply for such authority at any commercial service airport it controls. The public agency must use the proposed PFC to finance airport-related projects at that airport or at any existing or proposed airport that the public agency controls. A public agency may apply for authority to impose a PFC before or concurrent with an application to use PFC revenue. If a public agency chooses to apply, it must do so by using FAA Form 5500-1, PFC Application (latest edition) and all applicable Attachments. The public agency must provide the information required under paragraphs (b) or (c), or both, of this section.

(b) Application for authority to impose a PFC. This paragraph sets forth the information to be submitted by all public agencies seeking authority to impose a PFC. A separate application shall be submitted for each airport at which a PFC is to be imposed. The application shall be signed by an authorized official of the public agency, and, unless otherwise authorized by the Administrator, must include the following:

(1) The name and address of the public agency.

(2) The name and telephone number of the official submitting the application on behalf of the public agency.

(3) The official name of the airport at which the PFC is to be imposed.

(4) The official name of the airport at which a project is proposed.

(5) A copy of the airport capital plan or other documentation of planned improvements for each airport at which a PFC financed project is proposed.

(6) A description of each project proposed.

(7) The project justification, including the extent to which the project achieves one or more of the objectives set forth in § 158.15(a) and (if a PFC level above \$3 is requested) the requirements of § 158.17. In addition—

(i) For any project for terminal development, including gates and related areas, the public agency shall discuss any existing conditions that limit competition between and among air carriers and foreign air carriers at the airport, any initiatives it proposes to foster opportunities for enhanced competition between and among such carriers, and the expected results of such initiatives; or

(ii) For any terminal development project at a covered airport, the public agency shall submit a competition plan in accordance with § 158.19.

(8) The charge to be imposed for each project.

(9) The proposed charge effective date.

(10) The estimated charge expiration date.

(11) Information on the consultation with air carriers and foreign air carriers having a significant business interest at the airport and the public comment process, including:

(i) A list of such carriers and those notified;

(ii) A list of carriers that acknowledged receipt of the notice provided under § 158.23(a);

(iii) Lists of carriers that certified agreement and that certified disagreement with the project;

(iv) Information on which method under § 158.24(b) the public agency used to meet the public notice requirement; and

(v) A summary of substantive comments by carriers contained in any certifications of disagreement with each project and disagreements with each project provided by the public, and the public agency's reasons for continuing despite such disagreements.

(12) If the public agency is also filing a request under § 158.11—

(i) The request;

(ii) A copy of the information provided to the carriers under § 158.23(a)(3);

(iii) A copy of the carriers' comments with respect to such information;

(iv) A list of any class or classes of carriers that would not be required to collect a PFC if the request is approved; and

(v) The public agency's reasons for submitting the request in the face of opposing comments.

(13) A copy of information regarding the financing of the project presented to the carriers and foreign air carriers under § 158.23 of this part and as revised during the consultation.

(14) A copy of all comments received as a result of the carrier consultation and public comment processes.

(15) For an application not accompanied by a concurrent application for authority to use PFC revenue:

(i) A description of any alternative methods being considered by the public agency to accomplish the objectives of the project;

(ii) A description of alternative uses of the PFC revenue to ensure such revenue will be used only on eligible projects in the event the proposed project is not ultimately approved for use of PFC revenue;

(iii) A timetable with projected dates for completion of project formulation activities and submission of an application to use PFC revenue; and

(iv) A projected date of project implementation and completion.
(16) A signed statement certifying that the public agency will comply with the assurances set forth in Appendix A to this part.

(17) Such additional information as the Administrator may require.
(c) Application for authority to use PFC revenue. A public agency may use PFC revenue only for projects approved under this paragraph. This paragraph sets forth the information that a public agency shall submit, unless otherwise authorized by the Administrator, when applying for the authority to use PFC revenue to finance specific projects.

(1) An application submitted concurrently with an application for the authority to impose a PFC, must include:

(i) The information required under paragraphs (b)(1) through (15) of this section;

(ii) An FAA Form 5500-1, Attachment G, Airport Layout Plan, Airspace, and Environmental Findings (latest edition) providing the following information:

(A) For projects required to be shown on an ALP, the ALP depicting the project has been approved by the FAA and the date of such approval;

(B) All environmental reviews required by the National Environmental Policy Act (NEPA) of 1969 have been completed and a copy of the final FAA environmental determination with respect to the project has been approved, and the date of such approval, if such determination is required; and

(C) The final FAA airspace determination with respect to the project has been completed, and the date of such determination, if an airspace study is required.

(iii) The information required by §§ 158.25(b)(16) and 158.25(b)(17).

(2) An application where the authority to impose a PFC has been previously approved:

(i) Must not be filed until the public agency conducts further consultation with air carriers and foreign air carriers under § 158.23. However, the meeting required under § 158.23(a)(4) is optional if there are no changes to the projects after approval of the impose authority and further opportunity for public comment under § 158.24; and

(ii) Must include a summary of further air carrier consultation and the public agency's response to any disagreements submitted under the air carrier consultation and public comment processes conducted under paragraph (c)(2)(i) of this section;

(iii) Must include the following, updated and changed where appropriate:

(A) FAA Form 5500-1 without attachments except as required below;

(B) For any projects where there have been no changes since the FAA approved authority to impose a PFC for those projects, a list of projects included in this application for use authority. The FAA will consider the information on these projects, filed with the impose authority application, incorporated by reference; and

(C) For any project that has changed since receiving impose authority, the public agency must file an Attachment B for that project clearly describing the changes to the project.

(iv) An FAA Form 5500-1, Attachment G, Airport Layout Plan, Airspace, and Environmental Findings (latest edition) providing the following information:

(A) For projects required to be shown on an ALP, the ALP depicting the project has been approved by the FAA and the date of such approval;

(B) All environmental reviews required by the National Environmental Policy Act (NEPA) of 1969 have been completed and a copy of the final FAA environmental determination with respect to the project has been approved, and the date of such approval, if such determination is required; and

(C) The final FAA airspace determination with respect to the project has been completed, and the date of such determination, if an airspace study is required; and

(v) The information required by §§ 158.25(b)(16) and 158.25(b)(17).

■ 6. Amend § 158.27 by revising paragraphs (c)(2), (c)(3) introductory text, and (c)(4) to read as follows:

§ 158.27 Review of applications.

* * * * *

(c) * * *

(2) The Administrator may opt to publish a notice in the **Federal Register** advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (e) of this section. If the Administrator publishes a notice, the Administrator will provide a copy of the notice to the public agency.

(3) If the Administrator publishes a notice, the public agency—

* * * * *

(4) After reviewing the application and any public comments received from a **Federal Register** notice, the Administrator issues a final decision approving or disapproving the

application, in whole or in part, before 120 days after the FAA Airports office received the application.

* * * * *

■ 7. Amend § 158.29 by revising paragraph (c)(2) to read as follows:

§ 158.29 The Administrator's decision.

* * * * *

(c) * * *

(2) A public agency reapplying for approval to impose or use a PFC must comply with §§ 158.23, 158.24, and 158.25.

* * * * *

■ 8. Add § 158.30 to subpart B to read as follows:

§ 158.30 Pilot program for PFC authorization at non-hub airports.

(a) General. This section specifies the procedures a public agency controlling a non-hub airport must follow when notifying the FAA of its intent to impose a PFC and to use PFC revenue on a project under this section. In addition, this section describes the FAA's rules for reviewing and acknowledging a notice of intent filed under this section. A public agency may notify the FAA of its intent to impose a PFC before or concurrent with a notice of intent to use PFC revenue. A public agency must file a notice of intent in the manner and form prescribed by the Administrator and must include the information required under paragraphs (b), (c), or both, of this section.

(b) Notice of intent to impose a PFC. This paragraph sets forth the information a public agency must file to notify the FAA of its intent to impose a PFC under this section. The public agency must file a separate notice of intent for each airport at which the public agency plans on imposing a PFC. An authorized official of the public agency must sign the notice of intent and, unless authorized by the Administrator, must include:

(1) A completed FAA Form 5500-1, PFC Application (latest edition) without attachments except as required below;

(2) Project information (in the form and manner prescribed by the FAA) including the project title, PFC funds sought, PFC level sought, and, if an existing Airport Improvement Program (AIP) grant already covers this project, the grant agreement number.

(3) If an existing AIP grant does not cover this project, the notice of intent must include the information in paragraph (b)(2) of this section as well as the following:

(i) Additional information describing the proposed schedule for the project,

(ii) A description of how this project meets one of the PFC objectives in § 158.15(a), and

(iii) A description of how this project meets the adequate justification requirement in § 158.15(c).

(4) A copy of any comments received by the public agency during the air carrier consultation and public comment processes (§§ 158.23 and 158.24) and the public agency's response to any disagreements.

(5) If applicable, a request to exclude a class of carriers from the requirement to collect the PFC (§ 158.11).

(6) A signed statement certifying that the public agency will comply with the assurances set forth in Appendix A to this part.

(7) Any additional information the Administrator may require.

(c) Notice of intent to use PFC revenue. A public agency may use PFC revenue only for projects included in notices filed under this paragraph or approved under § 158.29. This paragraph sets forth the information that a public agency must file, unless otherwise authorized by the Administrator, in its notice of intent to use PFC revenue to finance specific projects under this section.

(1) A notice of intent to use PFC revenue filed concurrently with a notice of intent to impose a PFC must include:

(i) The information required under paragraphs (b)(1) through (7) of this section;

(ii) A completed FAA Form 5500-1, Attachment G, Airport Layout Plan, Airspace, and Environmental Findings (latest edition) for all projects not included in an existing Federal airport program grant.

(2) A notice of intent to use PFC revenue where the FAA has previously acknowledged a notice of intent to impose a PFC must:

(i) Be preceded by further consultation with air carriers and the opportunity for public comment under §§ 158.23 and 158.24 of this part. However, a meeting with the air carriers is optional if all information is the same as that provided with the impose authority notice;

(ii) Include a copy of any comments received by the public agency during the air carrier consultation and public comment processes (§§ 158.23 and 158.24) and the public agency's response to any disagreements or negative comments; and

(iii) Include any updated and changed information:

(A) Required by paragraphs (b)(1), (2), (5), (6), and (7) of this section; and

(B) Required by paragraph (c)(1)(ii) of this section.

(d) FAA review of notices of intent.

(1) The FAA will review the notice of intent to determine that:

(A) The amount and duration of the PFC will not result in revenue that exceeds the amount necessary to finance the project(s);

(B) Each proposed project meets the requirements of § 158.15;

(C) Each project proposed at a PFC level above \$3.00 meets the requirements of § 158.17(a)(2) and (3);

(D) All applicable airport layout plan, airspace, and environmental requirements have been met for each project;

(E) Any request by the public agency to exclude a class of carriers from the requirement to collect the PFC is reasonable, not arbitrary, nondiscriminatory, and otherwise complies with the law; and

(F) The consultation and public comment processes complied with §§ 158.23 and 158.24.

(2) The FAA will also make a determination regarding the public agency's compliance with 49 U.S.C. 47524 and 47526 governing airport noise and access restrictions and 49 U.S.C. 47107(b) governing the use of airport revenue. Finally, the FAA will review all comments filed during the air carrier consultation and public comment processes.

(e) FAA acknowledgment of notices of intent. Within 30 days of receipt of the public agency's notice of intent about its PFC program, the FAA will issue a written acknowledgment of the public agency's notice. The FAA's acknowledgment may concur with all proposed projects, may object to some or all proposed projects, or may object to the notice of intent in its entirety. The FAA's acknowledgment will include the reason(s) for any objection(s).

(f) Public agency actions following issuance of FAA acknowledgment letter. If the FAA does not object to either a project or the notice of intent in its entirety, the public agency may implement its PFC program. The public agency's implementation must follow the information specified in its notice of intent. If the FAA objects to a project, the public agency may not collect or use PFC revenue on that project. If the FAA objects to the notice of intent in its entirety, the public agency may not implement the PFC program proposed in that notice. When implementing a PFC under this section, except for § 158.25, a public agency must comply with all sections of part 158.

(g) Acknowledgment not an order. An FAA acknowledgment issued under this section is not considered an order

issued by the Secretary for purposes of 49 U.S.C. 46110 (Judicial Review).

(h) Sunset provision. This section will expire May 9, 2008.

■ 9. Revise § 158.37 to read as follows:

§ 158.37 Amendment of the FAA's decision with respect to an approved PFC.

(a)(1) A public agency may amend the FAA's decision with respect to an approved PFC to:

(i) Increase or decrease the level of PFC the public agency wants to collect from each passenger,

(ii) Increase or decrease the total approved PFC revenue,

(iii) Change the scope of an approved project,

(iv) Delete an approved project, or

(v) Establish a new class of carriers under § 158.11 or amend any such class previously approved.

(2) A public agency may not amend the FAA's decision with respect to an approved PFC to add projects, change an approved project to a different facility type, or alter an approved project to accomplish a different purpose.

(b) The public agency must file a request to the Administrator to amend the FAA's decision with respect to an approved PFC. The request must include or demonstrate:

(1)(i) Further consultation with the air carriers and foreign air carriers and seek public comment in accordance with §§ 158.23 and 158.24 when applying for those requests to:

(A) Amend the approved PFC amount for a project by more than 25 percent of the original approved amount of the project,

(B) Change the scope of a project, or

(C) Increase the PFC level to be collected from each passenger.

(ii) No further consultation with air carriers and foreign air carriers or public comment is required by a public agency in accordance with §§ 158.23 and 158.24 when applying for an amendment in the following situations:

(A) To institute a decrease in the level of PFC to be collected from each passenger;

(B) To institute a decrease in the total PFC revenue;

(C) To institute an increase of 25 percent or less for any approved PFC project;

(D) To establish a new class of carriers under § 158.11 or amend any such class previously approved; or

(E) To delete an approved project.

(2) A copy of any comments received from the processes in paragraph (b)(1)(A) of this section for the carrier consultation and the opportunity for public comment in accordance with §§ 158.23 and 158.24;

(3) The public agency's reasons for continuing despite any objections;

(4) A description of the proposed amendment;

(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, a change of the approved project scope, or any increase in the approved PFC level to be collected from each passenger;

(6) A description of how each project meets the requirements of § 158.17(b), for each project proposed for an increase of the PFC level above \$3.00 at a medium or large hub airport;

(7) A signed statement certifying that the public agency has met the

requirements of § 158.19, if applicable, for any amendment proposing to increase the PFC level above \$3.00 at a medium or large hub airport; and

(8) Any other information the Administrator may require.

(c) The Administrator will approve, partially approve or disapprove the amendment request and notify the public agency of the decision within 30 days of receipt of the request. If a PFC level of more than \$3.00 is approved, the Administrator must find the project meets the requirements of §§ 158.17 and 158.19, if applicable, before the public agency can implement the new PFC level.

(d) The public agency must notify the carriers of any change to the FAA's decision with respect to an approved PFC resulting from an amendment. The effective date of any new PFC level must be no earlier than the first day of a month which is at least 30 days from the date the public agency notifies the carriers.

Issued in Washington, DC, on January 7, 2005.

Marion C. Blakey,
Administrator.

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