

parts. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

#### (f) Compliance

Comply with this AD within the compliance times specified, unless already done.

#### (g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0115, dated June 7, 2023 (EASA AD 2023–0115).

#### (h) Exceptions to EASA AD 2023–0115

(1) Where EASA AD 2023–0115 defines the AMP as the approved Aircraft Maintenance Programme containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine, this AD defines the AMP as the aircraft maintenance program containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated airplane.

(2) Where EASA AD 2023–0115 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not require compliance with paragraphs (1), (2), (4), and (5) of EASA AD 2023–0115.

(4) Where paragraph (3) of EASA AD 2023–0115 specifies revising the approved AMP within 12 months after the effective date of EASA AD 2023–0115, this AD requires revising the airworthiness limitations section of the existing approved engine maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(5) This AD does not adopt the Remarks paragraph of EASA AD 2023–0115.

#### (i) Provisions for Alternative Actions and Intervals

After performing the actions required by paragraph (g) of this AD, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2023–0115.

#### (j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: [ANE-AD-AMOC@faa.gov](mailto:ANE-AD-AMOC@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

#### (k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: [sungmo.d.cho@faa.gov](mailto:sungmo.d.cho@faa.gov).

#### (l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0115, dated June 7, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0115, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); website: [easa.europa.eu](http://easa.europa.eu). You may find this EASA AD on the EASA website at [ad.easa.europa.eu](http://ad.easa.europa.eu).

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

Issued on September 22, 2023.

#### Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–21090 Filed 9–25–23; 4:15 pm]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 158

[Docket No.: FAA–2022–1315; Notice No. 23–14]

RIN 2120–AL86

#### Update and Clarification of the Passenger Facility Charge Regulations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to amend its Passenger Facility Charge regulations to implement changes to an existing pilot program that resides within the Passenger Facility Charge program. This Congressionally mandated pilot program simplifies the process for public agencies controlling commercial

service airports to obtain FAA authority to impose and use Passenger Facility Charges to fund airport development projects. The FAA also proposes to reaffirm existing program requirements and update or remove obsolete references within the Passenger Facility Charge regulations. Further, this proposed action removes certain Passenger Facility Charge program requirements eliminated in the 2018 FAA reauthorization legislation.

**DATES:** Send comments on or before November 27, 2023.

**ADDRESSES:** Send comments identified by docket number FAA–2022–1315 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

*Docket:* Background documents or comments received may be read at [www.regulations.gov](http://www.regulations.gov) at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Jane Johnson, Office of Airports, Airports Policy Branch, APP–510, Federal Aviation Administration, 800 Independence Avenue SW, Room 619, Washington, DC 20591; telephone (202) 267–5878; email [jane.johnson@faa.gov](mailto:jane.johnson@faa.gov).

**SUPPLEMENTARY INFORMATION:**

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## List of Abbreviations and Acronyms Frequently Used in This Document

- AIP—Airport Improvement Program
- ALP—Airport Layout Plan
- CBI—Confidential Business Information
- CFR—Code of Federal Regulations
- DOT—U.S. Department of Transportation
- FAA—Federal Aviation Administration
- FOIA—Freedom of Information Act
- ICAO—International Civil Aviation Organization
- IRFA—Initial Regulatory Flexibility Analysis
- NEPA—National Environmental Policy Act
- NPIAS—National Plan of Integrated Airport Systems
- NPRM—Notice of Proposed Rulemaking
- OIG—Office of Inspector General
- OMB—Office of Management and Budget
- PFC—Passenger Facility Charge
- RFA—Regulatory Flexibility Act
- RIA—Regulatory Impact Analysis
- SBA—Small Business Administration
- U.S.C.—United States Code

## I. Executive Summary

The FAA proposes to amend its PFC regulations to implement changes to a Congressionally mandated pilot program that simplifies the process for public agencies controlling commercial service airports to obtain FAA authority to impose and use PFCs to fund airport development projects. The FAA also proposes to reaffirm existing PFC program requirements and update or remove obsolete references within the PFC regulations. Further, this proposed action removes certain PFC program requirements eliminated in the 2018 FAA reauthorization legislation.

## II. Overview of the Proposal

The FAA Reauthorization Act of 2018 (2018 Reauthorization Act),<sup>1</sup> codified at 49 U.S.C. 40117, mandated several changes to the Passenger Facility Charge (PFC) program. The 2018 Reauthorization Act removed previously existing PFC program requirements and mandated changes for other PFC program requirements. This rulemaking action proposes to amend the PFC regulations in part 158 to implement the mandated changes.

The FAA also proposes to amend the PFC regulations to improve PFC program oversight. On December 18, 2018, the U.S. Department of Transportation, Office of Inspector General (OIG) issued Report No. AV2019015, “Most Public Agencies Comply with Passenger Facility Charge Program Requirements, But FAA Can Improve the Use of Its Oversight Tools.” In that report, the OIG made several recommendations to improve the FAA’s oversight and administration of the PFC program.<sup>2</sup> These recommendations pertained primarily to PFC reporting, recordkeeping, and audit procedures. Through this rulemaking, and as detailed in sections V.B.1. and V.B.2, the FAA is proposing to formalize in regulations policies that the FAA implemented in May 2019, in response to the OIG’s recommendations.<sup>3</sup>

Further, the FAA is proposing several miscellaneous amendments to the PFC regulations, including but not limited to: replacing obsolete references, correcting grammar or rewording language for clarity, and re-organizing and re-numbering sections to facilitate other amendments proposed in this rulemaking action. See section V.C.10. in this preamble for a cross-reference

<sup>1</sup> Public Law 115–254, October 5, 2018.

<sup>2</sup> OIG Report No. AV2019015 at 3.

<sup>3</sup> See PFC Update 71–19, “Oversight of Public Agency Passenger Facility Charge (PFC) Program,” issued April 1, 2019, on the FAA internet website.

table listing CFR units that the FAA proposes to rename, re-number, or both.

## III. Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code (U.S.C.). 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 is charged with prescribing regulations to impose a passenger facility fee to finance eligible airport-related projects.

This rulemaking is also promulgated pursuant to 49 U.S.C. 106(g), 40116, 47106, 47111, 47114–47116, 47524, and 47526.

## IV. History of the PFC Program

The PFC program was established by the Aviation Safety and Capacity Expansion Act of 1990 (Pub. L. 101–508; enacted November 5, 1990) which authorized the Secretary of Transportation (Secretary) to approve local imposition of PFCs of \$1, \$2, or \$3 per enplaned passenger and to use PFC revenue for approved projects. That Act also required the Secretary to issue regulations necessary to implement this authority. The Act directed the Secretary to develop an application procedure, establish terms and conditions for granting PFC authority, set up a system for collecting, handling, and remitting PFC revenue to the appropriate public agency, and establish recordkeeping and audit requirements and procedures for termination. On May 22, 1991, the FAA issued a final rule adopting new regulations to establish the PFC program in part 158.<sup>4</sup>

Pursuant to the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), the FAA issued a final rule amending part 158 on May 23, 2000.<sup>5</sup> That action amended the PFC regulations to incorporate administrative and statutory changes in the procedures to establish PFCs, including increasing the PFC level that a public agency may charge from \$1, \$2, or \$3 to \$4 or \$4.50.

On January 7, 2005, the FAA issued a final rule further amending part 158.<sup>6</sup> In that rulemaking action, the FAA created a new pilot program, as statutorily mandated by Vision 100—Century of Aviation Reauthorization

<sup>4</sup> 56 FR 24254 (May 29, 1991).

<sup>5</sup> 65 FR 34536 (May 30, 2000).

<sup>6</sup> 70 FR 14927 (March 23, 2005).

Act<sup>7</sup> (Vision 100), to test alternative procedures to authorize public agencies to impose PFCs and use PFC revenue for eligible projects at non-hub airports. Specifically, the FAA added current § 158.30 to prescribe the procedures a public agency controlling a non-hub<sup>8</sup> airport must follow when notifying the FAA of its intent to impose a PFC and to use PFC revenue on a project. That section also set forth criteria and standards for FAA review and acknowledgment of any notice of intent filed under the pilot program, and FAA objection to a proposed project. Since Vision 100 required the pilot program to be in effect for three years from the date the final rule was enacted, the final rule included a sunset provision of May 9, 2008.

The Federal Aviation Extension Act of 2008<sup>9</sup> authorized the non-hub pilot program to continue through September 30, 2008. However, when § 158.30 expired on May 9, 2008, there were no effective regulations in place to guide public agencies and the FAA regarding the use of these alternative procedures. Therefore, the FAA published a notice in the **Federal Register** informing public agencies of the program's continuing statutory authority, and the FAA periodically issued internal agency guidance in the form of PFC updates to inform agency personnel of how to administer the non-hub pilot program.

The FAA Modernization and Reform Act of 2012 subsequently eliminated the expiration date from 49 U.S.C. 40117(l) and the FAA continued implementing the non-hub pilot program in accordance with the statute in the absence of effective regulations.<sup>10</sup> The agency continued to use the same forms and procedures that were developed before the sunset of § 158.30, thereby allowing for seamless program continuation.

## V. Discussion of the Proposal

The FAA is proposing to amend the PFC program regulations. These proposed amendments are grouped into the following three categories based on the rationale for the proposed change: 2018 Reauthorization Act, PFC Program Oversight, and Miscellaneous Amendments.

### A. 2018 Reauthorization Act

This rulemaking action proposes the following changes to the PFC program as mandated by the 2018 Reauthorization Act: (1) changes related to project eligibility for PFC levels above \$3, and (2) changes related to applications and notices of intent for small-<sup>11</sup>, medium-<sup>12</sup>, and large-hub<sup>13</sup> airports.

#### 1. Changes to Project Eligibility for PFC Levels Above \$3

##### (a) Background

At the inception of the PFC program, public agencies received authority to impose a PFC of \$1, \$2, or \$3. The project eligibility requirements are contained in current § 158.15, "Project eligibility at PFC levels of \$1, \$2 or \$3." AIR 21 modified the PFC program by allowing a public agency to apply to the FAA to increase the PFC level that it may charge to \$4 or \$4.50 in certain instances. Project Eligibility requirements at PFC Levels of \$4 or \$4.50 are found in current § 158.17. Section 158.17 (a)(1) requires these projects to also meet the eligibility requirements of § 158.15.

AIR 21 limited projects funded at a \$4 or \$4.50 PFC level to those that could not be paid for from funds reasonably expected to be available under the Airport Improvement Program (AIP). The requirement for this AIP funds reasonability determination is found in current § 158.17(a)(2).

AIR 21 also conditioned the funding of surface transportation or terminal projects at the \$4 or \$4.50 level on a finding that the public agency had made adequate provision for financing the airside needs<sup>14</sup> of the airport. The requirement for this airside needs determination is found in current § 158.17(a)(3).

Further, AIR 21 established additional eligibility requirements for projects at medium- and large-hub airports. A project at a medium- or large-hub airport was eligible for PFC funding at \$4 or \$4.50 only if the project would make a significant contribution to: improving air carrier safety and security; increasing competition among

air carriers; reducing current or anticipated congestion; or reducing the impact of aviation noise on people living near the airport. These requirements are contained in current § 158.17(b).

##### (b) Removal of AIP Funds Reasonability Determination

The 2018 Reauthorization Act amended 49 U.S.C. 40117(b)(4) by removing the AIP funds reasonability determination requirement found in current § 158.17(a)(2). With this change in legislation, the FAA no longer uses this determination to set the collection level for which the project is approved. On May 9, 2019, the FAA issued PFC Update 72–19, "Changes to the Passenger Facility Charge Levels Above \$3," directing FAA personnel to cease applying this requirement while reviewing PFC applications. In this rulemaking action, the FAA proposes to formally remove this requirement from the PFC regulations.

##### (c) Removal of Significant Contribution Determination

The 2018 Reauthorization Act also eliminated the significant contribution requirement found in current § 158.17(b). As a result, the FAA no longer uses it to determine the collection level for which a project is approved and no longer requires public agencies to submit information related to significant contribution. PFC Update 72–19 directs FAA personnel to no longer apply this requirement in reviewing PFC applications and the FAA proposes to remove the requirement from the PFC regulations. Moving forward, the FAA would rely on airside needs as the determining factor.

##### (d) Retention of Airside Needs Determination

The 2018 Reauthorization Act retains the airside needs determination under 49 U.S.C. 40117(d)(4) found in current § 158.17(a)(3). Since the airside needs determination is the only requirement remaining within § 158.17 after making the 2018 Reauthorization Act changes, aside from the requirement to comply with § 158.15, the FAA proposes to combine these two sections. Specifically, the FAA proposes to move the airside needs requirement in § 158.17(a)(3) to § 158.15 by adding a new proposed paragraph (d) to current § 158.15 and restating the airside needs requirement, which continues to remain effective. The FAA also proposes to rename § 158.15 as "Project

<sup>7</sup> Vision 100, 49 U.S.C. 40117(l) (December 12, 2003).

<sup>8</sup> Non-hub airport means a commercial service airport that has less than 0.05 percent of the passenger boardings. 49 U.S.C. 47102(14).

<sup>9</sup> Public Law 110–253, June 30, 2008.

<sup>10</sup> Although § 158.30 expired on May 9, 2008, the text of the regulation continues to be printed in the Code of Federal Regulations because of the corresponding removal of the expiration date in the 2012 Act. This rulemaking action would remove that obsolete language.

<sup>11</sup> Small hub airport means a commercial service airport that has at least 0.05 percent but less than 0.25 percent of the passenger boardings. 49 U.S.C. 47102(25).

<sup>12</sup> Medium hub airport means a commercial service airport that has at least 0.25 percent but less than 1.0 percent of the passenger boardings. 49 U.S.C. 47102(13).

<sup>13</sup> Large hub airport means a commercial service airport that has at least 1.0 percent of the passenger boardings. 49 U.S.C. 47102(11).

<sup>14</sup> Airside needs include runways, taxiways, aprons, and aircraft gates.

eligibility”<sup>15</sup> and delete the current text of § 158.17 in its entirety. Consolidating the project eligibility requirements into one section and changing the section title will improve accessibility and comprehension of the requirements.

The FAA also proposes administrative amendments to replace references to former § 158.17(a)(3) throughout part 158 with references to proposed § 158.15(d). These administrative amendments are discussed further under section V.C. below.

## 2. Changes to Applications and Notices of Intent

### (a) Background

The statutory provisions initially authorizing the PFC program required public agencies to submit an application to the FAA to obtain authority to impose PFCs and use PFC revenue. However, Vision 100 established the notice of intent process, mandating that the FAA create a pilot program to test alternative procedures for authorizing eligible agencies for non-hub airports to impose PFCs and use PFC revenue.

Under the non-hub pilot program, only public agencies controlling non-hub airports could use alternative procedures to impose PFCs and use PFC revenue on eligible projects under 49 U.S.C. 40117(l). In lieu of submitting an application in accordance with 49 U.S.C. 40117(c), as prescribed in current § 158.25, public agencies controlling non-hub airports simply could submit a notice of intent to impose a PFC and use PFC revenue. Under these alternative procedures, within 30 days of receipt of the public agency’s notice, the FAA either objected to the public agency’s proposed project(s) or acknowledged the public agency’s notice of intent.

The 2018 Reauthorization Act amended 49 U.S.C. 40117(l) by removing all references to non-hub airports. This legislative change effectively directed the FAA to extend the pilot program to small-, medium-, and large-hub airports, permitting these airports to also obtain authority to impose PFCs and use PFC revenue using alternative notice of intent procedures.

### (b) PFC Update 73–20 and Partial Implementation of Program Changes

Immediately following enactment of the 2018 Reauthorization Act, the FAA considered several options for implementing the PFC program changes.

Since the FAA had been successfully implementing notice of intent procedures for non-hub airports for several years, such procedures seemed most appropriate for PFC authorizations for small-, medium-, and large-hub airports. However, rulemaking to amend part 158 would have been required to change the application requirements for public agencies.

Recognizing the immediate need for expeditious processing of PFC applications, the FAA internally implemented program changes to the maximum extent possible. On January 22, 2020, the FAA issued PFC Update 73–20, “Streamlined Procedures for Passenger Facility Charge (PFC) Authorizations at Small-, Medium-, and Large-Hub Airports.” This interim internal guidance partially implemented the program change by streamlining the FAA’s internal review of PFC projects meeting specific criteria for small-, medium-, and large-hub airports. This interim internal guidance did not change the PFC application procedures for public agencies. All applications were still required to meet the statutory and regulatory requirements of 49 U.S.C. 40117 and part 158.

PFC Update 73–20 indicated that all PFC applications received by the FAA from small-, medium-, or large-hub airports are to be processed using the streamlined procedures identified in the PFC update unless such applications are excluded in accordance with applicable PFC guidance. Therefore, all PFC applications not excluded under PFC Update 73–20 are to be treated as a notice of intent with FAA review and acknowledgment or objection within 30 days.

### (c) Proposed Amendments for Full Implementation of Program Changes

The FAA proposes to amend part 158 to allow for the full implementation of program changes originating from the 2018 Reauthorization Act. The FAA’s proposed regulations largely mirror the provisions of PFC Update 73–20 to implement the notice of intent pilot program.

The FAA proposes to revise § 158.30 to reflect the 2018 Reauthorization Act program changes and remove the since-rescinded section expiration date, which will provide consistency with current practice and law. Current § 158.30 prescribes regulations for notice of intent PFC authorizations for non-hub airports; however, § 158.30(h) indicates that § 158.30 expired on May 9, 2008. The FAA also intends to move some of the provisions found in § 158.30 to other sections within part 158 to improve readability of the notice of

intent requirements. The FAA is proposing this re-organization of § 158.30 to allow for the inclusion of notice of intent provisions stemming from PFC Update 73–20 and the FAA’s partial implementation of the program changes. These proposed changes are discussed in the following paragraphs.

First, the FAA proposes to amend current § 158.30 by renaming the section heading “Notices of intent.” While § 158.30(a) through (c) would remain largely the same, the FAA is proposing to make several changes. For example, the FAA proposes revising current paragraph (a) by removing language that limits the applicability of § 158.30 to non-hub airports. The FAA is also proposing minor changes to the project information requirements of current § 158.30(b). That paragraph requires public agencies to submit grant-related information when a PFC project is also funded by an AIP grant. The FAA proposes to replace references to AIP grants with “FAA awarded airport grant” so as to include information about other grants also funding the project, such as those authorized under the Bipartisan Infrastructure Law (BIL). Further, the FAA is adding a new paragraph, proposed § 158.30(b)(8), requiring public agencies to submit detailed cost information for non-AIP funded projects that exceed \$10 million.

Second, the FAA proposes to move the text of current § 158.31, “Duration of authority to impose a PFC after project implementation” to an amended § 158.33, and move the text of current § 158.30(d), which includes the notice of intent review requirements, to an amended and proposed § 158.31, “Review of notices of intent.” In turn, the FAA proposes to move the current text of § 158.33, “Duration of authority to impose a PFC before project implementation,” to a newly added proposed § 158.34.

Proposed § 158.31 describes the FAA’s rules for reviewing notices of intent and outlines two stages of FAA review. The first stage of review, which is prescribed in proposed § 158.31(a), addresses the types of applications and projects ineligible for notice of intent consideration. The second stage of review, which is prescribed in § 158.31(b), addresses the FAA’s determinations on projects eligible for notice of intent consideration.

Under proposed § 158.31(a), the FAA will review notices of intent to identify projects ineligible for consideration under this streamlined process. The FAA intends to notify public agencies in writing within 30 days if the FAA determines that a project is ineligible for the notice of intent procedure. This

<sup>15</sup> Prior to AIR 21 and the subsequent final rule allowing for the \$4 or \$4.50 PFC level, all project eligibility requirements were listed in § 158.15, which was titled Project eligibility. In this rulemaking, the FAA proposes to return to that former structure of the PFC regulation for project eligibility.

notification process, outlined in proposed § 158.31(a), was not prescribed in PFC Update 73–20.

The projects ineligible for consideration under proposed § 158.31(a)(1) through (a)(8) are identical to those ineligible for the streamlined procedures under PFC Update 73–20. In determining the types of projects ineligible for streamlined procedures under PFC Update 73–20, the FAA considered the agency's internal delegations of authority as delineated in PFC Order 5500.1, "Passenger Facility Charge," issued August 9, 2001. That document identifies certain types of PFC projects and applications that cannot be processed by the FAA's region and district offices because they require a higher level of internal FAA review and coordination within agency headquarters. Applications involving significant policy precedent, significant legal issues, significant controversy, multimodal projects, and significant noise, access, or revenue diversion issues are not eligible for streamlined processing under PFC Update 73–20. For reasons discussed in the next few paragraphs, the FAA proposes to incorporate these provisions within the regulations.

Under proposed § 158.31(a)(1), the FAA intends to review notices of intent for significant impacts on policy precedent. The FAA's disposition regarding a proposed PFC project could represent a significant policy precedent if the agency's decision would establish or change the FAA's policy on a project or issue. FAA review of such a project would typically require more than the 30 days afforded by the notice of intent process because the FAA would need to evaluate any potential impacts resulting from a change in policy.

Similarly, under proposed § 158.31(a)(2), the FAA intends to review notices of intent for projects with significant legal issues, as determined by the FAA's Office of the Chief Counsel or Office of Airports. Projects with significant legal issues involve matters that may result in litigation or may include projects where NEPA or environmental litigation are present. Such projects might also include circumstances where a Director within the FAA's Office of Airports has made a determination that the public agency has been found to be noncompliant in 14 CFR part 16 proceedings, or the public agency is presently a respondent in 14 CFR part 16 proceedings. Again, such projects need a level of review that requires more than the 30 days afforded by the notice of intent process.

PFC projects that are the subject of significant controversy are also ineligible for streamlined procedures in accordance with § 158.31(a)(3). Significant controversy is evidenced by opposition expressed during a public agency's consultation with air carriers. Other indicators of potential significant controversy include adverse public comments or opposition to the FAA's proposed action from other airport authorities, airport users, Federal, State, or local governments, elected officials or communities. Likewise, multimodal projects or projects involving significant airport noise, access, or revenue diversion issues are also ineligible for these alternative procedures in accordance with proposed § 158.31(a)(4) and (a)(5). Significant airport noise, access, or revenue diversion issues concern those assessing compliance with 49 U.S.C. 47521 *et seq.* (ANCA) and 49 U.S.C. 47111(e) (Action on Grant Assurances Concerning Airport Revenues).

The FAA also considered PFC Update 62–10, "Passenger Facility Charge Delegation of Authority," issued March 11, 2010, in determining the types of projects ineligible for streamlined procedures under PFC Update 73–20. That document identifies additional types of PFC projects and applications that cannot be processed by the FAA's regional and district offices. These include debt service on otherwise ineligible projects or blending of two or more PFC decisions to obtain a uniform collection level. Such projects and applications require specialized review because they tend to be unique and multifaceted. The next few paragraphs discuss the FAA's intent to retain these exclusions as proposed § 158.31(a)(6) and (a)(7).

In proposed § 158.31(a)(6), the FAA proposes to exclude applications involving debt service from the notice of intent streamlined procedures due to the complexity of these applications. When applying to use PFC revenue for certain debt service projects, the FAA encourages each airport to thoroughly discuss in its application those factors it believes most clearly indicate the airport's financial need. The FAA will consider the airport's plans to return to financial stability in its deliberations on the application. If incurring new debt, for any purpose, will help the airport return to financial stability as soon as possible, the public agency should discuss this factor in the application. The FAA also expects an airport attempting to demonstrate that it faces a financial crisis to discuss factors likely to affect its ability to make required payments in the future. Notice of intent

procedures would not be appropriate in such instances because the FAA's evaluation process is too extensive to be completed within 30 days. A longer time frame for review is necessary because this gives the public agency time to respond to any requests for information from the FAA should the application not contain all of the necessary documentation. For example, if during the course of review, the FAA finds that the public agency needs to provide a plan to return to financial stability, 30 days is insufficient to allow for the public agency to develop and submit the plan in order to move forward with the application. Since there is not sufficient time allotted for adequate review under the notice of intent process, the FAA proposes to exclude these types of projects and applications.

The FAA proposes to exclude applications for the blending of two or more PFC decisions to obtain a uniform collection level under proposed § 158.31(a)(7) for reasons similar to debt service on otherwise ineligible projects. Prior to the 2018 Reauthorization Act, public agencies sought to blend PFC applications to enable PFC collections at the higher \$4 or \$4.50 amount when significant contribution was a determining factor. Since the significant contribution determination has been eliminated and public agencies no longer need to demonstrate significant contribution to collect PFCs at the \$4 or \$4.50 level, the FAA does not anticipate receiving many public agency applications for blending. However, in the rare event that a public agency does seek to blend applications, the FAA has found that such action requires a specialized review and analysis that is likely to exceed the 30 days afforded by the notice of intent process. Therefore, the FAA excluded blending under PFC Update 73–20 and proposes that application blending should remain ineligible for the streamlined notice of intent procedures.

Finally, PFC Update 73–20 describes one more type of PFC project ineligible for streamlined processing. Terminal building projects in excess of \$25 million, except stand-alone passenger boarding bridges, are also ineligible for streamlined processing under PFC Update 73–20. The FAA proposes to retain this exclusion as proposed § 158.31(a)(8) for reasons discussed in the following paragraphs.

The initial justification for non-hub airport notice of intent procedures was to achieve PFC program efficiency by eliminating duplicative efforts. In 2002, the FAA examined the PFC program to identify ways to remove unnecessary,

duplicative, and time-consuming steps. The FAA found that while non-hub airports accounted for about 60 percent of the PFC applications processed over the prior five years, they only produced roughly two percent of the total annual PFC revenue. Further, the FAA found that non-hub airports often apply to use PFC revenue either as their matching share for an AIP grant or as a supplement to AIP funding. In such cases involving AIP funds, the FAA has already reviewed the project under the AIP grant procedures, thereby producing a duplication of efforts that created inefficiencies for both non-hub airports and the FAA. Thus, overall, enactment of the non-hub pilot program eliminated duplication, improved program efficiency, and supported expedited review of PFC projects for non-hub airports.

Under the non-hub pilot program for notices of intent, when PFC projects did not include AIP funds, the FAA required public agencies to submit project information sufficient for the FAA to review and consider whether the project is eligible for PFCs, meets a PFC objective, and is justified before acknowledging or objecting to a proposed PFC project. While terminal projects for non-hub airports typically fell into this category, the scale of such projects and the level of complexity tend to be minimal due to the nature of non-hub operations, allowing for review within the 30-day timeframe. However, in partially implementing program changes under PFC Update 73–20, the FAA concluded that terminal building projects for small-, medium-, and large-hub airports, on the other hand, may need more than the 30 days afforded under the notice of intent process.

Endeavoring to retain PFC program efficiencies gained through the notice of intent process while still allowing for adequate review and evaluation of terminal projects, the FAA implemented a \$25 million threshold for terminal projects under PFC Update 73–20 regardless of airport hub size. Since inception of the PFC program, the vast majority of non-hub terminal PFC projects were less than \$25 million. The \$25 million threshold allows nearly all non-hub airport terminal projects to continue to obtain PFC authority through the notice of intent process as they have done historically and allows a vast majority of terminal projects for small-, medium-, and large-hub airports to also use this process.

Terminal projects at or over \$25 million, in most cases, require a more extensive review on the part of the FAA to ensure the project has been fully assessed. Concluding from years of

experience with terminal projects, the FAA found that projects above \$25 million tend to involve more systems and components than smaller projects and have a greater potential to include spaces and equipment ineligible for funding under the PFC program. Therefore, these projects require a more comprehensive review, such as comparison against comparable projects, which would take more than the 30-day notice of intent period. The FAA does not propose changes to this limitation found in proposed § 158.31. The numerous components associated with projects at or over \$25 million generally require a more extensive review on the part of the FAA to ensure the project has been fully assessed. The application evaluation process may include determining if the submission includes sufficient documentation to demonstrate adequate justification for the project; determining whether the project is eligible for PFC funds; assessing the project objective and justification provided by the public agency; reviewing submission of detailed financial information; evaluating modifications to standards; assessing impacts to airport geometry; and determining whether it is necessary to engage in interagency coordination. There may be a need to coordinate with border control agencies or other Federal agencies on the impact of this application and project with respect to these agencies' equities. Other review factors can include amount and duration of the PFC; compliance with airport revenue use requirements; alternative uses; air carrier and public comments; compliance with the Airport Noise and Capacity Act of 1990 (ACNA); airport layout plan (ALP), airspace, and National Environmental Policy Act (NEPA) requirements; the schedule for project implementation; and financial viability of the project. Since many of these determinations and factors are present when a project reaches the \$25 million threshold, such projects cannot be streamlined.

#### (d) PFC Update 50–06 and 2018 Reauthorization Pilot Program Implementation

The FAA proposes a minor revision to the information that public agencies must submit to the FAA with a notice of intent when seeking authority to impose a PFC. Specifically, the FAA proposes to add §§ 158.25(b)(8) and 158.30(b)(3)(iv) directing public agencies to submit detailed cost information, as required by the Administrator. The FAA's policy on requesting this information from public agencies is currently outlined in PFC

Update 50–06, "Detailed basis of cost information, new project certifications, and changes to the Final Agency Decision," issued September 8, 2006.

The FAA issued PFC Update 50–06 in response to *Village of Bensenville, et al. v. Federal Aviation Administration*, a U.S. Court of Appeals, District of Columbia Circuit decision, that found the FAA had not adequately demonstrated that it had reviewed the cost estimates for an Environmental Impact Statement (EIS) project and that the FAA's records did not support its findings in its decision.<sup>16</sup> With the issuance of PFC Update 50–06, the FAA began requesting the submission of detailed cost information with PFC applications under the authority of current § 158.25(b)(18), which directs public agencies to submit "[s]uch additional information as the Administrator may require." Attachment B to the PFC Application Form 5500–1 explicitly requires public agencies to submit cost details sufficient to identify eligible and ineligible costs if the project amount is over \$10 million, as a result of the decision by the court.

The detailed cost submission requirement for small-, medium-, and large-hub airports has not changed with the availability of the notice of intent process, but this requirement will now apply to non-hub airports. Prior to the 2018 Reauthorization Act, non-hub airports obtaining PFC authority through the notice of intent process were not subject to the detailed cost submission requirements. In PFC Update 50–06, the FAA stated that most non-hub pilot program projects have either existing or planned AIP funding, and these grants involve an FAA review of the costs. Also, most non-hub pilot program projects request less than \$10 million in PFC funding authority. Further, the FAA indicated the 30-day pilot program-processing period does not provide enough time for the FAA to review detailed cost estimates for multiple projects. Section 158.30(b)(7) (which expired on May 9, 2008—See footnote 1) directed public agencies to include "any additional information the Administrator may require" with a notice of intent. The FAA proposes to include this language in § 158.30(b)(7). Similarly, the FAA does not propose to change current policy that non-hub airports must provide detailed cost information when submitting an application under § 158.25 and the project amount is over \$10 million.

<sup>16</sup> *Village of Bensenville, et al. v. Federal Aviation Administration*, 376 F.3d 1114, 1122 (D.C. Cir. 2004).

Since the 2018 Reauthorization Act effectively eliminated any distinction between hub and non-hub notice of intent submissions, the requirement for detailed cost information now extends to non-hub airports. The FAA proposes to add a new subparagraph § 158.30(b)(3)(iv) to clearly indicate within the PFC regulations that submission of cost detail information may be required as part of a notice of intent filing, regardless of hub size. The FAA anticipates the impact of this provision on public agencies will be minimal. Since the FAA proposes to restrict the types of projects eligible for streamlined procedures, the FAA expects that very few projects would require this comprehensive review of material within the 30-day period. Further, public agencies already possess detailed cost information for proposed projects in most cases. Adding this requirement merely directs public agencies to submit such information to the FAA for consideration along with a notice of intent filing.

#### *B. PFC Program Oversight*

The proposed regulatory changes to program oversight stem from PFC Update 71–19 and a review of current policies. The proposed changes formalize the policies contained in PFC Update 71–19, improve the informal resolution process, and restructure the current layout of the oversight regulations found in part 158 to improve accessibility and program compliance.

##### 1. Reporting, Recordkeeping and Audit Requirements

On April 1, 2019, the FAA issued PFC Update 71–19, Oversight of Public Agency Passenger Facility Charge (PFC) Program, in response to certain recommendations from the OIG, contained in Report # AV2019015. In that report, the OIG asserted that the FAA lacked a process to ensure that independent audit reports are timely and include required information. The OIG recommended that the FAA establish specific timeframes for issuing audit reports and verify that public agencies' independent audits are performed annually.

Public agencies are required to conduct an audit of their PFC accounts at least annually in accordance with current § 158.67(c). To ensure that these audit reports are submitted in a timely manner, PFC Update 71–19 directs the FAA to request that public agencies submit annual PFC audit reports 30 calendar days after receipt of the auditor's report or 9 months after the end of the audit period. The FAA proposes to amend § 158.69 to formalize

this guidance to now require public agencies to provide a copy of their annual audit to the Administrator within 30 calendar days after receipt of the audit or 9 months after the end of the audit period, whichever is less. The FAA also proposes to separate the requirements of current § 158.67(c) into four sub-paragraphs to separate four unique existing requirements. These sub-paragraphs have been renumbered as § 158.67(c)(1)-(4).

Further, the FAA is proposing two additional subparagraphs, § 158.67(c)(5)-(6) to § 158.67(c). Proposed § 158.67(c)(5) requires PFC audits to include a schedule of revenues and expenditures of the PFC account. This schedule should include the beginning balance in the PFC account on the first day of the fiscal year, PFC Collections for each quarter, PFC Interest Earned for each quarter, disbursements on projects by application for each quarter, and the PFC account closing balance. Current FAA policy concerning the submission of a PFC schedule is found in FAA Order 5500.1, Passenger Facility Charge, August 9, 2001, Paragraph 7–18.b. AUDIT, which indicates that the auditor must, as a minimum, provide opinions as well as a schedule of PFC transactions. Currently, PFC schedule guidance is included in FAA Order 5500.1. The FAA proposes to make this a requirement in the PFC regulations.

Proposed § 158.67(c)(6) requires PFC audits to be performed on an actual basis unless some form of reconciliation documentation is provided by the auditor. This proposal moves current industry practice into a regulatory requirement in order to allow for the real-time accounting of actual total collected towards the total PFC collection. This requirement will improve transparency and ensure that PFC funds are being collected accurately and are accounted for properly.

##### 2. Federal Oversight of Compliance, Informal Resolution, and Termination

The FAA proposes to rename current subpart “E—Termination” as subpart “E—Federal Oversight of Compliance, Informal Resolution, and Termination” and move current § 158.71, which prescribes regulations for Federal oversight, into subpart E. The FAA proposes to consolidate the regulations in subparts D and E, which ensure public agency compliance with the requirements of part 158 and 49 U.S.C. 40117, into the same subpart. The FAA anticipates that consolidating the regulations in subparts D and E will improve access to public agency

obligations and therefore improve compliance.

The annual PFC audit provides validation of and reconciliation between the public agency's audited financial statements and the PFC financial data in the FAA's System of Airports Reporting (SOAR) database. The FAA relies on SOAR data to evaluate whether the PFC collection period is appropriate. Some public agencies have inconsistently submitted required annual audit reports. Inaccurate or absent data impairs the FAA's oversight and ability to fulfill its statutory obligations under 49 U.S.C. 40117(d)(1) and 40117(h).

In some instances, after receiving a public agency's audit report, the FAA may decide to review the imposition and use of PFC revenue. In these cases, the public agency should provide a timely and sufficient response to any FAA inquiry. Accordingly, the FAA proposes to amend current § 158.71 by adding language indicating the Administrator may take further action including, but not limited to, informal resolution, termination, or other action, as appropriate. The FAA also proposes to re-number that section as § 158.83 and rename it “Federal oversight of compliance” to more clearly reflect the provisions.

The FAA also proposes to amend the informal resolution provisions of current § 158.83 by removing the requirement that the FAA audit, review, or both audit and review a public agency's use of PFC revenue or a public agency's collection and remittance of PFC revenue under the oversight authority of current § 158.71 before commencing an informal resolution process with a public agency. As discussed previously, the OIG found the FAA lacks a process to ensure that independent audit reports are timely and include required information. This proposal is part of a larger effort to create a compliance-oriented subpart with a clear escalation process. A compliance-oriented subpart with a clear escalation process also would enable the FAA to engage in informal resolution to address various PFC collection and use issues without the FAA having to first audit the public agency or initiate termination procedures. The FAA also proposes to re-number this section as § 158.85.

#### *C. Miscellaneous Amendments*

The FAA is proposing miscellaneous amendments to the PFC regulations. A discussion of these miscellaneous amendments follows.

The FAA proposes to re-organize and re-number several sections within part 158 to facilitate other amendments

proposed in this rulemaking action. In instances where revised section numbers are referenced elsewhere in the PFC regulations, the FAA proposes to make corresponding administrative amendments to those references within the PFC regulations.

#### 1. Changes to Subpart A

##### (a) Section 158.3—Definitions

The FAA proposes to amend the following definitions:

- **Approved project.** The FAA proposes to replace the reference to § 158.30 with § 158.32. This is a technical correction.
- **Bond financing costs.** The FAA proposes to add language to include the cost of financing other indebtedness, which is consistent with PFC Order 5500.1, Appendix 4, August 9, 2001.
- **Charge effective date.** The FAA proposes to insert the word “first” before the word “date” and replace the word “obliged” with the word “start collecting.” These amendments provide further detail on the FAA’s expectation for the charge effective date.
- **Charge expiration date.** The FAA proposes to replace the phrase “cease to collect” with the phrase “stop collecting.” This is not a substantive change.
- **Debt service.** The FAA proposes to move the word “items” from behind the word “such” to before the word “such.” This is not a substantive change.
- **Exclusive long-term lease or use agreement.** The FAA proposes to add language to this definition that applies to exclusive leases of less than five years that have automatic renewal or carryover options, or to leases that have the effect of granting exclusive use rights. This proposed change is not a substantive change but has been made to align the definition with PFC assurances 5 and 6.
- **Implementation of an approved project.** The FAA proposes to replace the word “nonconstruction” with “non-construction.” This is not a substantive change.
- **Notice of intent (to impose or use PFC revenue).** The FAA proposes to amend the definition by removing the limited applicability to non-hub airports. This amendment is consistent with the 2018 Reauthorization Act. The FAA also proposes to replace the reference to § 158.30 with § 158.32. This amendment harmonizes with the re-numbering of certain sections. This is a proposed substantive change to account for program changes made by the 2018 Reauthorization Act.

(b) Section 158.11—Requests for Air Carrier, Foreign Air Carrier, or Isolated Community Exclusion

The FAA proposes to shorten the title of this section by revising it from “Public agency request not to require collection of PFCs by a class of air carriers or foreign air carriers or for service to isolated communities” to “Requests for air carrier, foreign air carrier, or isolated community exclusion.”

(c) Section 158.13—Use of PFC Revenue

Currently, § 158.13 is titled “Use of PFC Revenue” and § 158.18 is titled “Use of PFC revenue to pay for debt service for non-eligible projects.” Both sections pertain to the use of PFC revenue. Current § 158.13(e) provides an exception for the use of PFC revenue to pay for debt service for non-eligible projects and references current § 158.18. Rather than making this reference, for simplicity, the FAA proposes to move the language contained in § 158.18 into § 158.13(e) and delete § 158.18 entirely.

Additionally, since the last sentence of paragraph (f) pertains to auditing, the FAA proposes to move that language to the auditing requirements for approved projects combining PFC revenue and Federal grant funds within subpart D. Specifically, the FAA proposes to incorporate this language into § 158.67.

(d) Section 158.15—Project Eligibility

The FAA proposes two amendments to this section: (1) change the section title to remove dollar amounts, and (2) add a new paragraph (d) which contains the airside needs test language from § 158.17(a)(3). This second amendment is necessary because most of the requirements of § 158.17 were removed by the 2018 Reauthorization Act and the FAA is proposing to delete § 158.17 and move any surviving requirements to § 158.15.

As discussed in section V.A.1. of the preamble, the FAA is amending § 158.17(a)(3) to revise the airside needs requirement to align with the 2018 Reauthorization Act. The 2018 Reauthorization Act retains the airside needs requirement of 49 U.S.C. 40117(d)(4), which provides that in the case of an eligible surface transportation or terminal project, a PFC project cannot be approved at a collection level higher than \$3 unless the FAA determines that the public agency has made adequate provision for financing the airside needs of the airport.<sup>17</sup>

After removal of the funds reasonability determination and the significant contribution requirement,

the only provisions of current § 158.17(a)(1) that would remain in proposed § 158.17 are those relating to the project meeting the eligibility requirements of § 158.15 and the airside needs requirements of current § 158.17(a)(3). Therefore, the FAA proposes to delete current § 158.17 and move the airside needs requirement to a new paragraph within § 158.15(d).

(e). Section 158.19—Requirement for Competition Plans

The FAA proposes to re-number current § 158.19 as § 158.17. This amendment reflects re-numbering changes to part 158.

(f) Section 158.20—Submission of Required Documents

The FAA proposes four amendments to this section: (1) re-number current § 158.20 as § 158.19, (2) revise paragraph (a) to allow for electronic submission of documents, (3) revise paragraph (b) because the databased referenced has been completed, and (4) move the section from subpart B to subpart A.

The FAA now has the capability of receiving documents electronically, which it did not have at the time the regulation was written. The FAA’s PFC online database, System of Airports Reporting (SOAR), for collecting required reports is complete and this proposed change reflects this update. The FAA proposes to move this section to subpart A because electronic submission provisions should pertain to all documents, not just applications.

#### 2. Changes to Subpart B

(a) Section 158.21—General

The FAA proposes to amend current § 158.21 to indicate that a public agency may either submit an application and obtain approval from the Administrator to impose a PFC and use PFC revenue or submit a notice of intent to impose a PFC and use PFC revenue. Currently this section only references PFC applications and FAA approval of PFC applications, not notices of intent and FAA acknowledgment of notices of intent.

(b) Section 158.25—Applications

The FAA proposes to add a new subparagraph, § 158.25(b)(8), directing public agencies to submit detailed cost information, as required by the Administrator. This proposed paragraph is similar to the cost detail information required by proposed § 158.30(b)(3)(iv) discussed in section IV.A.2., the rationale for which is described in that portion of the preamble.

<sup>17</sup> 49 U.S.C. 40117(d)(4)

3. Changes to Subpart C

(a) Section 158.37 Amendment of Approved PFC

The FAA proposes to amend § 158.37 by adding a new paragraph (b)(1) requiring the Administrator to find the public agency has complied with the Reporting, Recordkeeping and Audit requirements before approving a PFC amendment as discussed in section V.B.1. This amendment encourages public agency compliance with audit and recordkeeping requirements and supports the FAA’s oversight of PFC audits. Further, this action informs public agencies of the need to submit PFC audit reports before submitting requests for amendments.

(b) Section 158.43 Public Agency Notification to Collect PFCs

The FAA proposes moving the last sentence of paragraph (c) to new paragraph (e) without change. This proposed change separates requirements for public agencies and air carriers to ensure that requirements for each of these entities are clear and accessible.

(c) Section 158.45—Collection of PFCs on Tickets Issued in the U.S.

The FAA proposes to insert “on the return” after “last two enplaning airports.” This proposed amendment change clarifies when PFCs can be collected and harmonizes with § 158.9(a).

4. Changes to Subpart D

(a) Section 158.63—Reporting Requirements: Public Agency

The FAA proposes to amend paragraph (a)(2) by adding “reimbursements” to the list of information that must be included in quarterly reports. This proposed change clarifies that the public agency must report expenditures to outside entities as well as reimbursements to itself. This change is necessary so that the FAA can

verify that the reimbursement is consistent with appropriate regulations, policies, and standards. It also provides the FAA with the relevant information to fulfill its recordkeeping and auditing responsibilities under 49 U.S.C. 40117(g).

(b) Section 158.67—Recordkeeping and Auditing: Public Agency

The FAA proposes to change the title of this section from “Recordkeeping and auditing: Public agency” to “Accounting and auditing: Public agency.” This change supports general improvement in the FAA oversight of the PFC program by making audit requirements clearer for public agencies.

(c) Section 158.69—Recordkeeping and Auditing: Collecting Carriers

The FAA proposes to change the title of this section from “Recordkeeping and auditing: Collecting carriers” to “Accounting and auditing: Collecting carriers.” This change supports general improvement in the FAA oversight of the PFC program by making audit requirements clearer for public agencies.

5. Changes to Subpart E

(a) Section 158.85—Termination of Authority To Impose PFCs

The FAA proposes to re-number current § 158.85 as § 158.87. This amendment reflects re-numbering changes to part 158.

(b) Section 158.87—Loss of Federal Airport Grant Funds

Currently the requirements for loss of Federal airport grant funds are found in § 158.87. The FAA proposes to redesignate these requirements as § 158.89. This amendment reflects re-numbering changes to part 158. Additionally, the FAA proposes to replace a reference to § 158.83 with § 158.85 and also replace a reference to § 158.85 with § 158.87 within proposed

§ 158.89(a). These amendments also reflect re-numbering changes to part 158.

6. Changes to Subpart F

(a) Section 158.95—Implementation of Reduction

The FAA proposes to amend paragraph (c) to add the word “either” in front of the number 50 and “75 percent” after the word “or” to reflect the total reduction. These amendments use plain language for clarification and do not change the regulatory provisions.

7. Changes to Appendix A

Public agencies must comply with PFC assurances when implementing a project funded with PFC revenue. However, the assurances only reference PFC applications and FAA approval of PFC applications, not notices of intent and FAA acknowledgment of notices of intent. The FAA proposes to revise paragraphs A. 2 and A. 3 to reflect that the requirement to comply with PFC assurances also applies to notices of intent and FAA acknowledgment of notices of intent.

8. Section Cross-Reference Table

This section cross reference table is a re-designation listing of renumbered CFR units. This table also shows the old CFR unit numbers of former provisions along with corresponding new CFR unit numbers and current provisions. In instances where the FAA proposes to move a requirement from one section to another section, interested persons can look up the former section number for the requirement and find the new section number for that requirement. Similarly, in cases where the FAA is not proposing to change regulatory requirements within a section but proposes to re-number a section, interested persons can use the table to easily identify the new section number.

TABLE 2—CROSS-REFERENCE LISTING CURRENT AND PROPOSED CFR SECTIONS

Current Provisions/CFR Reference		Proposed Provisions/CFR References	
§ 158.11	Public agency request not to require collection of PFCs by a class of air carriers or foreign air carriers or for service to isolated communities.	§ 158.11	Requests for air carrier, foreign air carrier, or isolated community exclusion.
§ 158.17(a)(1)	Project eligibility at PFC levels of \$4 or \$4.50	§ 158.15	Project eligibility.
§ 158.17(a)(3)		§ 158.15(d)	
§ 158.18	Use of PFC revenue to pay for debt service for non-eligible projects.	§ 158.13(e)	Use of PFC revenue.
§ 158.19	Requirement for competition plans	§ 158.17	Requirement for competition plans.
§ 158.20	Submission of required documents	§ 158.19	Submission of required documents.
§ 158.25(b)(8)	Applications	§ 158.25(b)(9)	Applications.
§ 158.25(b)(9)		§ 158.25(b)(10)	
§ 158.25(b)(10)		§ 158.25(b)(11)	
§ 158.25(b)(11)		§ 158.25(b)(12)	

TABLE 2—CROSS-REFERENCE LISTING CURRENT AND PROPOSED CFR SECTIONS—Continued

§ 158.25(b)(12) .....		§ 158.25(b)(13)	
§ 158.25(b)(13) .....		§ 158.25(b)(14)	
§ 158.25(b)(14) .....		§ 158.25(b)(15)	
§ 158.25(b)(15) .....		§ 158.25(b)(16)	
§ 158.25(b)(16) .....		§ 158.25(b)(17)	
§ 158.25(b)(17) .....		§ 158.25(b)(18)	
§ 158.30(a) .....	PFC Authorization at Non-Hub Airports .....	§ 158.30(a)	Notices of intent.
§ 158.30(b) .....		§ 158.30(b)	
§ 158.30(c) .....		§ 158.30(c)	
§ 158.30(d) .....	FAA review of notices of intent. ....	§ 158.31(b)	FAA review of notices of intent.
§ 158.30(e) .....	FAA acknowledgment of notices of intent .....	§ 158.32(a)	FAA acknowledgment of notices of intent.
§ 158.30(f) .....		§ 158.32(b)	
§ 158.30(g) .....		§ 158.32(c)	
§ 158.31 .....	Duration of authority to impose a PFC after project implementation.	§ 158.33	Duration of authority to impose a PFC after project implementation.
§ 158.33 .....	Duration of authority to impose a PFC before project implementation.	§ 158.34	Duration of authority to impose a PFC before project implementation.
§ 158.67 .....	Recordkeeping and auditing: Public agency .....	§ 158.67	Accounting and auditing: Public agency.
§ 158.69 .....	Recordkeeping and auditing: Collecting carriers .....	§ 158.69	Accounting and auditing: Collecting carriers.
§ 158.71 .....	Federal oversight .....	§ 158.83	Federal oversight.
§ 158.83 .....	Informal resolution. ....	§ 158.85	Informal resolution.
§ 158.85 .....	Termination of authority to impose PFCs .....	§ 158.87	Termination of authority to impose PFCs.
§ 158.87 .....	Loss of Federal airport grant funds .....	§ 158.89	Loss of Federal airport grant funds.

**VI. Regulatory Notices and Analyses**

Federal agencies consider impacts of regulatory actions under a variety of Executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. 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 that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$177,000,000, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this rulemaking.

In conducting these analyses, the FAA has determined that this rulemaking: will result in benefits that justify costs; is not an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

*A. Regulatory Evaluation*

1. Need for the Regulation

The proposed rule would amend the PFC regulations to: first, codify changes that have been self-implemented through the 2018 Reauthorization Act; second, improve PFC program oversight and administration based on the OIG report’s recommendations primarily concerning reporting, recordkeeping and audit processes; and third, replace obsolete references, correct grammar or reword language for clarity, and re-organize and re-number sections of part 158.

2. Baseline for the Analysis

Five major sources of airport capital development funding are (1) the AIP; (2) PFCs imposed pursuant to Federal law; (3) tax-exempt bonds; (4) state and local grants; and (5) airport operating revenue from tenant lease and other revenue-

generating activities such as landing fees.

The AIP has been providing Federal grants for airport development and planning since the passage of the Airport and Airway Improvement Act of 1982 (Pub. L. 97–248). AIP funding is usually spent on projects that support aircraft operations such as runways, taxiways, aprons, noise abatement, land purchase, and safety or emergency equipment. The funds obligated for AIP are drawn from the airport and airway trust fund, which is supported by a variety of user fees and fuel taxes.

Airports use different combinations of these sources depending on the individual airport’s financial situation and the type of project being considered. Smaller airports’ individual grants are of much smaller dollar amounts than the grants going to large and medium hub airports. Therefore, the smaller airports are much more dependent on AIP to meet their capital needs. Larger airports are much more likely to issue tax-exempt bonds or finance capital projects with the proceeds of PFCs.

The PFC program was established in 1990 and modified in 2005 to institute a pilot program for non-hub airports to streamline the application process in order for them to access the PFC revenues more efficiently and rapidly. The streamlined application process ensures the non-hub airports’ PFC

applications be treated as a notice of intent with the FAA review and acknowledgment within 30 days instead of 120 days.

PFC Update 73–20 published in January 2020 gave notice that the FAA would review and acknowledge all allowed PFC applications received from small-, medium-, or large-hub airports within 30 days using streamlined procedures. This rulemaking proposes to codify this significant policy change into the FAA's part 158 regulations.

According to the National Plan of Integrated Airport Systems (NPIAS), which details the amounts and types of airport development eligible for Federal funding under the AIP over the next five years, there are nearly 3,300 public-use airports within the national airport system. The 2023–2027 NPIAS<sup>18</sup> published on September 30, 2022, identified 238 non-hub, 80 small-hub, 35 medium-hub and 30 large-hub airports in addition to 2,904 other public-use airports.

This proposed rulemaking would affect 145 small-, medium-, and large-hub airports. As explained in the preceding paragraphs, proposed changes do not concern either the 2,904 other airports that do not use PFC revenues or the 238 non-hub airports that are currently benefiting from the streamlined application process over the last two decades.

### 3. Benefits

The FAA examined the proposed changes and identified one provision that would benefit approximately 145 small-, medium-, and large-hub airports. Specifically, these airports would continue to use the streamlined application process shortening the FAA's review and acknowledgment period to 30 days from 120 days beyond the expiration of the PFC Update 73–20. The FAA recognizes these gains in efficiency and faster service time to the affected airports. However, these benefits, which would continue to accrue to those airports, are not quantified or monetized.

### 4. Costs

The FAA has evaluated the cost impacts to the stakeholders involved in this proposed rulemaking, which includes the airports and the FAA. As discussed in the preceding preamble section, the FAA determined that the proposed changes would have no additional cost impacts to airports and the FAA.

<sup>18</sup> "Appendix A: List of NPIAS Airports" following this link: [www.faa.gov/airports/planning\\_capacity/npias/current](http://www.faa.gov/airports/planning_capacity/npias/current) Last accessed on November 16, 2022.

### 5. Regulatory Alternatives

This rulemaking proposes amendments to the PFC regulations to address statutorily mandated program changes, program oversight improvements, and minor administrative changes, such as removing or correcting obsolete references.

There are no legally supportable regulatory alternatives to implementing the statutory requirements for the proposed changes. The alternative to rulemaking would be to leave the existing system of orders, guidance, and policy documents in place. However, this is untenable long-term as decentralized program requirements hinder the FAA's ability to ensure compliance and transparency.

#### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980<sup>19</sup>, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996<sup>20</sup> and the Small Business Jobs Act of 2010<sup>21</sup>, requires Federal agencies to consider the effects of the regulatory action on small businesses and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The FAA identified 145 airports that are owned and operated by both small and non-small entities. In order to estimate the number of small entities, the FAA used the Table of Size Standards<sup>22</sup> issued by the Small Business Administration (SBA) for the North American Industry Classification System (NAICS) and found two NAICS codes that these airports would fall under: 488111 (Air Traffic Control) and 488119 (Other Airport Operations). SBA's size standards generally define small businesses based on the number of employees or annual receipts. For these two NAICS codes, the size standard is established as \$35 million (*i.e.*, entities with annual receipts under \$35 million are qualified as small businesses).

<sup>19</sup> Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612.

<sup>20</sup> Public Law 104–121, 110 Stat. 857, Mar. 29, 1996.

<sup>21</sup> Public Law 111–240, 124 Stat. 2504 Sept. 27, 2010.

<sup>22</sup> Small Business Administration (SBA). 2022. Table of Size Standards. Effective July 14, 2022. [www.sba.gov/document/support-table-size-standards](http://www.sba.gov/document/support-table-size-standards).

Using the U.S. Census data for 488111 and 488119 NAICS codes,<sup>23</sup> the FAA estimated that, with the exception of 13 airports reporting over \$35 million annual revenue, the remaining 132 airports are classified as small entities.

The FAA did not identify any economic impacts on small entities that would be affected by the proposed rule. Therefore, the FAA proposes to certify that the rule will not have a significant economic impact on a substantial number of small entities. The FAA welcomes comments on the basis for this certification.

#### C. International Trade Impact Assessment

The Trade Agreements Act of 1979,<sup>24</sup> as amended by the Uruguay Round Agreements Act,<sup>25</sup> prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the effect of this proposed rule and determined that its purpose is to ensure the safety of U.S. civil aviation. Therefore, this proposed rule is in compliance with the Trade Agreements Act.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995<sup>26</sup> 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 (in 1995 dollars) 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 \$177 million in lieu of \$100 million. This proposed rule does not contain such a

<sup>23</sup> [www.data.census.gov/cedsci/table?q=488119&g=0100000US&n=488111&tid=CBP2020.CB2000CBP](https://www.data.census.gov/cedsci/table?q=488119&g=0100000US&n=488111&tid=CBP2020.CB2000CBP) Last accessed November 3, 2022.

<sup>24</sup> Public Law 96–39

<sup>25</sup> Public Law 103–465

<sup>26</sup> Public Law 104–4.

mandate; therefore, the requirements of Title II of the Act do not apply.

#### *E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995<sup>27</sup> requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act<sup>28</sup>, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The FAA has determined that there would be no new information collection associated with this proposed rulemaking. The Office of Management and Budget (OMB) previously approved the FAA to collect such information under the provisions of the Paperwork Reduction Act of 1995<sup>29</sup> via OMB Control Number 2120–0557.

On November 22, 2021, OMB approved a revision of the FAA's previously approved information collection. That revision reflected changes in the estimated burden resulting from the 2018 Reauthorization Act and the FAA's implementation of PFC Update 73–20. While this rulemaking proposes to codify these changes into the regulations, there are no new information collection actions resulting directly from this rulemaking action.

#### *F. International Compatibility*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to 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 proposed regulations.

#### *G. Environmental Analysis*

FAA Order 1050.1F 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 5–6.6 and involves no extraordinary circumstances.

### **VIII. Executive Order Determinations**

#### *A. Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order (E.O.) 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal 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.

#### *B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,<sup>30</sup> and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,<sup>31</sup> the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this proposed rule.

#### *C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the Executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### *D. Executive Order 13609, International Cooperation*

Executive Order 13609, “Promoting International Regulatory Cooperation,” promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory

requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action would have no effect on international regulatory cooperation.

### **VIII. Additional Information**

#### *A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

**Confidential Business Information:** Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA),<sup>32</sup> CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives which is not

<sup>27</sup> 44 U.S.C. 3507(d).

<sup>28</sup> 5 CFR 1320.8(b)(2)(vi).

<sup>29</sup> 44 U.S.C. 3507(d).

<sup>30</sup> 65 FR 67249 (Nov. 6, 2000).

<sup>31</sup> FAA Order No. 1210.20 (Jan. 28, 2004), available at <http://www.faa.gov/documentLibrary/media/1210.pdf>.

<sup>32</sup> 5 U.S.C. 552.

specifically designated as CBI will be placed in the public docket for this rulemaking.

#### B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov);
2. Visiting the FAA's Regulations and Policies web page at [www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies);
3. Accessing the Government Printing Office's web page at [www.GovInfo.gov](http://www.GovInfo.gov).

Copies may also be obtained 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) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal.

#### List of Subjects in 14 CFR Part 158

Air carriers, Airports, Passenger facility charge, Public agencies, Reporting and recordkeeping requirements.

#### The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 158 as follows:

#### PART 158—PASSENGER FACILITY CHARGES (PFCs)

- 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. In part 158, remove the text “PFC’s” wherever it appears, and add in its place the text “PFCs”.

- 3. Amend § 158.3 by revising the definitions for “Approved project”, “Bond financing costs”, “Charge effective date”, “Charge expiration date”, “Debt service”, “Exclusive long-term lease or use agreement”, “FAA Airports office”, “Financial need”, “Implementation of an approved project”, and “Notice of intent (to impose or use PFC revenue)” to read as follows:

#### § 158.3 Definitions.

\* \* \* \* \*

*Approved project* means a project for which the FAA has approved using PFC revenue under this part. The FAA may

also approve specific projects contained in a single or multi-phased project or development described in an airport capital plan separately. This includes projects acknowledged by the FAA under § 158.32.

*Bond financing costs* means the costs of financing a bond (or other indebtedness, except debt service) and includes such costs as those associated with issuance, underwriting discount, original issue discount, capitalized interest, debt service reserve funds, initial credit enhancement costs, and initial trustee and paying agent fees.

*Charge effective date* means the first date on which carriers are required to start collecting a PFC.

*Charge expiration date* means the date on which carriers are required to stop collecting a PFC.

\* \* \* \* \*

*Debt service* means payments for items such as principal and interest, sinking funds, call premiums, periodic credit enhancement fees, trustee and paying agent fees, coverage, and remarketing fees.

*Exclusive long-term lease or use agreement* means an exclusive lease or use agreement between a public agency and an air carrier or foreign air carrier with a term of 5 years or more. This term also applies to exclusive leases of less than 5 years that have automatic renewal or carryover options, or to leases that have the effect of granting exclusive use rights.

*FAA Airports office* means a regional, district or field office of the Federal Aviation Administration that administers Federal airport-related matters.

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

\* \* \* \* \*

*Implementation of an approved project* means: (1) With respect to construction, issuance to a contractor of notice to proceed or the start of physical construction; (2) with respect to non-construction projects other than property acquisition, commencement of work by a contractor or public agency to carry out the statement of work; or (3) with respect to property acquisition projects, commencement of title search, surveying, or appraisal for a significant portion of the property to be acquired.

\* \* \* \* \*

*Notice of intent (to impose or use PFC revenue)* means a notice under § 158.30 from a public agency that the public agency intends to impose a PFC or use PFC revenue. Except for §§ 158.25 and

158.32, “notice of intent” can be used interchangeably with “application.”

\* \* \* \* \*

- 4. Revise the section heading to § 158.11 to read as follows:

#### § 158.11 Requests for air carrier, foreign air carrier, or isolated community exclusion.

\* \* \* \* \*

- 5. Amend § 158.13 by revising paragraphs (e) and (f) to read as follows:

#### § 158.13 Use of PFC revenue.

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

- 6. Amend § 158.15 by revising the section heading and adding paragraph (d) to read as follows:

#### § 158.15 Project eligibility.

\* \* \* \* \*

(d) A surface transportation or terminal project is eligible for PFC funding at a level above \$3 if the public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.

#### § 158.17 [Removed]

- 7. Remove § 158.17.

#### § 158.19 [Redesignated as § 158.17]

- 8. Redesignate § 158.19 as § 158.17.  
 ■ 9. Redesignate § 158.20 as § 158.19 and revise newly redesignated paragraphs (a) introductory text and (b) to read as follows:

#### § 158.19 Submission of required documents.

(a) Submittals and documents required by this part may be transmitted

to the appropriate recipient (the public agency, air carrier, the FAA, or any combination thereof) electronically or via email, courier, facsimile, or U.S. Postal Service.

\* \* \* \* \*

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

**§ 158.20 [Reserved]**

■ 10. Reserve § 158.20.

■ 11. Revise the heading to subpart B to read as follows:

**Subpart B—Applications and Notices of Intent**

\* \* \* \* \*

■ 12. Revise § 158.21 to read as follows:

**§ 158.21 General.**

This subpart specifies the application and notice of intent requirements under which a public agency may obtain authorization to impose a PFC and use PFC revenue on a project. This subpart specifies the consultation, notice and public comment, application, and notice of intent requirements under which a public agency may obtain approval or acknowledgment to impose a PFC and use PFC revenue on a project. This subpart also establishes the procedures for the Administrator’s review and approval of applications and amendments, procedures for FAA acknowledgment of notices of intent, and requirements for use of excess PFC revenue.

■ 13. Amend § 158.24 by revising paragraph (a)(2) to read as follows:

**§ 158.24 Notice and opportunity for public comment.**

(a) \* \* \*

(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 internet website, as applicable.

\* \* \* \* \*

■ 14. Amend § 158.25 by revising paragraphs (b)(7) through (18), (c)(1)(i), (c)(1)(ii) introductory text, (c)(1)(iii), (c)(2)(iii)(C), (c)(2)(iv) introductory text, and (c)(2)(v) to read as follows:

**§ 158.25 Applications**

\* \* \* \* \*

(b) \* \* \*

(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 § 158.15.

(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 § 158.17.

(8) Detailed cost information, in a form and manner acceptable to the Administrator.

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

(10) The proposed charge effective date.

(11) The estimated charge expiration date.

(12) 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.

(13) 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.

(14) 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.

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

(16) 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.

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

(18) Other information as required by the Administrator.

(c) \* \* \*

(1) \* \* \*

(i) The information required under paragraphs (b)(1) through (18) of this section;

(ii) An FAA Form 5500–1 and applicable attachments:

\* \* \* \* \*

(iii) The information required by §§ 158.25(b)(17) and 158.25(b)(18).

(2) \* \* \*

(iii) \* \* \*

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

(iv) An FAA Form 5500–1 and applicable attachments:

\* \* \* \* \*

(v) The information required by §§ 158.25(b)(17) and 158.25(b)(18).

■ 15. Amend § 158.29 by:

■ a. Revising paragraphs (a)(1)(ii), (iii) and (viii);

■ b. Adding paragraph (a)(1)(ix); and

■ c. Revising paragraphs (a)(2), (b)(1)(ii) and (iii), (b)(1)(iv)(2), and (d).

The revisions and addition read as follows:

**§ 158.29 The Administrator’s decision.**

(a) \* \* \*

(ii) The project will achieve the objectives and criteria set forth in § 158.15 except for those projects approved under § 158.13(e).

(iii) If a PFC level above §3 is being approved, the project meets the criteria set forth in § 158.15(d);

\* \* \* \* \*

(viii) If applicable, the public agency has submitted a competition plan in accordance with § 158.17.

(ix) The public agency has demonstrated compliance with the Reporting, Recordkeeping and Audit requirements of subpart D of this part in a form and manner acceptable to the Administrator.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the projects and alternative uses that may qualify for PFC financing under § 158.15, and (if a PFC level above \$3 is being approved) § 158.15(d), PFC level, total approved PFC revenue including the amounts approved at \$3 and less, \$4, \$4.50, or any combination thereof, duration of authority to impose and earliest permissible charge effective date.

(b) \* \* \*

(1) \* \* \*

(ii) The project will achieve the objectives and criteria set forth in § 158.15 except for those projects approved under § 158.13(e).

(iii) If a PFC level above \$3 is being approved, the project meets the criteria set forth in § 158.15(d); and

(iv) \* \* \*

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the approved projects, PFC level, total approved PFC revenue, total approved for collection, including the amounts approved at \$3 and less, \$4, or \$4.50, or any combination thereof and any limit on the duration of authority to impose a PFC as prescribed under § 158.34.

\* \* \* \* \*

(d) The FAA provides notice of PFC approvals and disapprovals on the FAA internet website.

■ 16. Amend § 158.30 by:

■ a. Revising the section heading;

■ b. Revising paragraphs (a), (b) introductory text, (b)(1) and (2), and (b)(3)(ii) and (iii);

■ c. Adding paragraph (b)(3)(iv);

■ d. Revising paragraphs (b)(7), (c) introductory text, (c)(1)(ii), and (c)(2)(i); and

■ e. Removing paragraphs (d) through (h).

The revisions and addition read as follows:

### § 158.30 Notices of intent.

(a) *General.* A public agency may notify the FAA of its intent to impose a PFC prior to or concurrently 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.* 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. Unless otherwise directed by the Administrator, the notice of intent must include:

(1) A completed FAA Form 5500–1, PFC Application (current version) without attachments except as required below;

(2) Project information including the project title, amount of PFC funds sought, PFC level sought, and the grant agreement number if an existing FAA awarded airport grant already covers this project.

(3) If the project is not funded by an existing FAA awarded airport grant, the notice of intent must include the information in paragraph (b)(2) of this section in addition to the following:

\* \* \* \* \*

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

(ii) A description of how the project meets the adequate justification requirement in § 158.15(c), and

(iv) Detailed cost information, in a form and manner acceptable to the Administrator.

\* \* \* \* \*

(7) Other information as required by the Administrator.

(c) *Notice of intent to use PFC revenue.* A public agency must file:

(1) \* \* \*

\* \* \* \* \*

(ii) All applicable requirements pertaining to the Airport Layout Plan (ALP) for the airport, airspace studies for the project, and the National Environmental Policy Act of 1969 (NEPA), have been satisfied for all projects not included in an existing Federal airport program grant.

(2) \* \* \*

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

\* \* \* \* \*

■ 17. Revise § 158.31 to read as follows:

### § 158.31 Review of notices of intent.

(a) The FAA will review the notice of intent to identify projects ineligible for notice of intent consideration. The FAA will notify the public agency in writing

within 30 days if the FAA determines that projects involving the following are ineligible for notice of intent procedures as a result of:

(1) Significant policy precedent.

(2) Significant legal issues.

(3) Significant controversy, as evidenced by significant opposition to the FAA's proposed action by the applicant or other airport authorities, airport users, Federal, State or local agencies, elected officials, or communities.

(4) Multimodal projects.

(5) Significant airport noise, access, or revenue diversion issues, including compliance with 49 U.S.C. 47521 and 49 U.S.C. 47111(e).

(6) Debt Service on otherwise ineligible projects.

(7) Blending of two or more PFC decisions to obtain a uniform collection level.

(8) Terminal building projects in excess of \$25 million, except stand-alone passenger boarding bridges.

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

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

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

(3) Each project proposed at a PFC level above \$3.00 meets the requirements of § 158.15(d);

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

(5) 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

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

(7) The public agency has complied with the Reporting, Recordkeeping and Audit requirements of subpart D of this part.

(c) 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.

■ 18. Add § 158.32 to read as follows:

### § 158.32 FAA acknowledgment of notices of intent.

(a) 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.

(b) If the FAA does not object to a project or the notice of intent in its entirety, the public agency may implement its PFC program. The public agency's implementation must be consistent with 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 PFCs proposed in that notice. When implementing a PFC under this section, a public agency must comply with all sections of part 158, except for § 158.25.

(c) 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).

■ 19. Revise § 158.33 to read as follows:

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

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

(a) The charge expiration date is reached;

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

(c) The authority to collect the PFC is terminated by the Administrator under subpart E of this part; or

(d) The public agency is determined by the Administrator to be in violation of 49 U.S.C. 47524 and 47526, and the authority to collect the PFC is terminated under that statute's implementing regulations under this title.

■ 20. Add § 158.34 to read as follows:

**§ 158.34 Duration of authority to impose a PFC before implementation.**

(a) A public agency shall not impose a PFC beyond the lesser of the following—

(1) 2 years after approval to use PFC revenue on an approved project if the project has not been implemented;

(2) 5 years after the charge effective date; or

(3) 5 years after the FAA's decision on the application (if the charge effective date is more than 60 days after the decision date) if an approved project is not implemented.

(b) If, in the Administrator's judgment, the public agency has not made sufficient progress toward implementation of an approved project within the times specified in paragraph (a) of this section, the Administrator begins termination proceedings under subpart E of this part.

(c) The authority to impose a PFC following approval shall automatically expire without further action by the Administrator on the following dates:

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

(i) The public agency has filed an application for approval to use PFC revenue for an eligible project that is pending before the FAA;

(ii) An application to use PFC revenue has been approved; or

(iii) A request for extension (not to exceed 2 years) to submit an application for project approval, under § 158.35, has been granted; or

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

(d) If the authority to impose a PFC expires under paragraph (c) of this section, the public agency must provide the FAA with a list of the air carriers and foreign air carriers operating at the airport and all other collecting carriers that have remitted PFC revenue to the public agency in the preceding 12 months. The FAA notifies each of the listed carriers to terminate PFC collection no later than 30 days after the date of notification by the FAA.

(e) Restriction on reauthorization to impose a PFC. Whenever the authority to impose a PFC has expired or been terminated under this section, the Administrator will not grant new approval to impose a PFC in advance of implementation of an approved project.

**§ 158.35 [Amended]**

■ 21. Amend § 158.35, in paragraph (d), by removing the citation “§ 158.33” and adding in its place the citation “§ 158.34”.

■ 22. Amend § 158.37 by revising paragraphs (b)(1) introductory text, (b)(1)(i), (b)(6) and (7), and (c) to read as follows:

**§ 158.37 Amendment of approved PFC.**

\* \* \* \* \*

(b) \* \* \*

(1) The public agency has demonstrated compliance with the Reporting, Recordkeeping and Audit

requirements of subpart D of this part in a form and manner acceptable to the Administrator.

(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:

\* \* \* \* \*

(6) A description of how each project meets the requirements of § 158.15(d), 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 § 158.15(d), if applicable, for any amendment proposing to increase the PFC level above \$3.00 at a medium or large hub airport; and

\* \* \* \* \*

(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 §§ 158.15(d) and 158.17, if applicable, before the public agency can implement the new PFC level.

\* \* \* \* \*

■ 23. Amend § 158.43 by revising paragraph (c) and adding paragraph (e) to read as follows:

**§ 158.43 Public agency notification to collect PFCs.**

\* \* \* \* \*

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

\* \* \* \* \*

(e) Each notified air carrier must notify its agents, including other issuing carriers, of such changes.

■ 24. Amend § 158.45 by revising paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) For each one-way trip shown on the complete itinerary of an air travel ticket, issuing air carriers and their agents shall collect a PFC from a passenger only for the first two airports where PFCs are imposed. For each round trip, a PFC shall be collected only for enplanements at the first two enplaning airports and the last two

enplaning airports on the return where PFCs are imposed.

\* \* \* \* \*

■ 25. Amend subpart D by revising the subpart heading to read as follows:

**Subpart D—Reporting, Accounting, and Audits**

■ 26. Amend § 158.63 by revising paragraph (a)(2) to read as follows:

**§ 158.63 Reporting requirements: Public agency.**

(a) \* \* \*

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

\* \* \* \* \*

■ 27. Amend § 158.67 by:

- a. Revising the section heading;
- b. Revising paragraphs (c)(1) through (3); and
- c. Adding paragraphs (c)(4) through (6) and (d) through (g).

The revisions and additions read as follows:

**§ 158.67 Accounting and auditing: Public agency.**

\* \* \* \* \*

(c) Each public agency shall provide for an audit of its PFC account for the period the PFC is collected, held or used, as follows:

(1) The public agency must conduct an audit of its PFC account annually;

(2) The annual audit must be performed by an accredited independent public accountant and may be of limited scope;

(3) The accountant shall express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding, and using PFC revenue;

(4) The accountant shall also express an opinion on whether the quarterly report required under § 158.63 fairly represents the net transactions within the PFC account;

(5) The public agency must provide a schedule of revenue and expenditures of the PFC account including: balance in the account on the first day of the fiscal year, PFC Collections for each Quarter, PFC Interest Earned for each Quarter, disbursements on projects by application for each quarter, closing balance; and

(6) The audit must be performed on actual basis, unless the audit is accompanied by reconciliation documentation in a manner and form acceptable to the Administrator.

(d) The audit may be—

(1) Performed specifically for the PFC account; or

(2) Conducted as part of an audit under the Single Audit Act, 31 U.S.C. 75, provided the auditor specifically addresses the PFC.

(e) Upon request, a copy of the audit shall be provided to each collecting carrier that remitted PFC revenue to the public agency in the period covered by the audit.

(f) A copy of the audit shall be provided to the Administrator within 30 calendar days after receipt of the audit or 9 months after the end of the audit period, whichever is less.

(g) Each public agency that combines PFC revenue and Federal grant funds to carry out an approved project is subject to the recordkeeping and auditing requirements of this part, as well as the reporting, recordkeeping, and auditing requirements imposed by 49 U.S.C. 47107 Airport and Airway Improvement Act of 1982 (AAIA).

■ 28. Revise the section heading to § 158.69 to read as follows:

**§ 158.69 Accounting and auditing: Collecting carriers.**

\* \* \* \* \*

**§ 158.71 [Removed and Reserved]**

■ 29. Remove and reserve § 158.71.

■ 30. Revise the subpart heading to subpart E to read as follows:

**Subpart E—Federal Oversight of Compliance, Informal Resolution, and Termination**

■ 31. Revise § 158.81 to read as follows:

**§ 158.81 General.**

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

■ 32. Revise § 158.83 to read as follows:

**§ 158.83 Federal oversight of compliance.**

(a) The Administrator may periodically audit, review, or both audit and review, the receipt and use of PFC revenue by a public agency. The purpose of the audit or review is to ensure that the public agency is in compliance with the requirements of this part and 49 U.S.C. 40117. The Administrator may take further action including, but not limited to, informal resolution, termination, or other action, as appropriate.

(b) The Administrator may periodically audit, review, or both audit

and review the collection and remittance by the collecting carriers of PFC revenue. The purpose of the audit or review is to ensure collecting carriers are in compliance with the requirements of this part and 49 U.S.C. 40117. The Administrator may take further, as appropriate.

(c) Public agencies and carriers shall allow any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller General of the U.S., access to any of its books, documents, papers, and records pertinent to PFCs.

■ 33. Revise § 158.85 to read as follows:

**§ 158.85 Informal resolution.**

The Administrator may undertake informal resolution with the public agency or any other affected party if the Administrator cannot determine that PFC revenue is being collected, used, or both collected and used on an approved application for the approved projects in accordance with the terms of the Administrator's approval to impose a PFC for those projects or in compliance with the requirements of this part and with 49 U.S.C. 40117.

■ 34. Revise § 158.87 to read as follows:

**§ 158.87 Termination of authority to impose PFCs.**

(a) The FAA begins proceedings to terminate the public agency's authority to impose a PFC only if the Administrator determines that informal resolution is not successful.

(b) The Administrator publishes a notice of proposed termination in the **Federal Register** and supplies a copy to the public agency. This notice will state the scope of the proposed termination, the basis for the proposed action and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective actions the public agency can take to avoid further proceedings. The due date for comments and corrective action shall be no less than 60 days after publication of the notice.

(c) If corrective action has not been taken as prescribed by the Administrator, the FAA holds a public hearing, and notice is given to the public agency and published in the **Federal Register** at least 30 days prior to the hearing. The hearing will be in a form determined by the Administrator to be appropriate to the circumstances and to the matters in dispute.

(d) The Administrator publishes the final decision in the **Federal Register**. Where appropriate, the Administrator may prescribe corrective action, including any corrective action the public agency may yet take. A copy of

the notice is also provided to the public agency.

(e) Within 10 days of the date of publication of the notice of the Administrator's decision, the public agency shall—

(1) Advise the FAA in writing that it will complete any corrective action prescribed in the decision within 30 days; or

(2) Provide the FAA with a listing of the air carriers and foreign air carriers operating at the airport and all other issuing carriers that have remitted PFC revenue to the public agency in the preceding 12 months.

(f) When the Administrator's decision does not provide for corrective action or the public agency fails to complete such action, the FAA provides a copy of the **Federal Register** notice to each air carrier and foreign air carrier identified in paragraph (e) of this section. Such carriers are responsible for terminating or modifying PFC collection no later than 30 days after the date of notification by the FAA.

■ 35. Add § 158.89 to read as follows:

**§ 158.89 Loss of Federal airport grant funds.**

(a) If the Administrator determines that revenue derived from a PFC is excessive or is not being used as approved, the Administrator may reduce the amount of funds otherwise payable to the public agency under 49 U.S.C. 47114. Such a reduction may be made as a corrective action under § 158.85 or § 158.87.

(b) The amount of the reduction under paragraph (a) of this section shall equal the excess collected, or the amount not used in accordance with this part.

(c) A reduction under paragraph (a) of this section shall not constitute a withholding of approval of a grant application or the payment of funds under an approved grant within the meaning of 49 U.S.C. 47111(d).

■ 36. Amend § 158.95 by revising paragraph (c) to read as follows:

**§ 158.95 Implementation of reduction.**

(c) If the projection of PFC revenue in a fiscal year is inaccurate, the reduction in apportioned funds may be increased or decreased in the following fiscal year, except that any further reduction shall not cause the total reduction to exceed either 50 percent or 75 percent of such apportioned amount as would otherwise be apportioned in any fiscal year.

■ 37. Amend appendix A to part 158 by revising paragraphs (A)(2) and (3), and (B)(5) to read as follows:

**Appendix A to Part 158 Assurances**

A. \* \* \*

2. These assurances are required to be submitted as part of the application for approval or acknowledgment of authority to impose a PFC under the provisions of 49 U.S.C. 40117.

3. Upon approval of an application or acknowledgment of a notice of intent by the Administrator, the public agency is responsible for compliance with these assurances.

B. \* \* \*

5. Non-exclusivity of contractual agreements. It will not enter into an exclusive long-term lease or use agreement with an air carrier or foreign air carrier for projects funded by PFC revenue. Such leases or use agreements will not preclude the public agency from funding, developing, or assigning new capacity at the airport with PFC revenue.

\* \* \* \* \*

Issued under authority provided by 49 U.S.C. 106(f) and 40117 in Washington, DC.

**Shannetta R. Griffin,**

*Associate Administrator for Airports.*

[FR Doc. 2023-20559 Filed 9-26-23; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[EPA-HQ-OAR-2023-0330; FRL-4908.1-01-OAR]**

**RIN 2060-AV20**

**Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to add requirements for sources to reclassify from major source status to area source status under the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. The requirements of this proposal would apply to all sources that choose to reclassify, including any sources which have reclassified since January 25, 2018. The EPA is proposing that sources reclassifying from major source status to area source status under the NESHAP program must satisfy the following criteria: any permit limitations taken to reclassify from a major source of hazardous air pollutants (HAP) under the Clean Air Act to an area source of HAP must be federally enforceable, any such permit limitations must contain safeguards to prevent emission increases

after reclassification beyond the applicable major source NESHAP requirements at time of reclassification, and reclassification will only become effective once a permit has been issued containing enforceable conditions reflecting the requirements proposed in this action and electronic notification has been submitted to the EPA. Additionally, we are proposing clarifications to reporting requirements and updating language regarding submittal of confidential business information.

**DATES:**

*Comments.* Comments must be received on or before November 13, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before October 27, 2023.

*Public hearing:* If anyone contacts us requesting a public hearing on or before October 2, 2023, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OAR-2023-0330, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- *Email:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2023-0330 in the subject line of the message.
- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2023-0330.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2023-0330, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.-4:30 p.m., Monday-Friday (except federal holidays).

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information