



Federal Aviation Administration

Memorandum

Date: October 7, 2008

To: All Regional Airports Division Managers and AMA-620
Attention: PFC Contacts

From: Manager, Financial Analysis and Passenger Facility Charge Branch, APP-510

Prepared by: Jane Johnson, Management and Program Analyst, APP-510

Subject: PFC Update, PFC 56-09

PFC 09-56.1. Streamlined PFC Application Procedures for Non-Hub Airports.

The Federal Aviation Extension Act of 2008, Part II (Pub. L. 110-330, September 30, 2008) “extends” the non-hub pilot program until March 31, 2009. However, since the program introduced under Vision 100 and subsequently implemented in the PFC regulation as 14 CFR §158.30 had a sunset provision which was reached on May 9, 2008, there are no longer regulations in place to guide public agencies and the FAA regarding these streamlined procedures. The FAA is publishing a notice in the Federal Register, informing public agencies of the continued availability of streamlined procedures and advising interested public agencies to contact their local FAA Airports field office for details on these procedures. This update letter is intended to provide further guidance and set forth the procedures for processing any public agency requests. Note that, in accordance with the statute, these procedures will expire on March 31, 2009.

Public Agency Procedures

General.

The information below specifies the streamlined procedures a public agency controlling a non-hub airport must follow when notifying the FAA of its intent to impose a PFC and to use PFC revenue on a project. A public agency may notify the FAA of its intent to impose a PFC before or concurrent with a notice of intent to use PFC revenue. A public agency must file a “notice of intent” in the manner and form prescribed by the FAA and must include the information required under paragraphs (a), (b), or both, below.

Definitions.

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

Notice of intent (to impose or use PFC revenue) means a notice from a public agency controlling a non-hub airport that it intends to impose a PFC and/or use PFC revenue.

Procedures.

(a) *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 and, unless authorized by the FAA, the notice must include:

(1) A completed FAA Form 5500-1, PFC Application (latest edition) [available at the ARP PFC web page] without attachments except as required below;

(2) A completed Attachment H, Project Information (latest edition) [available at the ARP PFC web page], including the project title, PFC funds sought, PFC level sought, and, if an existing Airport Improvement Program (AIP) grant already covers this project, the grant agreement number.

(3) If an existing AIP grant does not cover this project, the Attachment H must include the project title, PFC funds sought, PFC level sought, the proposed schedule for the project, a description of how this project meets one of the PFC objectives in 14 CFR §158.15(a), and a description of how this project meets the adequate justification requirement in 14 CFR §158.15(c).

(4) A copy of any comments received by the public agency during the air carrier consultation and public comment processes (14 CFR §158.23 and §158.24) and the public agency's response to any disagreements (this response can be included on the Attachment H or, if more space is needed, submitted on a separate page attached to the Attachment H).

(5) If applicable, a request to exclude a class of carriers from the requirement to collect the PFC (14 CFR §158.11).

(6) A signed statement certifying that the public agency will comply with the assurances set forth in Appendix A to 14 CFR Part 158.

(7) Any additional information the FAA may require.

(b) *Notice of intent to use PFC revenue.* A public agency may use PFC revenue only for projects included in notices filed under these procedures or approved under 14 CFR §158.29. This paragraph sets forth the information that a public agency must file, unless otherwise authorized by the FAA, in its notice of intent to use PFC revenue to finance specific projects under this section.

(1) A notice of intent to use PFC revenue filed concurrently with a notice of intent to impose a PFC must include the information required under paragraphs (a)(1) through (7) above. This includes the completion of those portions of the Attachment H related to the airport layout plan, airspace, and environmental findings for each project not included in an existing Federal AIP grant.

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

(i) Be preceded by further consultation with air carriers and the opportunity for public comment under 14 CFR §158.23 and §158.24. However, a meeting with the air carriers is optional if all information is the same as that provided with the impose authority notice;

(ii) Include a copy of any comments received by the public agency during the air carrier consultation and public comment processes (14 CFR §158.23 and §158.24) and the public agency's response to any disagreements or negative comments (this response can be included on the Attachment H or, if more space is needed, submitted on a separate page attached to the Attachment H); and

(iii) Include any updated and changed information:

(A) Required by paragraphs (a)(1), (2), (3), (5), and (7) above; and

(B) Required by paragraph (b)(1) above.

(c) *FAA's acknowledgement of notice of intent.* The FAA will issue a letter acknowledging or objecting to the public agency's notice of intent within 30 days of receipt of any such notice.

(1) If the FAA objects to the public agency's notice in total, the public agency may not impose a PFC and/or use PFC revenue as requested in the notice.

(2) If the FAA objects to one or more specific projects included in the notice, the public agency may not impose a PFC and/or use PFC revenue for that project.

(3) The FAA's letter will include its reasons for any objections.

(d) *Applicability of 14 CFR Part 158.* A public agency authorized to impose a PFC and/or use PFC revenue under these procedures must comply with all applicable requirements in 14 CFR Part 158, with the exception of any requirements in §§158.25 through 158.29.

(e) *Acknowledgment not an order.* An FAA acknowledgment issued under these procedures is not considered an order issued by the Secretary for purposes of 49 U.S.C. 46110 (Judicial Review).

(f) *Sunset provision.* In accordance with the Federal Aviation Extension Act of 2008, Part II (Pub. L. 110-330, September 30, 2008), these procedures are in effect until March 31, 2009. Any notice using the above procedures which is received by the local FAA Airports office on, or before, March 31, 2009, will be processed using the procedures below.

(g) *Types of projects not eligible for inclusion in a notice of intent.* Public agencies may not use the streamlined non-hub PFC application process to request authority to impose a PFC and/or use PFC revenue on the following: intermodal (complex ground access) projects; projects requesting authority to impose and/or use PFC revenue to pay debt service for otherwise ineligible projects; projects included in a request for termination protection; and projects included in a notice where the public agency is requesting to blend two or more decisions in order to achieve a uniform PFC level.

FAA Procedures

(a) *FAA review of notices of intent.*

- (1) The FAA will review the notice of intent to determine that:
 - (A) The amount and duration of the PFC will not result in revenue that exceeds the amount necessary to finance the project(s);
 - (B) Each proposed project meets the requirements of 14 CFR §158.15;
 - (C) Each project proposed at a PFC level above \$3 meets the requirements of 14 CFR §158.17(a)(2) and (3);
 - (D) All applicable airport layout plan, airspace, and environmental requirements have been met for each project;
 - (E) Any request by the public agency to exclude a class of carriers from the requirement to collect the PFC is reasonable, not arbitrary, nondiscriminatory, and otherwise complies with the law; and
 - (F) The consultation and public comment processes complied with 14 CFR §158.23 and §158.24.
 - (G) The public agency is in 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.
 - (H) The airside needs test determination should be made after a review of any available planning documents, airport inspection and certification reports, and the ACIP.
- (2) Where applicable, the FAA will mark up the Attachment H to indicate its findings.
- (3) Unlike the PFC application process, the FAA is not required to determine that a notice of intent submitted under the non-hub pilot program is or is not substantially complete. Therefore, if a notice is fatally flawed the only options are
 - (A) The public agency can withdraw the notice at any point prior to the FAA's issuance of an acknowledgement letter; or
 - (B) The FAA's acknowledgement letter will object to the notice in its entirety.
- (4) Because of the short processing time, the FAA cannot request additional public comment through a Federal Register notice for a non-hub pilot program notice of intent.
- (5) Finally, the FAA will review all comments filed during the air carrier consultation and public comment processes and format responses to any disagreements.

(b) *FAA acknowledgment of notices of intent.* Within 30 days of receipt of the public agency's notice of intent about its PFC program, the FAA will issue a written acknowledgment of the public agency's notice.

- (1) 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.
- (2) The FAA's acknowledgment will include the reason(s) for any objection(s).
- (3) The review and issuance of acknowledgement letters for all notices of intent filed under the non-hub program are delegated to the regions and may be delegated further at the regional division manager's discretion.
- (4) Attached to this update letter is a template acknowledgement letter. It has been color-coded to indicate any sections that can and should be tailored to meet the needs of the

particular action. The color scheme for the template non-hub pilot program acknowledgement letter is as follows:

- Black - template language that should not be modified without express permission of APP-510.
- Magenta - mandatory replacements (note: for items such as the impose airport's three-letter location ID, you may want to start off by doing a global replacement of "XYZ" with the appropriate designator. Also, although the shortened name for the public agency is indicated as a mandatory replacement, the public agency's full name should only be shortened to full words such as "Airport Authority" or "Port Authority" or commonly accepted abbreviations such as "ILDOT" (Illinois Department of Transportation) or "MSCAA" (Memphis-Shelby County Airport Authority). NEVER SHORTEN A PUBLIC AGENCY NAME TO THE THREE-LETTER DESIGNATOR OF THE AIRPORT.)
- Dark green - pluralization of mandatory or template language.
- Blue - optional phrases
- Red - replacement language within optional phrases
- Dark yellow - pluralization within optional phrases

(5) An electronic copy of each acknowledgement letter must be uploaded in SOAR and also sent to ATA immediately after the letter has been signed.

(6) If the public agency's notice proposes changes to previously approved projects, those changes must first be addressed by the FAA in a separate amendment decision letter. This is because Part 158 requires the FAA to "approve" or "disapprove" any amendment action whereas the FAA "acknowledges" or "objects to" a non-hub notice of intent.

If you have any questions on any of the above information, please contact Sheryl Scarborough, (202) 267-8825 or Jane Johnson, (202) 267-5878.

Joe Hebert

Attachment