

those carriers that have a significant business interest at the airport. (The public agency may continue to offer the opportunity for consultation to carriers who do not qualify as a significant business interest at the airport but this is no longer necessary to meet the minimum needed to satisfy the statute and regulation.)

Significant business interest is defined as an air carrier or foreign air carrier that:

- (1) had no less than 1.0 percent of passenger boardings at that airport in the prior calendar year;
- (2) had at least 25,000 passenger boardings at that airport in the prior calendar year; or
- (3) provides scheduled service at that airport.

Note that the definition requires that an air carrier meet only one of the conditions to be considered a significant business interest at the airport.

Public agency procedures. Prior to submitting (1) a PFC application, (2) a notice of intent under the non-hub program, or (3) an amendment request to change the scope of a project or projects, increase the PFC level to be collected, or increase the PFC amount for a project by more than 25 percent, the public agency must review its annual enplanements report to determine which carriers qualify as significant business interests at the airport. The public agency must then follow the normal consultation requirements of notice or notice and meeting. However, the public agency will need to contact only those carriers identified as significant business interests.

FAA procedures: The FAA field office must review the public agency's determination of significant business interest to confirm that the public agency's determination was correct and that all significant business interest carriers were provided with a consultation notice. The appropriate section of the "Checklist for Review of PFC Application" was modified to incorporate the new rules on significant business interest and is attached to this update letter (Attachment 1). A similar checklist has been prepared for review of non-hub notices of intent and is also attached to this update letter (Attachment 3).

PFC 05-49.2. Notice and opportunity for public comment (§158.24). The Final Rule adds a new requirement that public agencies must provide a notice and opportunity for public comment before submitting (1) a PFC application, (2) a notice of intent under the non-hub program, or (3) an amendment request to change the scope of a project or projects, increase the PFC level to be collected, or increase the PFC amount for a project by more than 25 percent. The public notice and comment period may be run concurrently with the air carrier consultation period.

Public agency procedures. The Final Rule lists the eight required types of information that the notice must contain. The information is very similar to the types of information required for either the air carrier consultation notice or the carrier consultation meeting.

The public agency has several options for publishing the notice – (1) local newspaper, (2) other local media, (3) posting on the public agency’s web site, or (4) any other method acceptable to the Administrator. If the public agency wants to use option 4, it should get prior approval of the method from the RO/ADO to ensure that the method to be used is acceptable and will meet the public comment requirements.

The FAA received several comments on this section of the NPRM. Many commenters were concerned that the public comment requirement would provide an opening for airport opponents to derail or slow down projects. Other commenters argued that most projects were already subject to public comment processes through other forums such as environmental reviews or master planning activities. Some of these commenters argued that the public comment process was duplicative. The FAA partially addressed some of these issues in the preamble to the NPRM and fully addressed the issues in the preamble to the Final Rule. First, the public notice and comment requirement is statutory and thus cannot be deleted or waived. Second, the FAA has no objection to a public agency combining the PFC notice and comment period with other, similar public notice and comment periods such as are found with environmental and master plan reviews. However, the information and distribution requirements for the PFC notice must be met in order for the combined notice to be valid.

In addition, timing of the notice and comment period may be a problem. Paragraph 2-11 of FAA Order 5500.1, Passenger Facility Charge, states that air carrier consultations are normally valid for 6 months and we have adopted that same 6-month requirement for the PFC public notice and comment period. Thus, if the public agency sought a concurrent notice and comment period, the environmental or planning notice and comment period could take place no more than 6 months prior to the public agency’s submission of its PFC application, notice of intent, or amendment.

The public agency is required to submit evidence of compliance with the public notice and comment requirement in its PFC application, notice of intent or amendment request. The evidence of compliance includes information on the method used to publish the notice, a summary of any project disagreements submitted by the public, and the public agency’s reasons for proceeding in the face of those disagreements. Eventually, the Attachment B will be modified to include the summary of disagreements and public agency’s reasons for proceeding in the face of those disagreements requirement. However, that modification will be submitted to OMB for approval, so it won’t be available immediately for PFC applications and amendments. In addition, as will be discussed below, the forms for project information, including information on public notice and comment, for the non-hub notices of intent will not be available for some time. Until the new forms are released, public agencies should include the information on the method of public comment on plain bond paper in the air carrier consultation attachment. The summary of disagreements and reasons for proceeding should be discussed on plain bond paper and attached to the

appropriate attachment B's (i.e. public agencies only have to summarize disagreements so projects where there was no disagreement will not require this information) or notice of intent project information sheets.

FAA procedures: The public agency may contact their local FAA office prior to the public notice and comment period to discuss the method they wish to use to publish their public notice. "Other methods" will be decided on a case-by-case basis and the ADO must coordinate with the regional PFC contact and APP-510 before issuing its decision. When reviewing a proposed method of publication, the primary question should be, "Will the proposed method of publication be accessible to the vast majority of the local community?"

The appropriate section of the "Checklist for Review of PFC Application" was modified to include a subsection on the public notice and comment period and is attached to this update letter (Attachment 1). A similar checklist has been prepared for review of non-hub notices of intent and is also attached to this update letter (Attachment 3).

PFC 05-49.3. Amendment of the FAA's decision with respect to an approved PFC (§158.37). Not just the title has been changed. The entire section was revised to clarify and streamline the process. Public agencies may amend their PFC decision to increase or decrease the PFC level, increase or decrease the total approved PFC revenue, change the scope of an approved project, delete an approved project, or establish, amend, or delete an excluded class of carriers. Public agencies may not amend their PFC decision to add projects, change an approved project to a different facility type, or change an approved project to accomplish a different purpose.

Public agency procedures. There are three actions that require additional carrier consultation and public notice and comment: (1) increasing the PFC amount for A PROJECT by more than 25 percent of the original approved amount of the project; (2) changing the scope of a project; and (3) increasing the PFC level to be collected from the passenger. The carrier consultation requirement has been clarified to require a meeting, not just written notice. If consultation and public comment is required, the public agency must include a copy of any comments received and must provide its reasons for proceeding in the face of any disagreement.

All amendments must include a description of the proposed changes. For all proposed changes that are subject to the additional consultation requirement, the public agency must also provide a brief justification for those proposed changes. In addition, if the public agency is proposing an increase to a \$4.00 or \$4.50 PFC level at a large or medium hub airport, the public agency must describe how each affected project meets the significant contribution requirement. The amendment must be submitted using FAA Form 5500-1 plus any additional documentation. The FAA Form 5500-1 is necessary because it contains the certifications the public agency is required to submit.

If the amendment proposes to change the PFC level being collected, the earliest charge effective date for the change of level will be the first day of the month at least 30 days after the FAA approves the amendment.

FAA procedures. The two most important changes to the FAA's processing of amendments are (1) the FAA will approve, partially approve, or disapprove all amendment requests and (2) the FAA will issue its decision on the amendment request within 30 days of receipt of that request.

In order to issue its decision, the FAA must review any required air carrier consultation and public notice and comment to ensure that those actions were done properly. If either process is flawed, the amendment actions for projects subject to consultation and public comment cannot be approved. Beyond the consultation/public comment, the ADO and RO should review and issue its decision on the amendment request using the procedures already in place with the following exception - the FAA will no longer publish *Federal Register* notices for amendments regardless of the level of controversy surrounding the amendment.

All amendment letters must follow one of the formats in Exhibit 24 of the PFC Forms site on the intranet. All amendment letters approving an increase of the PFC level to \$4.00 or \$4.50 at a large or medium hub airport must be reviewed by APP-510 prior to issuance to ensure that significant contribution decisions are consistent on a nationwide basis.

CHANGES TO THE CURRENT PFC APPLICATION PROCESS

The Final Rule makes changes to §§158.25, 158.27, and 158.29. Some of these changes are made to comply with provisions of Vision 100. A few additional changes were made, mainly to the use application procedures to streamline those procedures. Most of the changes are very minor and will be transparent to anyone familiar with the PFC program.

PFC 05-49.4. Applications (§158.25). The first change is not a change in policy or a new requirement – it merely brings the regulation in line with longstanding FAA policy. Paragraph (a) was revised to require public agencies filing PFC applications to use the latest edition of FAA Form 5500-1 and all applicable attachments.

Paragraph (b)(11) was revised to comply with the change in air carrier consultation discussed above and with the new requirement for public notice and comment. A subparagraph was added to require public agencies to submit copies of all comments received during consultation and public comment.

Paragraph (c)(2), which deals with stand-alone use applications or projects requesting use authority after having been approved for impose authority in a

previous application, has been revised to decrease the amount of information a public agency is required to submit if there has been no change to the proposed projects since they were approved for impose authority.

Public agency procedures. As mentioned above, all PFC applications must be submitted using FAA Form 5500-1 and all applicable attachments. The public agency procedures for air carrier consultation and public notice and comment are discussed in the respective sections above.

Public agencies submitting a stand-alone use application or requesting use authority for a project previously approved for impose authority continue to be required to submit Attachment B's for projects where there are changes to the financing, scope, and/or justification since the project was approved for impose authority. The Attachment B must clearly describe the changes since impose approval. However, if there has been no change to a project since it was approved for impose authority, the public agency may submit a list of those projects rather than the Attachment B's. The FAA will consider the new information on those projects filed with the impose application, incorporated by reference.

FAA procedures. None.

PFC 05-49.5. Review of applications (§158.27). There are two changes to FAA procedures regarding review of applications, the first deals with use applications, and the second, and more complex change eliminates mandatory *Federal Register* notices.

Public agency procedures. None.

FAA procedures. The ADO or RO should send a copy of the application to APP-510 immediately after receipt. Alternatively, the ADO or RO could instruct the public agency to send a copy of the application to APP-510 directly. In either case, the application should be sent to APP-510 via overnight mail or other courier service. (Regular US Mail sent to Washington Headquarters continues to be subject to decontamination procedures that significantly delay, and often irreparably damage, the package.)

FAA procedures for determining substantial completeness for impose only and impose and use applications (with the exception of any use-only authority projects in an impose and use application) remain unchanged. FAA procedures for determining substantial completeness for stand-alone use applications or for projects requesting use authority after having been approved for impose authority will differ depending on whether the project has been changed since approved for impose authority. For projects that have been changed, the current procedures remain unchanged.

For projects that have not been changed since impose approval, the substantially complete determination is based on a review of the Attachment G. The FAA findings made on impose only Attachment B are incorporated by reference into the use file. A project should be determined substantially complete if the airport layout plan, airspace, and environmental requirements are met. A project must be determined not substantially complete if any of the airport layout plan, airspace, or environmental requirements are not met.

As stated in the preambles to both the NPRM and the Final Rule, the FAA will decide on the need for a *Federal Register* notice on a case-by-case basis. We expect to publish *Federal Register* notices only for those applications that have significant unresolved issues, have generated substantial public controversy, and/or contain projects of a national interest. Therefore, concurrently with the substantially complete review or after the review has been completed but before the completeness letter has been sent to the public agency, the ADO and/or RO must consult with APP-510 to determine if a *Federal Register* notice must be published for each application. It is recommended that this consultation be accomplished via email to have more complete documentation of the decision for the PFC file.

In addition to determining whether a *Federal Register* notice should be published or not, this consultation between the ADO/RO and APP-510 will be used to determine the signature level for the PFC Final Agency Decision. Decisions for all applications for which a *Federal Register* notice is published will be issued by ARP-1. The signature level for the majority of decisions issued is delegated to the appropriate regional office. However, it is possible that an application may address an issue that, while it does not generate public controversy necessitating a *Federal Register* notice, is a significant national issue, requiring the decision be issued by ARP-1.

If the determination is that a *Federal Register* notice must be issued, the ADO/RO should prepare the notice and transmit it for publication using the current templates and procedures. The "For Information Contact" and address to submit comments continues to be the appropriate person in the ADO or RO. (As was mentioned above, Washington Headquarters continues to have difficulty receiving regular mail. Thus, to insure that all comments are received in a timely manner, we are retaining the requirement that the comments be submitted to the local FAA office.)

Once the *Federal Register* comment period has closed, and for those other applications where the decision is to be issued by ARP-1, the ADO/RO should prepare the Regional recommendation package using the same forms and procedures currently in use, and send the package to APP-510.

If a *Federal Register* notice is not issued for the application, and the decision has been delegated to the region, use the same procedures as are currently in place for review of the application.

PFC 05-49.6. The Administrator’s Decision (§158.29). The Final Rule makes one change to this section, adding the requirement that a public agency undertake a new public notice and comment period prior to reapplying for a project that was previously disapproved by the FAA. The major change to the FAA’s decision is not contained in the PFC regulation. Rather, the change affects the actual decision document. That change will be discussed under FAA procedures below.

Public agency procedures. A public agency reapplying for impose and/or use authority for a project that was previously disapproved must re-consult with air carriers and provide a new public notice and opportunity for public comment before submitting the new application.

FAA procedures. The FAA is currently not required to respond to comments submitted during the air carrier consultation process unless they are resubmitted in response to the *Federal Register* notice. However, because the *Federal Register* is now optional, the FAA needs to address the comments submitted during the consultation and public comment processes. Therefore, the ADO/RO will need to modify the “Federal Register” section of the FAD templates to address any air carrier disagreements and negative public comments. The format will be very similar to the format APP-510 currently uses to address *Federal Register* comments however, unlike the APP-510 format, the RO/ADO will be able to group similar comments into a single comment and response.

The basic format is as follows:

- 1) paraphrase the disagreement,
- 2) paraphrase the public agency’s response to the disagreement, and
- 3) provide the FAA’s response.

On any particular disagreement, the FAA will either agree or disagree with the commenter. Those instances where the FAA agrees with the commenter are fairly easy to respond to because most likely the FAA has either disapproved or partially approved the project along the lines of the disagreement. In cases like this, the FAA should respond, “The FAA agrees with the comments and has disapproved/partially approved the project for the reasons discussed in the determination paragraph above.”

If the FAA disagrees with the commenter, the FAA should respond by summarizing any response provided by the public agency and then provide the reason(s) why the FAA believes the commenter was incorrect or why the FAA ruled on the project in a particular manner.

NON-HUB PILOT PROGRAM

PFC 05-49.7. Pilot program for PFC authorization at non-hub airports (§158.30). The Vision 100 legislation included a provision intended to streamline

the PFC application process for non-hub airports. The definition of non-hub airports in Vision 100 equates to what are commonly referred to as non-hub primary airports and commercial service airports, i.e. airports at least 2,500 annual enplanements but less than 0.05 of the total annual enplanements nationwide.

A non-hub airport may apply for PFC impose and/or use authority using either the traditional application process and forms or the new pilot program process. Vision 100 specifies that a request for PFC authority submitted under the pilot program is not a PFC application, but rather the request is to be known as a Notice of Intent to impose a PFC, to impose a PFC and use PFC revenue, or to use PFC revenue. Similar to the requirement under the PFC application process, a public agency must file separate notices of intent for each airport at which a PFC is to be imposed under the pilot program.

Because of the streamlined information requirements and FAA processing for notices of intent under the non-hub pilot program, certain types of projects are not eligible to be included in notices of intent. For example, requests for PFC funding to pay for debt service under the provisions of Section 122 of Vision 100 cannot be processed under non-hub pilot program procedures because of the additional information regarding the financial need of the airport requirement. In addition, certain complex projects such as ground access, which require additional information to establish eligibility, cannot be processed under the pilot program. However, non-hub airports may apply for these types of projects under the PFC application process.

Public agency procedures. All pilot program notices of intent must include a completed and signed PFC application Form (FAA Form 5500-1). In addition, all notices of intent must include information on the public agency's consultation with air carriers and public comment period as well as copies of all comments submitted under these two processes. Also, if the public agency is requesting to exclude a class or classes of carriers from the requirement to collect the PFC, that request must be included in the notice of intent.

The submission of project information under the pilot program is divided into two categories, projects that are in existing AIP grants and projects that are not in existing AIP grants. This distinction is made to differentiate between projects that the FAA is already on record as having ruled on, and projects where there is no FAA ruling on record. At this time we are not providing a form or format for the basic project information (except as noted below) as any new form must first receive OMB approval. We do not expect to provide a form for pilot program project information until 2007. In the interim, public agencies should provide the required project information on plain bond paper.

For projects in existing AIP grants, the public agency will need to provide the project title, PFC funds sought for the project (broken into pay-as-you-go, capital, and financing costs as applicable), PFC level, and AIP grant agreement number.

For projects that are not a part of existing AIP grants, the public agency will need to provide the project title, a brief project justification, a description of how the project meets at least one of the PFC objectives, PFC funds sought for the project (broken into pay-as-you-go, capital, and financing costs as applicable), PFC level, and the project schedule. In addition, the public agency must complete the Attachment G form for those projects that the public agency is requesting use of PFC revenue.

As discussed below, the FAA will issue a letter acknowledging the public agency's notice of intent. The public agency is permitted to collect a PFC and/or use PFC revenue, as appropriate, for any projects that the FAA does not object to after receiving the acknowledgement letter. For any new collections, the public agency must notify the carriers of the charge effective date, which must be on the first day of the month at least 30 days after the date of the FAA's acknowledgement letter.

With the exception of sections 158.25 through 29 that deal with the submission and approval of traditional PFC applications, the public agency is required to follow all other sections of Part 158.

FAA procedures. The FAA must review the notice of intent and issue its letter of acknowledgement within 30 days of receipt of the notice. 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.

APP-510 requests that each region send a copy of the first 3 notices of intent received or any notice's of intent submitted within the first 6 months of the program, whichever comes first, to APP-510 so that we can get a feel for what is being submitted by the public agencies. In addition, an electronic copy of each acknowledgement letter must be sent to APP-510 and ATA immediately after it has been signed. The requirement to send the acknowledgement letter to APP-510 will be rescinded once the document upload function of the PFC module of SOAR goes on line.

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. Also, 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. However, the FAA is still required to document its findings on eligibility, consultation, excluded class, and overall collection amount, PFC level, and duration. Attached is a worksheet that should be used to document the notice of intent findings (attachment 3). In addition to this worksheet, the RO/ADO will need to complete one or two project analysis worksheets as discussed below. The comment section of the worksheet should be used to explain the reasons for the FAA's objection if the reviewer determines

that the notice as a whole is flawed (most likely because the air carrier consultation and/or public comment period were not done correctly or because the FAA is objecting to all of the projects in the notice). Also, the FAA can object to other aspects of the proposal, which are not considered fatal flaws of the proposal, such as the proposed charge effective date. If the proposed charge effective date does not meet requirements, the RO/ADO should include an “earliest permissible charge effective date” in its reason for objecting to the proposed charge effective date.

For each project, the FAA is required to make the following findings: project eligibility; PFC objective; adequate justification; ALP requirements; airspace requirements; and environmental requirements. In addition, for projects proposed for a PFC level above \$3, the FAA must make the same type of findings on AIP funding and airside needs that are required for PFC applications.

FAA processing of projects that are also in existing AIP grants should be straightforward since the FAA has already made determinations regarding project eligibility, AIP funding needs, and ALP, airspace and environmental requirements. The PFC file needs to contain some form of documentation of the FAA’s determinations. The only additional findings the FAA will be required to make for these projects is to determine the appropriate PFC objective met and, if applicable, that the airside needs test has been met. If you cannot determine the PFC objective met by a combination of the project title and any AIP information available, you will need to request additional information from the public agency on this subject. The airside needs test determination should be made after a review of any available planning documents, airport inspection and certification reports, and the ACIP.

Attached is a simple worksheet that can be used to document the required findings (Attachment 4). Alternatively, RO’s and ADO’s are encouraged to review their AIP process to see if there is an existing worksheet used for the AIP program that would fit the need for documentation (with, perhaps the addition of boxes for PFC objective and airside needs) and could be copied into the PFC file.

FAA processing of projects that are not in existing AIP grants will require some additional effort. A worksheet for the required findings is attached (Attachment 5). The reviewer will be required to indicate the appropriate eligibility and PFC objective findings, check that the project is adequately justified, and, if applicable, make the required findings on AIP funding and airside needs. In addition, the reviewer will need to complete the FAA parts of the Attachment G, if applicable. Also, the reviewer should make sure that the proposed project schedule meets requirement the requirement for project implementation.

For all projects, if the reviewer determines that the FAA should object to the project, the worksheet(s) should be annotated to indicate the project and the reason for the objection.

After the review of the notice of intent is complete, the FAA will prepare a letter of acknowledgement. Attached is a template Letter of Acknowledgement (Attachment 6). 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

In addition to sending the signed letter to the public agency, a copy of the signed letter must be sent electronically to APP-510 and ATA using the same procedures used to transmit Final Agency Decisions and amendments.

Original signed by Joe Hebert for

Barry Molar
Attachments

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Sscarborough:app530:2/6/05:revised 3/10/05; revised 4/27/05