



Federal Aviation Administration

Memorandum

Date: April 2, 2009

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

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

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

Subject: PFC Update, PFC 58-09

PFC 09-58.1. Streamlined PFC Application Procedures for Non-Hub Airports.

The Federal Aviation Extension Act of 2009, (Pub. L. 111-12, March 30, 2009) "extends" the non-hub pilot program until September 30, 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. 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 September 30, 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 2009, (Pub. L. 111-12, March 30, 2009), these procedures are in effect until September 30, 2009. Any notice using the above procedures which is received by the local FAA Airports office on, or before, September 30, 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.

Authorized Representative
Name of Public Agency
Address
City, State zip code

Dear authorized representative,

In accordance with 49 United States Code (U.S.C.) 40117 and paragraph (c)(3) of the Federal Aviation Extension Act of 2009, Pub. L. 111-12, March 30, 2009), the Federal Aviation Administration (FAA) acknowledges your notice of intent to impose a passenger facility charge (PFC) at Airport Name Airport (LOCID) and to use PFC revenue at LOCID or impose a passenger facility charge (PFC) at Airport Name Airport (LOCID) for future use at LOCID or use passenger facility charge revenue at Airport Name Airport. The authority to impose a PFC is contingent on your continued compliance with the terms of 49 U.S.C 40117, 14 Code of Federal Regulations (CFR) Part 158 and any conditions included in this letter.

IF THE FAA DOES NOT OBJECT TO THE NOTICE OR ANY OF THE PROJECTS, USE THE FOLLOWING PARAGRAPH. (ALSO, IF THE FAA OBJECTS TO A PORTION OF THE NOTICE, SUCH AS THE CHARGE EFFECTIVE DATE, BUT THIS OBJECTION IS NOT A FATAL FLAW, THE PARAGRAPH BELOW CAN BE MODIFIED TO REFLECT THE SITUATION.)

Your notice of intent, submitted on insert date, has been assigned the following PFC number: FY-SN-I/C/U-00-LOCID. The FAA does not have any particular objections to your proposed projects nor your notice of intent in total. Therefore, the FAA acknowledges that you will begin collecting a PFC for LOCID at a \$X.XX PFC level on charge effective date and complete your collections on charge expiration date. Furthermore, the FAA acknowledges that you will collect a total of \$total PFC revenue to be collected in PFC revenue to for the following projects:

<u>Project Title</u>	<u>Project Type</u>	<u>PFC amount</u>
(List each project)	(Choose I, C, or U)	(List PFC amount for that project)

IF THE FAA DOES NOT OBJECT TO THE NOTICE BUT OBJECTS TO SOME BUT NOT ALL OF THE PROJECTS, USE THE FOLLOWING PARAGRAPHS.

Your notice of intent, submitted on insert date, has been assigned the following PFC number: FY-SN-I/C/U-00-LOCID. The FAA does not have any particular objections to the projects listed below nor does the FAA object to your notice of intent, submitted on insert date, in total. Therefore, the FAA acknowledges that you will begin collecting a PFC at a \$X.XX PFC level on charge effective date and complete your collections on charge expiration date. Furthermore, the FAA acknowledges that you will collect \$total PFC revenue to be collected in PFC revenue for the following projects:

<u>Project Title</u> (List each project)	<u>Project Type</u> (Choose I, C, or U)	<u>PFC amount</u> (List PFC amount for that project)
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The FAA objects to the projects listed below for the reasons listed. You may not collect or use PFC revenue to fund these projects.

<u>Project Title</u> (list each project)	<u>Project Type</u> (Choose I, C, or U)	<u>Reason for objection</u> (Give reason for each project)
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IF THE FAA OBJECTS TO THE NOTICE AND THE OBJECTION CONSTITUTES A FATAL FLAW, USE THE FOLLOWING PARAGRAPH.

Your notice of intent, submitted on **insert date**, has been assigned the following PFC number: **FY-SN-I/C/U-00-LOCID**. The FAA objects to your notice in whole for the following reasons: **(give reason or reasons for objectives)**. Therefore, the **public agency name** may not impose a PFC and use PFC revenue as you had proposed.

IF THE PUBLIC AGENCY HAS PROPOSED AN ACCEPTABLE EXCLUDED CLASS AND THE FAA DOES NOT OBJECT TO AT LEAST A PORTION OF THE NOTICE, USE THE FOLLOWING PARAGRAPH.

The FAA also acknowledges your proposal to exempt that class of air carriers defined as **list each acceptable class** from the requirement to collect the PFC. We request that you notify the carriers in each excluded class, which were listed in your notice of intent, of their exemption.

IF THE PUBLIC AGENCY HAS PROPOSED AN EXCLUDED CLASS THAT THE FAA FINDS OBJECTIONABLE AND THE FAA DOES NOT OBJECT TO AT LEAST A PORTION OF THE NOTICE, USE THE FOLLOWING PARAGRAPH.

The FAA objects to your proposal to exempt that class of air carriers defined as **list each acceptable class** from the requirement to collect the PFC. The FAA finds that this class does not fit the requirements of 14 CFR §158.11 for the following reasons: **(provide reason(s) for objection(s))**.

IF THE PUBLIC AGENCY RECEIVED CERTIFICATIONS OF DISAGREEMENT OR NEGATIVE COMMENTS FROM THE PUBLIC DURING THE CARRIER CONSULTATION OR PUBLIC COMMENT PERIOD, USE THE FOLLOWING PARAGRAPH AND EXPAND AS NECESSARY.

The FAA reviewed the certifications of disagreement and/or negative public comments submitted to the public agency as a result of the **air carrier consultation and/or public notice and comment period** and considered these comments during its deliberations on the notice of intent.

(Discuss each related set of comments, identifying who submitted comments on this subject. Provide an FAA response. Use a separate paragraph for each comment/response.)

All public agencies collecting PFC's are subject to reporting, record keeping, and auditing requirements as described in 14 CFR Part 158, Subpart D (14 CFR section 158.61 et. seq.).

The charge effective date must be the first day of the month and must be at least 30 days from the date of this letter. We request that you provide a copy of your notice to **ADO or RO name** when you notify the air carriers and foreign air carriers to begin collecting PFCs. Also, you are responsible for coordinating any construction with the appropriate Federal offices as you would with any non-federally funded construction.

IF THE NOTICE OF INTENT INCLUDES IMPOSE AND USE OR USE ONLY PROJECTS, INCLUDE THE FOLLOWING PARAGRAPH.

Be advised, 14 CFR section 158.33(a)(1) requires you to implement your **concurrent impose and use or use** projects that the FAA has not objected to within the 2 years of this date. 14 CFR section 158.33(a)(1) requires the public agency to begin implementation of a project no later than 2 years after receiving clearance to use PFC revenue on that project.

IF THE NOTICE OF INTENT INCLUDES IMPOSE ONLY PROJECTS IN ADDITION TO THE IMPOSE AND USE OR USE ONLY PROJECTS, INCLUDE THE FOLLOWING PARAGRAPH.

In addition, 14 CFR section 158.33(c) requires you to submit notice(s) of intent to use PFC revenue or request(s) for extension if the implementation schedule has been delayed, within 3 years of this date for those impose only projects that the FAA has not objected to in this letter.

IF THE NOTICE OF INTENT INCLUDES ONLY IMPOSE ONLY PROJECTS, INCLUDE THE FOLLOWING PARAGRAPH.

Be advised, 14 CFR section 158.33(c) requires you to submit notice(s) of intent to use PFC revenue or request(s) for extension if the implementation schedule has been delayed, within 3 years of this date for those impose only projects that the FAA has not objected to in this letter.

Finally, a decision summary table showing the cumulative history of PFC decisions for **LOCID** is enclosed for your use. We have also enclosed the list of advisory circulars with which you must comply in accordance with your certification of 14 CFR Part 158 assurance number 9, standards and specifications.

Sincerely,

Name of manager

XXX Airports Division Manager or Manager, XXX Airports District Office

Enclosures