ORDER

5500.1

PASSENGER FACILITY CHARGE

August 9, 2001

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

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RECORD OF CHANGES

CHANGE TO BASIC	SUPPLEMENTS			OPTIONAL	CHANGE TO BASIC	SUPPLEMENTS			OPTIONAL

FOREWORD

This order provides guidance and procedures to be used by FAA personnel in the administration of the Passenger Facility Charge (PFC) Program. The guidance and procedures reflect established FAA practices that have successfully met the statutory and regulatory requirements of the PFC Program. The guidance and procedures are current as of the date of issuance of this order, and incorporate all changes to the PFC Program introduced by the 'Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" (AIR 21), as well as prior legislation.

This order references several other FAA orders and advisory circulars. The references are made using the latest publication numbers for such documents as of the date of issuance of this order. However, in cases where a referenced document is updated following the issuance of this order, the latest official release of the document should be used as the reference.

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Director of Airport
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TABLE OF CONTENTS

CHAPTER 1. INTRODUCTION 1

SECTION 1. GENERAL.. 1
1-1. Overview 1
1-2. Distribution 1
1-3. Authorizing Legislation 1
1-4. Policy and Guidance Principles.. 1
1-5. Order Format.. 1
1-6. Definitions.. 3
1-7 to 1-10. Reserved.. 8
SECTION 2. TITLE 49, UNITED STATES CODE 8
1-11. PFC Authority-Section 40117.. 8
1-12. Reduction in AIP Apportionments-Section 47114(f) 10
1-13. Use of Funds Recovered Under Section 47114(f). 11
1-14 to 1-15. Reserved.. 11
SECTION 3. DELEGATION OF AUTHORITY.. 11
1-16. Overview 11
1-17. Delegation of Limited Authority to FAA Airports Offices 11
1-18 to 1-20. Reserved.. 12
SECTION 4. OVERVIEW OF THE PFC PROCESS.. 12
1-21. The PFC Process.. 12
1-22. PFC Program and Its Relationship to AIP.. 12
1-23 to 1-25. Reserved.. 13
SECTION 5. REDUCTION IN AIP APPORTIONMENTS 13
1-26. Apportionment Reduction for Collection Levels of $3 or Below.. 13
1-27. Apportionment Reduction for Collection Levels Above $3.. 13
1-28. Implementation of Apportionment Reduction.. 14
1-29. Adjustments to Apportionment Reduction.. 14
1-30 to 1-35. Reserved.. 14

CHAPTER 2. ADVANCE COORDINATION 21

SECTION 1. BACKGROUND.. 21
2-1. Overview 21
2-2 to 2-5. Reserved.. 21
SECTION 2. OPTIONAL APPLICATION FORMULATION MEETING 21
2-6. Overview 21
2-7. Project Description, Eligibility, Objectives, and Justification 22
2-8. Project Cost and Funding Strategies 22
2-9. Project Schedules and Environmental, Airspace, and ALP Requirements 23
2-10. Alternative Projects (for impose-only projects) 23
2-11. Preparation for and Timing of Carrier Consultation 23
2-12. Application Forms 24
2-13. Public Agency PFC Assurances 24

2-14. Exemption of a Class or Classes of Carriers 25
2-l 5. Additional Requirements for Imposing a PFC Level Above $3 25
2-16. Identification of Additional Information 25
2-17 to 2-20. Reserved.. 26
SECTION 3. CONSULTATION MEETING 26
2-21. Requirement to Consult 26
2-22. Content of Notice to Carriers 26
2-23. Carrier Written Acknowledgment 27
2-24. Consultation Meeting 27
2-25. Carrier Written Certification of Agreement or Disagreement 28
2-26. Carrier Failure to Provide Written Acknowledgment or Certification.. 28
of Agreement/Disagreement
2-27. Summary of Meeting 28
2-28. Changes by Public Agency after the Consultation 29
2-29 to 2-35. Reserved 29
SECTION 4. DRAFT PFC APPLICATION REVIEW 29
2-36. Overview 29
2-37 to 2-40. Reserved.... 30

CHAPTER 3. APPLICATION SUBMITTAL 35

SECTION 1. GENERAL 35
3-l. Overview 35
3-2. Flow Chart of Approval/Disapproval Process 35
3-3 to 3.5. Reserved 35
SECTION 2. PROCEDURES FOR SUBMITTAL.. 35
3-6. Form 35
3-7. Timing of Submission.. 35
3-8. Application File 37
3-9 to 3-15. Reserved 38
SECTION 3. APPLICATION COMPLETENESS REVIEW 38
3-l 6. Overview 38
3-l 7. Receipt of Application 39
3-18. Determination of Completeness.. 39
3-l 9. Processing of Application Supplement 42
3-20. Public Agency Coordination 42
3-21 to 3-25. Reserved 42

CHAPTER 4. PROJECT AND APPLICATION REVIEW 49

SECTION 1. GENERAL.. 49
4-l. Overview 49
4-2. Application Evaluation.. 49
4-3 to 4-5. Reserved.. 50
SECTION 2. EVALUATION CRITERIA 50
4-6. Project Eligibility 50
4-7. Project Objective 55
4-8. Project Justification 56
4-9. Amount and Duration of PFC 61
4-10. Collection Process 62
4-l 1. Exclusion of Class or Classes of Carriers.. 63
4-12. Compliance with the ANCA.. 65
4-13. Compliance with Airport Revenue Use Requirements.. 66
4-14. Alternative Uses 66
4-15. Consultation Procedures.. 67

4-l 6. Air Carrier Consultation Comments 68
4-17. ALP/Airspace/NEPA Requirements 69
4-18. Schedule for Project Implementation 69
4-19. Financial Viability 70
4-20 to 4-25. Reserved 71

CHAPTER 5. APPROVAL/DISAPPROVAL OF APPLICATIONS 75

SECTION 1. GENERAL 75
5-1. Overview 75
5-2 to 5-5. Reserved.. 75
SECTION 2. DECISIONMAKING AUTHORITY.. ..... **75**
5-6. Determining Delegation of Record of Decision 75
5-7 to 5-10. Reserved.. 77
SECTION 3. ROD PREPARATION PROCESS **77**
5-l 1. Application Approval/Disapproval Documentation 77
5-l 2. ROD Language to Address Exceptional Circumstances 77
5-13. Treatment of Federal Renister Comments in ROD's 80
5-14. Notification of Approval/Disapproval 82
5-1 5 to 5-20. Reserved 82

CHAPTER 6. COLLECTION, HANDLING, AND REMITTANCE OF PFC'S **87**

SECTION 1. GENERAL.. ..... **87**
6-1. Overview 87
SECTION 2. PUBLIC AGENCY COLLECTION ISSUES **87**
6-2. Public Agency Notification to Carriers.. 87
6-3. Public Agency Notification to Excluded Carriers.. 88
6-4. Beginning Collection 88
6-5. Adjustments to the Duration of Collection.. 88
6-6. Expiration of Collection 89
6-7 to 6-10. Reserved.. 89
SECTION 3. COLLECTION ON TICKETS ISSUED IN THE UNITED STATES.. ..... **90**
6-l 1. Collection of PFC's.. 90
6-12. Information Required on Tickets 90
6-13. Adjustments 90
6-14. Essential Air Service (EAS). 91
6-l 5. Frequent Flyer Awards.. 91
6-l 6. Exemptions for Certain Flights in Hawaii and Alaska 92
6-l 7 to 6-20. Reserved.. 92
SECTION 4. COLLECTION OF PFC'S ON TICKETS ISSUED OUTSIDE THE UNITED STATES **92**
6-21. Regulatory Options for Collecting PFC's 92
6-22. No Air Service to United States.. 92
6-23. Collection for the Gateway Airport 92
6-24. Collection at Ticket Issuance 93
6-25. Collection at Time of Enplanement 93
6-26. Handling of PFC.. 93
6-27 to 6-30. Reserved 93
SECTION 5. AIR CARRIER ACCOUNTING AND HANDLING OF PFC REVENUE COLLECTED **94**
6-31 . Overview 94
6-32. Air Carrier Remittance of PFC Revenue Collected 94
6-33. Property Interests.. 94
6-34. Collection Compensation 95
6-35 to 6-40. Reserved.. 95

CHAPTER 7. REPORTING, RECORDKEEPING, AND AUDITS **99**

SECTION 1. BACKGROUND **99**
7-1. Overview 99
7-2 to 7-5. Reserved 99
SECTION 2. PUBLIC AGENCY REPORTING REQUIREMENTS **99**
7-6. Quarterly Report 99
7-7. Large/Medium Hub Airport Yearly Report 100
7-8. Annual Collections Report 100
7-9 to 7-10. Reserved 100
SECTION 3. AIR CARRIER REPORTING REQUIREMENTS **101**
7-11. Quarterly Report 101
7-12 to 7-15. Reserved 101
SECTION 4. RECORDKEEPING AND AUDITING-PUBLIC AGENCY **101**
7-16. Account 101
7-17. Accounting Record 101
7-18. Audit 102
7-19. Acceptable Level of Assurance 102
7-20. FAA Review of Public Agency Audits 103
7-21 to 7-25. Reserved 103
SECTION 5. RECORDKEEPING AND AUDIT-AIR CARRIERS **103**
7-26. Account 103
7-27. Audit 103
7-28. Acceptable Level of Assurance 104
7-29. Review of Air Carrier Audits 104
7-30 to 7-35. Reserved 104
SECTION 6. FEDERAL OVERSIGHT 104
7-36. Public Agency 104
7-37. Carriers 105
7-38. Access to Documentation 105
7-39 to 7-45. Reserved 105

CHAPTER 8. APPLICATION OVERSIGHT **109**

SECTION 1. GENERAL **109**
8-1. Overview 109
8-2 to 8-5. Reserved 109
SECTION 2. DURATION OF AUTHORITY TO IMPOSE PFC'S BEFORE PROJECT IMPLEMENTATION **109**
8-6. Timing 109
8-7. Reserved 111
8-8. Notification of Carriers 111
8-9. Restriction on Authorization to Re-Impose a PFC 111
8-10 to 8-20. Reserved 111
SECTION 3. DURATION OF AUTHORITY TO IMPOSE A PFC AFTER PROJECT IMPLEMENTATION **111**
8-21. Overview 111
8-22 to 8-30. Reserved 112
SECTION 4. EXCESS PFC REVENUE 112
8-31. Overview 112
8-32. FAA Monitoring of Project Costs 112
8-33 to 8-34. Reserved 113
8-35. Excess PFC Revenue Plan 113
8-36 to 8-40. Reserved 114

CHAPTER 9. EXTENSIONS **119**

SECTION 1. GENERAL **119**
9-1. Overview **119**
9-2 to 9-5. Reserved.. ..... **119**
SECTION 2. NOTICE **119**
9-6. Public Notice 119
9-7 to 9-10. Reserved 119
SECTION 3. REQUEST FOR EXTENSION **119**
9-11. Request 119
9-l 2. Description of Progress.. 119
9-13. Schedule 120
9-14. Explanation for Delay.. 120
9-15. Summary Financial Report 120
9-l 6. Carrier Consultation 120
9-l 7. Local Notice Comments 120
9-18. Confirmation/Validation of Alternative Projects.. 120
9-19 to 9-20. Reserved.. 120
SECTION 4. REVIEW AND APPROVAL/DISAPPROVAL **120**
9-21. Review 120
9-22. Approval/Disapproval 121
9-23 to 9-30. Reserved 122

CHAPTER IO. PFC LEVELS ABOVE $3.. ..... **127**

SECTION 1. GENERAL 127
1 O-l. Overview 127
1 O-2 to 1 0-5. Reserved.. 127
SECTION 2. PFC LEVELS ABOVE $3 AT SMALL AIRPORTS.. ..... **128**
10-6. Method to Evaluate PFC Level Above $3 at Small Airports 128
10-7. Finding That Projects Cannot Be AIP Funded.. 128
1 O-8. Finding That Airside Needs Are Met.. 130
1 O-9. Treatment of a Project Qualifying for PFC Approval.. 131
at $1, $2, or $3 Level But Not at Levels Above $3
IO-IO. Reserved 131
SECTION 3. PFC LEVELS ABOVE $3 AT MEDIUM AND LARGE HUB AIRPORTS.. ..... **131**
10-1 1. Method to Raise PFC Level Above $3 at Large and Medium Hub Airports 131
1 0-12. Determination of Significant Contribution Procedures 131
1 O-l 3. Procedures 132
IO-14 to 10-15. Reserved.. 133
SECTION 4. ESTABLISHMENT OF APPLICATION PFC LEVEL.. ..... **133**
1 O-l 6. Overview 133
10-17. Setting the PFC Level for a Single Project Application.. 133
10-18. Policy on Setting the PFC Level for Multiple Projects with Mixed PFC Levels 133
10-19. Procedure to Set the PFC Level for a Single Application with Multiple Projects.. 135
1 O-20. Examples of PFC Level Calculations for Single Applications.. 137
1 0-21 . Procedure for Multiple RODs 138
10-22. Examples of PFC Level Calculations for Multiple RODs 142
1 O-23 to 1 0-25. Reserved.. 144
SECTION 5. OTHER MODIFICATIONS TO THE PFC PROGRAM.. ..... **144**
10-26. Additional Reduction in AIP Apportionments 144
10-27. Other Effects of AIR-21 on the PFC Program.. 145
1 O-28 to 1 0-30. Reserved 148

CHAPTER 11. AMENDMENTS NOT REQUIRING CONSULTATION 153

SECTION 1. GENERAL 153
1 1-1. Overview 153
II-2 to 11.5. Reserved 153
SECTION 2. AMENDMENTS WHICH CAN BE INSTITUTED BY PUBLIC AGENCY NOTICE 153
1 l-6. Type and Timing of Amendments 153
11-7. Notice-Content and Distribution.. 155
11-8. FAA Review.. 155
11-9 to 11-15. Reserved.. 156

CHAPTER 12. AMENDMENTS REQUIRING CONSULTATION 161

SECTION 1. GENERAL.. 161
12-1. Overview 161
12-2 to 12-5. Reserved.. 161
SECTION 2. AMENDMENTS WHICH REQUIRE CONSULTATION WITH AIR CARRIERS AND FORMAL SUBMISSION TO FAA 161
12-6. Type and Timing of Amendment 161
12-7. Notice-Content and Distribution.. 162
12-8 to 12-10. Reserved.. 164
SECTION 3. NO CARRIER DISAGREEMENT 164
12-l 1. FAA Review of Proposal and Approval/Disapproval.. 164
12-12. Public Agency Notice to Carriers 165
12-13 to 12-15. Reserved.. 165
SECTION 4. CARRIER DISAGREEMENT.. 165
12-l 6. FAA Review and Approval/Disapproval 165
12-l 7. Public Agency Notice to Carriers 166
12-18 to 12-20. Reserved.. 166
SECTION 5. ADMINISTRATIVE AMENDMENTS 166
12-21. Overview 166
12-22. Administrative Amendment Due to Use Application 166
12-23. Administrative Amendment Due to Automatic Expiration 167
12-24 to 12-25. Reserved.. 167

CHAPTER 13. TERMINATION PROCEDURES 171

SECTION 1. GENERAL.. 171
13-1. Overview 171
13-2. Identification of Potential Violation 171
13-3. investigation of Complaints 172
13-4 to 13-5. Reserved.. 172
SECTION 2. INFORMAL RESOLUTION.. 172
13-6. Letter to Public Agency 172
13-7. Meeting Between FAA and Public Agency 173
13-8. Informal Resolution of the Violation 173
13-9 to 13-15. Reserved 173
SEC-I-ION 3. FORMAL TERMINATION PROCEEDINGS.. 173
13-l 6. FAA Determination That Informal Resolution was Not Successful 173
13-17. Federal Reaister Notice of Proposed Termination.. 174
13-18. Public Hearing 174
13-1 9. Final Decision 174
13-20 to 13-25. Reserved.. 176
SECTION 4. IMPACT ON AIP 176
13-26. Loss of Federal Grant Funds 176
13-27. Amount of Reduction.. 176

13-28. impact on Existing Grants 176
13-29 to 13-30. Reserved 176
SECTION 5. SPECIAL INFORMAL RESOLUTION AND TERMINATION PROTECTION TO FACILITATE PFC STAND-ALONE FINANCING 176
13-31. Overview 176
13-32. Protracted informal Resolution 176
13-33. Termination Protection 177
13-34 to 13-35. Reserved 177

CHAPTER 14. PROJECT COMPLETION AND PFC CLOSEOUT 181

SECTION 1. GENERAL 181
14-1 . Overview 181
14-2. Recordkeeping and Audit 181
14-3 to 14.5. Reserved.. 181
SECTION 2. PFC PROJECT COMPLETION 181
14-6. Physical Completion Requirements, No AIP Funds.. 181
14-7. Joint PFC/AIP Funded Projects 182
14-8. Financial Completion Requirements 182
14-9. FAA Actions Associated with Project Physical Completion 182
14-10. FAA Actions Associated with Project Financial Completion 183
14-1 1. Project Completion Notification and Record Requirements.. 183
14-12 to 14-15. Reserved.. 184
SECTION 3. PFC DECISION CLOSEOUT 184
14-16. Overview 184
14-l 7. Quarterly Reports.. 184
14-18. PFC Decision Closeout Report 184
14-19. Decision Closeout Notification and Record Requirements.. 185
14-20. Use of Excess PFC Revenue.. 185
14-21. Loss of Federal Airport Grant Funds.. 186
14-22 to 14-25. Reserved.. 186

CHAPTER 15. ASSURANCES 191

SECTION 1. GENERAL 191
15-l. Overview 191
15-2 to 15-5. Reserved 191
SECTION 2. DISCUSSION OF ASSURANCES 191
15-6. Responsibility and Authority of the Public Agency.. 191
15-7. Compliance with Regulation.. 192
15-8. Compliance with State and Local Laws and Regulations.. 192
15-9. Environmental, Airspace, and ALP Requirements 193
15-l 0. Nonexclusivity of Contractual Agreements 193
15-11. Carryover Provisions.. 195
15-12. Competitive Access.. 196
15-13. Rates, Fees, and Charges 197
15-14. Standards and Specifications.. 199
15-l 5. Recordkeeping and Audit.. 200
15-16. Reports 200
15-17. ANCA 200
15-l 8 to 15-25. Reserved 201

APPENDIX 1. PFC PROCESS FLOWCHARTS 1

1-1. Application for Authority to Impose a PFC 3
1-2. Application for Authority to Impose and Use a PFC.. 5
1-3. Application for Authority to Use a PFC.. 7

APPENDIX 2. ASSURANCES 1

APPENDIX 3. PROJECT CONSTRUCTION OVERSIGHT 1

SECTION 1. GENERAL 1
3-1. Overview 1
3-2. Coordination of Projects.. 1
SECTION 2. PFC/AIP FUNDED PROJECTS.. 1
3-3. Oversight of PFC/AIP Funded Projects 1
3-4 to 3-6. Reserved.. 1
SECTION 3. PFC FUNDED PROJECTS-NO AIP FUNDS.. 1
3-7. Preconstruction Conference.. 1
3-8. Labor/Disadvantaged Business Enterprise (DBE). 2
3-9. Design, Construction, and Equipment Standards.. 2
3-10. Notice to Proceed.. 2
3-11. Construction Records.. 2
3-12. Safety 2
3-13. Parts 107 and 139 Requirements 2
3-14. Environmental Compliance 3
3-15 to 3-20. Reserved.. 3

APPENDIX 4. AIRPORT DEBT FINANCING 1

4-1. Overview 1
4-2. Debt Financing Associated with PFC Applications 1
4-3. Definitions of Financing Terms.. 1
4-4. Types of Financing Scenarios.. 2
4.5. The FAA's Role in PFC-Backed Financing.. 3
4-6. Protracted Informal Resolution.. 3
4-7. Termination Protection 4

CHAPTER 1. INTRODUCTION

SECTION 1. GENERAL

I-I. OVERVIEW. This order provides guidance and procedures for Federal Aviation Administration (FAA) Airports offices' use in administering the Passenger Facility Charge (PFC) program.

I-2. DISTRIBUTION. This order is distributed to all addressees of the PFC Branch (APP-530) special mailing list and all Airports District and Field Offices.

I-3. AUTHORIZING LEGISLATION. The PFC is authorized by 49 United States Code (U.S.C.) §40117, which is referred to as the "Statute." The PFC statute's broad objective is to provide funds through the local imposition of a $1, $2, $3, $4, or $4.50 charge per enplaned passenger.

I-4. GUIDANCE PRINCIPLES.

a. The PFC program must be administered uniformly nationwide with regard to the procedures and requirements dictated by legislation, regulation, and this order. However, the diversity among the FAA Regions in program and public agency needs, available resources, and Airports Division organizational structures dictates that some flexibility be given Airports Division Managers for administration of program elements not specifically required by the regulation. The administration of these elements are left to the discretion of the regional Airports Division Manager.

b. The statute is implemented by the PFC regulation (14 Code of Federal Regulations (CFR) Part 158, "Passenger Facility Charges"). The PFC regulation was adopted on May 22, 1991, and was substantially amended on May 30, 2000. The regulation is intended to provide public agencies with the flexibility to tailor their PFC programs to their own needs while meeting the requirements of the statute. In addition, it is intended to reduce the administrative burden as much as possible for public agencies and air carriers,

c. This order reflects the interpretation and refinement of statutory and regulatory provisions, based on the experience of administering the PFC program.

1-5. ORDER FORMAT.

a. This order is arranged beginning with definitions, legislative history, and overall requirements, followed by the step-by-step procedures to be used by FAA personnel to administer the PFC program from the public agency's first indication of interest through PFC closeout or termination proceedings.

b. This order summarizes appropriate information from other guidance material when possible, so direct reference to the original material is seldom needed. When needed, the current version of the following guidance materials should be used in conjunction with this order:

(1) 14 CFR Part 158, Passenger Facility Charges (referred to as “the regulation” or “Part 158”);

(2) 49 U.S.C. Compilation of Selected Aviation Laws;

(3) FAA Order 1050.1 D, Policies and Procedures for Considering Environmental Impacts;

(4) FAA Order 5050.4A, Airport Environmental Handbook;

(5) FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook, regarding project eligibility;

(6) Program Guidance Letters (PGL's) issued under FAA Order 5100.38A regarding project eligibility;

(7) FAA Order 7400.2, Procedures for Handling Airspace Matters;

(8) Advisory Circular (AC) 150/5300-13, Airport Design;

(9) AC 150/5370-2C, Operational Safety on Airports During Construction;

(10) Those AC’s contained on the list entitled, Current FAA Advisory Circulars for PFC Projects, which is included with each PFC Record of Decision; and

(I I) Agency directives, regulations, future AC’s which may pertain, and additional information, which should be considered companion documents to this order and should be utilized in conjunction with the PFC program.

c. The following is a list of appendices to this order:

(1) Appendix 1, PFC Project Approval Process. Appendix 1 provides flowcharts for the review and approval/disapproval of:

(i) an application for authority to impose a PFC;

(ii) a concurrent application for authority to impose and use PFC revenue; and,

(iii) an application for authority to use PFC revenue.

(2) Appendix 2, Assurances. Appendix 2 contains the assurances required of a public agency in the submittal of its request to impose and use PFC revenues.

(3) Appendix 3, Project Construction Oversight. Appendix 3 contains the information for construction oversight and responsibilities to insure public agency compliance with the PFC standards and specifications under PFC Assurance 9.

(4) Appendix 4, Airport Debt Financing. Appendix 4 contains information for the analysis of airport bond and other similar types of debt financing associated with PFC applications.

d. All guidance issued in future “PFC Update” letters will be included in subsequent order changes.

I-6. DEFINITIONS. The following definitions apply. Terms in bold lettering are also found in the PFC regulation, but, in many cases, the definitions have been expanded for clarity in this order. All these expanded definitions are based on decisions on individual PFC applications.

a. *Administrator* means the Federal Aviation Administrator or other person designated by the Administrator to act on his/her behalf.

b. **Airport** means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.:

c. Airport capital plan means a capital improvement program that lists all airport-related planning, capital development, or noise compatibility projects expected to be accomplished with anticipated available funds (PFC, AIP, local funds, bonds, revenue from other Federal and state agencies, etc.) within a specified timeframe (normally 3 to 5 years).

d. *Air carrier* means any person providing passenger air transportation for hire that is incorporated under the laws of the United States.

e. Airport layout p/an (ALP) means a plan showing the existing and proposed airport facilities and boundaries in a form prescribed by the Administrator.

f. **Airport revenue** means revenue generated by a public airport

(1) Through any lease, rent, fee, or other charge collected, directly or indirectly, in connection with any aeronautical activity conducted on an airport that it controls; or

(2) In connection with any activity conducted on airport land acquired with Federal financial assistance, or acquired with PFC revenue under this part, or conveyed to such public agency under the provisions of any Federal surplus property program or any provision enacted to authorize the conveyance of Federal property to a public agency for airport purposes.

g. Air transportation means the transportation of passengers by aircraft in common carriage for which the air carrier receives remuneration between a point in the United States and a point outside the United States, between a point in a State and another State, and between points entirely within the same State.

h. **Air travel ticket** means all documents pertaining to a passenger's complete itinerary necessary to transport a passenger by air, including passenger manifests.

i. **Allowable cost** means the reasonable and necessary costs of carrying out an approved project including costs incurred prior to and subsequent to the approval to impose a PFC, and making payments for debt service on bonds and other indebtedness [financing costs] incurred to carry out such projects. A public agency's costs of administering its PFC program are also included in allowable costs. Allowable costs include only those costs incurred on projects implemented on or after November 5, 1990 (the date the statute was enacted). In addition, under the terms of the "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" (AIR-21) (P.L. 106-181) allowable costs include terminal development incurred after August 1, 1986, at an airport that did not have more than .25 percent of the total annual passenger boardings in the United States in the most recent calendar year for which data are available and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997.

j. **Approved project** means a project for which use of PFC revenue has been approved. Specific projects contained in a larger single or multi-phased project or development described in an airport capital plan may also be approved separately. (Note: To facilitate financing arrangements and program accountability, it is strongly recommended that each project be discrete and readily identifiable and approved separately.)

k. **Charge effective date** means the first date on which carriers are obliged to collect a PFC.

l. **Charge expiration date** means the date on which carriers are to cease to collect a PFC.

m. Class *of* carrier means a category(s) of air carriers based on common carrier classifications found in FAA operational regulations, DOT economic regulations, or on any other basis that is reasonable, not arbitrary, nondiscriminatory and otherwise in compliance with the law. A class of carriers may be employed by a public agency to exempt those carriers from PFC collection requirements.

n. **Collecting carrier** means an issuing carrier or other carrier collecting a PFC, whether or not such carrier issues the air travel ticket.

o. Collection means the acceptance of payment of a PFC from a passenger.

p. **Commercial service airport** means a public airport that annually enplanes 2,500 or more passengers and receives scheduled passenger service by aircraft.

q. **Covered airport** means a medium or large hub airport at which one or two air carriers control more than 50 percent of passenger boardings.

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

s. *Eligible point* means **a** point receiving air transportation under the Essential Air Service program (see paragraph 6-14).

t. *Excess revenue* means PFC revenue collected, plus interest, exceeding the allowable costs of a project(s). Excess revenue may also include revenue generated from the sale of property purchased with PFC funds.

u. *Excluded* c/ass *of carriers* means those air carriers or foreign air carriers not required to collect PFC's from passengers enplaning at a specific airport. A class approved by the FAA may be excluded if the number of passengers enplaned by the carriers in the class constitutes no more than 1 percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed (see paragraph 4-l 1).

v. 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, and to leases that have the effect of granting exclusive use rights.

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

x. financial plan is the public agency's depiction of the means of and timeframe for paying for proposed PFC projects in the application. The plan should include information on the financing of all projects in the airport capital plan, clearly identifying projects to be funded with PFC revenue. (Note: This information is usually provided in the Attachment B for each individual project in the PFC application.)

y. Financing costs means the costs of financing a bond [or other debt instrument (other than 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 agency fees. (Note: The financial community suggests that these costs do not ordinarily exceed two percent of the debt package, but the FAA has not imposed a regulatory limit. If such costs prove to be excessive, the FAA may find that the costs are not reasonable and therefore not allowable.)

z. Foreign *air carrier* means any provider of passenger air transportation for hire that is incorporated under the laws of a country other than the United States.

aa. **Frequent flyer award certificate** means a zero-fare award of air transportation that an air carrier or foreign air carrier provides to a passenger in exchange for accumulated travel mileage credits in a customer loyalty program, whether or not the term “frequent flier” is used in the definition of that program. The definition of “frequent flier award coupon” does not extend to redemption of accumulated credits for awards of additional or upgraded service on trips for which the passenger has paid a published fare, “two-for-the-price-of-one” and similar marketing programs, or to air transportation purchased for a passenger by other parties.

bb. *Gateway* means the last enplaning airport prior to departure from the United States.

cc. 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 or execution of a contract or agreement for a parcel.

dd. **issuing carrier** means any air carrier or foreign air carrier that issues an air travel ticket or whose imprinted ticket stock is used in issuing such ticket by an agent.

ee. Medium or large hub airport means a commercial service airport that has more than 0.25 percent of the total number of passenger boardings at all such airports in the United States for the prior calendar year, as determined by the Administrator.

ff. Nonrevenue passenger means a passenger receiving air transportation from an air carrier or foreign air carrier for which remuneration is not received by the air carrier or foreign air carrier and as defined under Department of Transportation (DOT) Regulations or as otherwise determined by the Administrator. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are also considered nonrevenue passengers.

gg. One-way trip means any trip that is not a round trip (also see definition of *trip).*

hh. **Passenger enplaned** means a domestic, territorial, or international revenue passenger enplaned at a point in the United States in scheduled or nonscheduled service on aircraft in intrastate, interstate, or foreign commerce. (Note: Passengers are not considered enplaned at technical stops, such as for refueling or customs inspection, which are not shown on the passenger's ticket.)

ii. **PFC** means a passenger facility charge imposed by a public agency on passengers enplaned at a commercial service airport it controls. It is referred to in the Statute as the passenger facility fee.

jj. *Point* means the airport at which travel begins or ends. In the case where a locality is serviced by more than one airport (coterminal airports), the "point" is determined by referencing the current version of the Official Airline Guide. For defining a round-trip as it pertains to calculating applicable PFC's, a trip can begin and end at any of these coterminal airports. (Note: This definition is used to determine whether a given itinerary constitutes a round-trip or a one-way trip.)

kk. **Project** means airport planning, airport land acquisition, or development of a single component, a multi-phased development program (including but not limited to development described in an airport capital plan), or a new airport for which PFC financing is sought or approved (see also definition of *approved project).*

ll. **Public agency** means a State or any agency of one or more States; a municipality or other political subdivision of a State; an authority created by Federal, State, or local law; a tax-supported organization; an Indian tribe or pueblo that controls a commercial service airport; or for the purposes of [the PFC regulation], a private sponsor of an airport approved to participate in the Pilot Program on Private Ownership of Airports.

mm. *Remittance* means the transmittal of PFC revenue by the collecting air carrier to the public agency.

nn. *Revenue passenger* means a person receiving air transportation from the air carrier for which remuneration is received by the air carrier as defined under existing DOT Regulations, except passengers using frequent flyer award certificates, as defined in this order (see definition of *nonrevenue passenger).*

oo. **Round trip** means a trip on a complete air travel itinerary [to at least one destination point and back] which terminates at the origin point (also see definitions of *point* and *trip).*

pp. Secretary means the Secretary of Transportation or other person designated by the Secretary to act on his/her behalf.

qq. *Stand-Alone Financing* means a financing instrument backed solely by a PFC revenue stream without any other commitment of airport or general revenue (see appendix 4).

rr. **State** means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam.

ss. Trip means air travel from one point to another point. In the case of a trip with only one enplanement and one deplanement, the deplanement must occur at a separate point from the enplanement. Consequently, air tours that begin and end at one point without stopping at intermediate points (other than technical stops such as for refueling) are not trips for PFC purposes. In addition, travel between a point and a non-airport location, e.g. a logging camp, is not considered a trip for PFC purposes.

tt. **Unliquidated PFC revenue** means revenue received by a public agency from collecting carriers and interest earned thereon but not yet used on approved projects.

I-7 to I-10. RESERVED.

SECTION 2. TITLE 49, UNITED STATES CODE

1-11. PFC AUTHORITY - SECTION 40117. The PFC program is authorized by 49 U.S.C. Subtitle VII, Part A - Air Commerce and Safety, §40117. This statute was implemented by the Aviation Safety and Capacity Expansion Act of 1990 which amended the Federal Aviation Act of 1958, as amended, to remove the restriction against a PFC. The statute authorizes the Secretary of Transportation to allow a public agency that controls at least one commercial service airport to impose a fee for each paying passenger of an air carrier enplaned at the airport. This revenue finances eligible airport projects to be carried out at the commercial service airport or any other airport which the public agency controls.

The Federal Aviation Act of 1994, the Federal Aviation Reauthorization Act of 1996, and most significantly, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (signed into law on April 5, 2000), made significant modifications to 940117. The Codification of Certain United States Transportation Laws (July 5, 1994) changed the U.S.C. references in 14 CFR Part 158.

The following summarizes the major provisions of the statute, as amended. These provisions are described in much more detail in appropriate sections of this order.

a. PFC level. A public agency that controls a commercial service airport may request the authority to impose a PFC of $1, $2, $3, $4, or $4.50 on revenue passengers enplaned at such an airport.

b. Requirements. A public agency which controls a commercial service airport may be granted authority by the FAA to impose a PFC only if the FAA finds, on the basis of an application submitted by the public agency, that the amount and duration of the PFC will not result in excess revenues and the proposed project(s) is: eligible; preserves or enhances capacity, safety, or security, reduces noise, or furnishes opportunities for enhanced competition; and is adequately justified. Additional findings are required for approval of a PFC level above $3 (see chapter 10).

c. Limitation. A public agency may not impose a PFC on a passenger enplaning on a subsidized flight to an eligible point for which Essential Air Service compensation is paid. (Note: This does not prohibit the imposition of a PFC from an eligible point unless that flight is also to an eligible point.) A public agency may not impose a PFC on a passenger who obtains a ticket for air transportation with a frequent flyer award coupon without monetary payment. A PFC may not be imposed on a passenger on flights, including flight segments, between 2 or more points in Hawaii; and in Alaska aboard an aircraft having a seating capacity of less than 60 passengers.

d. Two enplanements per trip limitation. A PFC may not be collected from a passenger in excess of two charges per one-way trip or four charges per round trip (see paragraph 6-l I).

e. Air carrier rates, fees, and charges. A public agency may not include in its price base the portion of the capital costs of a project paid for by using PFC revenue to establish a price (i.e., a rate, fee, or charge) under a contract between the public agency and an air carrier or foreign air carrier. However, the Statute requires that, for PFC-funded projects for terminal development, gates and related areas, or a facility occupied or used by one or more air carriers or foreign air carriers on an exclusive or preferential basis, the rates fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid by such carriers using similar facilities at the airport that were not funded by PFC revenue.

f. Exclusivity of authority.

(1) A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency may not tax, regulate, or prohibit or otherwise attempt to control in any manner, the imposition or collection of a PFC or the use of the revenue from the PFC.

(2) No contract or agreement between an air carrier or foreign air carrier and a public agency may impair the authority of the public agency to impose a PFC or impair use of the PFC revenue.

g. Nonexclusivity of contractual agreements. No project funded with PFC revenue may be subject to an exclusive long-term lease or use agreement with an air carrier or foreign air carrier. No lease or use agreement of an air carrier with respect to a project constructed or expanded with PFC revenue may restrict the public agency which controls the airport from funding or developing new capacity at that airport with PFC revenue or assigning that capacity as it sees fit.

h. Collection and handling by air carriers. Air carriers and their agents are required to collect PFC's imposed by public agencies and must remit those charges, less an FAA-specified handling fee, in a timely manner. In addition, the charges collected by the carrier must be noted on the passenger's ticket.

i. Application process.

(1) A public agency interested in imposing a PFC must submit to the FAA an application for authority to impose such fee.

(2) The application must contain the information and be in the form required by regulation as further developed by the FAA (see Preamble to the Regulation).

(3) Before submission of the application, the public agency must provide reasonable notice to, and an opportunity for consultation with, air carriers and foreign air carriers operating at the airport.

(4) After receiving the application, the FAA must provide notice and an opportunity for comment on the application by carriers and interested persons.

(5) A PFC may only be imposed if the FAA approves an application for authority to impose the PFC. The FAA has 120 days from receipt of an application to render a final decision.

j. Recordkeeping and audits. The public agency and the air carriers are required to abide by any regulations which the FAA may issue with regard to recordkeeping and audits of collection of the PFC and use of PFC revenue. If the FAA determines that collection is excessive or that revenue is not being used on approved projects or otherwise not properly used, the FAA may terminate PFC authority and/or offset such amounts otherwise payable to the public agency from AIP under the terms of 49 U.S.C. 47114(c).

k. Terms and conditions. Authority granted to a public agency to impose a PFC is subject to terms and conditions established by the FAA.

I-12. REDUCTION IN AIP APPORTIONMENTS - SECTION 47114(f). The AIP entitlement funds apportioned to a public agency that controls a large or medium hub airport will be reduced if the public agency imposes a PFC at such airport. For further discussion see section 5 of this chapter.

I-13. USE OF FUNDS RECOVERED UNDER SECTION 47114(f). Twenty-five percent of the funds not apportioned under 49 U.S.C. 47114(f) will be added to the AIP discretionary funds with half of this additional amount being designated for use at small hub airports. The remaining 75 percent of these recovered funds will constitute the "Small Airport Fund." One-third of the funds in the Small Airport Fund will be distributed to general aviation (including reliever) airports with the remainder of the funds being distributed to nonhub commercial service airports.

1-14 to I-15. RESERVED.

SECTION 3. DELEGATION OF AUTHORITY

I-16. OVERVIEW. The Associate Administrator for Airports is delegated limited authority to sign, in coordination with the Chief Counsel, approvals and disapprovals of PFC applications submitted under Part 158. This delegation does not apply to applications involving:

(a) Significant policy precedent;

(b) Significant legal issues, as determined by the FAA's Chief Counsel;

(c) 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;

(d) Multimodal projects; or

(e) Significant airport noise, access, or revenue diversion issues, including compliance with 49 U.S.C. 47521 et seq. (the Airport Noise and Capacity Act of 1990 (ANCA) and 49 U.S.C. 471 11(e) (Action on Grant Assurances Concerning Airport Revenues)).

The Administrator may delegate decisional authority on an individual application involving any of these exceptions on a case-by-case basis.

1-17. DELEGATION OF LIMITED AUTHORITY TO FAA AIRPORT OFFICES. On October 28, 1996, the Associate Administrator for Airports delegated to FAA Regional Airports Division Managers on a limited basis the authority to sign approvals and disapprovals of certain PFC applications submitted under Part 158. This delegation does not apply to applications involving:

(a) Applications not delegated to the Associate Administrator for Airports (see paragraph I-l 6);

(b) Applications that receive negative comments in response to FAA's notice published in the Federal Register;

(c) Any application involving eligibility determinations for which Order 5100.38 and subsequent Program Guidance Letters refer field staff to Headquarters offices, or which require a case-by-case eligibility determination; and

(d) Applications requesting the inclusion of PFC termination protection language.

Specific instructions on the management and procedures for decisions delegated to FAA Regional Airports Division Managers are provided in chapter 5 of this order.

I-1 8 to I-20. RESERVED.

SECTION 4. OVERVIEW OF THE PFC PROCESS

1-21. THE PFC PROCESS. Appendix 1 illustrates the steps to be taken by the FAA, air carriers, and the public agency for approvals to impose a PFC and approvals to expend PFC funds on eligible projects. Details on requirements and procedures for each of the steps are found in chapters 3, 4, and 5 of this order.

I-22. PFC PROGRAM AND ITS RELATIONSHIP TO AIP. PFC's are related to funds available under AIP in the following areas:

a. Public agencies are authorized under Part 158 to use the PFC revenue as the matching local share of an AIP project;

b. PFC revenue can be used by a public agency to supplement an AIP project;

c. PFC revenue can be used to pay debt service and financing costs. AIP funds cannot be used for this purpose, except under the AIP Innovative Finance Pilot Program.

d. Eligible projects under the AIP are also eligible for PFC funding. Therefore, future changes to the AIP in regard to project eligibility also apply to the PFC program. However, PFC eligibility also differs from AIP eligibility in that gates and related areas not eligible for AIP at larger airports are PFC-eligible under specific provisions of the PFC statute, as are noise projects eligible under 49 U.S.C. §47504, even if a Part 150 program for those projects has not been approved.

e. As a distinct requirement of the PFC program, PFC projects must meet one or more of the objectives of §158.15(a) of the regulation. Specifically, PFC projects must: (1) preserve or enhance safety, security, or capacity of the national air transportation system; (2) reduce noise or mitigate noise impacts resulting from an airport; or (3) furnish opportunities for enhanced competition between or among air carriers.

Additional requirements for imposition of PFC's at a level above $3 are discussed in chapter 10.

f. Projects must also be adequately justified. This latter requirement was added to the PFC statute after the original PFC regulation was issued although justification has always been required under §158.25(b)(7). The current version of Part 158 explicitly states this requirement.

g. The authorization to collect PFC's provides that, if the FAA determines a public agency is collecting an excessive amount of PFC revenue or the revenue is not being used as approved, the FAA may reduce the amount of funds otherwise payable to the public agency under the AIP by the amount of the excess collected or not used as approved.

h. Reduction in AIP apportionments at large and medium hub airports that impose a PFC is discussed in section 5 of this chapter.

i. PFC's constitute a special form of local airport revenue, subject to restrictions imposed by the PFC statute and regulation. Accordingly, some Federal statutory and regulatory requirements that apply to projects funded with AIP monies do not apply to projects funded solely with PFC's. Most importantly, projects funded totally with PFC revenue or with financing other than Federal funds are not subject to the labor minimum wage rates under the Davis-Bacon Act, Disadvantaged Business Enterprise (DBE) requirements, Buy-American Preferences, or the Uniform Relocation Assistance and Real Property Acquisition Policy Act requirements. However, in cases where PFC funds are commingled with AIP funds to complete a project, all AIP requirements apply. In addition, the AIP requirements may apply if the PFC funded project is part of a past, current, or future FAA grant funded program or project. Finally, in cases where a public agency may have distinct projects to accomplish a similar objective (particularly relocation assistance), one solely PFC funded and one solely AIP grant funded, both projects may adhere to the AIP requirements to preclude perceived inequities among those affected by the projects. Any questions on applicable Federal standards must be addressed on a case-by-case basis in consultation with APP-530.

1-23 to I-25. RESERVED.

SECTION 5. REDUCTION IN AIP APPORTIONMENTS

I-26. APPORTIONMENT REDUCTION FOR COLLECTION LEVELS OF $3 OR BELOW. The Statute prescribes that funds apportioned under 49 U.S.C. 47114 to large and medium hub primary airports that impose a PFC of $1, $2, or $3 be reduced by an amount equal to 50 percent of the projected revenues from the PFC in the fiscal year. However, this amount cannot exceed 50 percent of the passenger entitlements otherwise due the airport. The reduced apportionment takes effect in the first fiscal year following the year in which the collection of the PFC begins.

1-27. APPORTIONMENT REDUCTION FOR COLLECTION LEVELS ABOVE $3. AIR-21 provides that, in the case of a medium or large hub airport collecting a PFC at a level above $3, AIP funds apportioned must be reduced by an amount equal to the lesser of 75 percent of the projected revenues from the PFC in the fiscal year or 75 percent of the passenger entitlements otherwise due the airport. The reduced apportionment takes effect in the first fiscal year following the year in which the collection of the higher PFC level begins.

AIR-21 provides that certain small hub airports transitioning to medium hub airport status are protected through FY 2003 against a loss in combined year-to-year AIP apportionment and PFC revenues caused by entitlement reductions under 49 U.S.C. 47114(f). The sum of the amount that would be apportioned under 49 U.S.C. 47114 to the public agency controlling that airport in a fiscal year, after application of the apportionment reduction, and the projected PFC revenues to be collected in such fiscal year, shall not be less than the sum of the apportionment to such airport for the preceding fiscal year and the PFC revenues collected in the preceding fiscal year (see paragraph 1 O-26).

I-28. IMPLEMENTATION OF APPORTIONMENT REDUCTION. Annually, the Office of Airport Planning and Programming (APP) gathers information regarding enplaned passengers and computes the apportionment for each primary airport for the following fiscal year (see paragraph 7-7). The apportionment for each large and medium hub airport imposing a PFC will be recomputed starting in the first fiscal year following the fiscal year in which collections of a PFC begin at that airport and for each ensuing fiscal year that the public agency imposes a PFC. In October of each such fiscal year, APP will notify each FAA Airports office of the amount of each apportionment reduction by airport. The FAA Airports office will notify each public agency controlling an airport subject to reduction of the amount of the reduction. The FAA Airports office should remind a public agency which is considering requesting a PFC level above $3 that the reduced AIP apportionment will be implemented at the beginning of the fiscal year following the charge effective date of the higher collection level, as this may influence the public agency's choice of the charge effective date (see paragraph 10-26).

I-29. ADJUSTMENTS TO APPORTIONMENT REDUCTION. In the event that PFC revenues are less than or greater than estimated, the reduction may be increased or decreased in the following fiscal year. Any increase in the reduction, however, will not cause the reduction to exceed 50 percent for public agencies collecting PFC's at a level of $3 or less, or 75 percent for those public agencies collecting at a PFC level above $3, of the amount of AIP entitlement funds that would otherwise be apportioned in any fiscal year.

I-30 to I-35. RESERVED.

CHAPTER 2. ADVANCE COORDINATION

SECTION 1. BACKGROUND

2-1. OVERVIEW. The public agency's PFC application formulation process includes the following actions: (a) development of a project(s) and a project schedule; (b) preparation of a comprehensive financial plan including the proposed PFC share of project costs; (c) consultation with the air carriers operating at the airport at which the PFC is to be imposed; (d) drafting of the PFC application; and (e) submission of the application to the FAA. In addition, any environmental, ALP, and airspace actions required for projects for which use authority is requested must be completed prior to application submittal. This chapter discusses three processes for advance coordination:

(a) the application formulation meeting, which is optional;

(b) the carrier consultation meeting, which is required by statute; and

(c) the draft PFC application review, which is optional.

The formulation stage is complete when the PFC application is submitted to the FAA.

2-2 to 2-5. RESERVED.

SECTION 2. OPTIONAL APPLICATION FORMULATION MEETING

2-6. OVERVIEW. An application formulation meeting between the public agency and the FAA may identify critical issues that can be resolved in advance of the consultation process and the application submission. Such a meeting is optional on the part of the public agency but, in all but the most routine applications, should be encouraged. Resolution of problems at this level will greatly expedite the PFC process and improve the quality of the final decision. Key points to review at the application formulation meeting include:

(a) Project description, eligibility, objectives, and justification;

(b) Project cost and funding strategies;

(c) Project schedules;

(d) ALP, airspace, and environmental requirements;

(e) Alternative project(s) (for impose-only projects);

(f) Carriers to be excluded from requirement to collect PFC's;

(g) Consultation process, including the list of air carriers to be consulted; and

(h) Additional requirements for imposing a PFC level above $3, if applicable (see chapter 10)

Although this meeting can yield substantial benefits for the public agency, FAA personnel should be careful not to issue statements that predetermine the application review process. In particular, the FAA can identify problems and suggest corrections, but cannot make any assurances to the public agency that would constrain the FAA's discretion during the formal evaluation of the application. Upon request, the FAA may provide the public agency with a good example of a PFC application submitted by another airport of comparable size and/or with comparable projects to serve as a model for the public agency.

2-7. PROJECT DESCRIPTION, ELIGIBILITY, OBJECTIVES, AND JUSTIFICATION. The FAA's evaluation of a PFC application may be impeded due to imprecise, inaccurate, or incomplete project descriptions, misunderstandings about project objectives, inadequate justification of projects, or inadequate description of the significant contribution of a project(s) for a $4 or $4.50 PFC (at large or medium hub airports). A failure to identify these weaknesses prior to the consultation and Federal Register comment processes can lead to procedural problems and/or the inability of the FAA to approve a project that otherwise could have been approved. Accordingly, the FAA should make the public agency familiar with the evaluation criteria specified in chapters 4 and 10 of this order at the application formulation meeting. The FAA Airports office should advise the public agency that each project must be supported by the following information: (a) a concise description that identifies the work to be performed and where the project is located; (b) one or more clearly stated objectives that conform to the objectives in the PFC statute; (c) and an explanation, documented by specific information, of why the project is needed and justified. The FAA should also take this opportunity to identify for the public agency any projects that are clearly not PFC eligible or those projects for which eligibility is determined on a case-by-case basis. Particularly in the case of a proposed terminal development project, the FAA should emphasize the need for the public agency to address the effects of the project on air carrier competition at the airport. Information relevant to the competitive effects of a terminal development project is discussed in sections 3-18, 4-7 and 4-8.

2-8. PROJECT COST AND FUNDING STRATEGIES. The financial plan for a given project must address the period from charge effective date through financial completion. While a financial plan for impose only applications may be preliminary, a detailed financial plan is mandatory for an impose and use application or an application for use. The financial plan for each project must be presented at the airline consultation meeting, and in the PFC application. The financial plan must meet the requirements specified in chapter 4. The FAA should confirm that the public agency: (a) has reasonable cost estimates for each project (availability of project operation and maintenance costs may be beneficial, but are not mandatory, for air carrier consultation purposes); (b) understands which portions of these costs are eligible costs; (c) has correctly

reflected existing AIP entitlement and discretionary grants and has made reasonable assumptions about future AIP entitlement and discretionary funds; and (d) has identified credible sources of other non-PFC funds if needed. If AIP discretionary funds are anticipated in the financial plan, the FAA should advise the public agency that it must develop an alternate funding plan that does not rely on AIP discretionary funding so that interested parties may have some assurance that the project will go forward if approved for PFC funding even if AIP discretionary funds are not forthcoming. In the case of a $4 or $4.50 PFC level, particular attention must be given to expected AIP funding for the project, as the FAA cannot approve $4 or $4.50 PFC funding for projects that it reasonably expects can be funded with AIP funds (see paragraph 10-7). In addition, if the use of a PFC-funded project depends on the completion of a non-PFC funded project, the public agency must present information demonstrating that it has the funding necessary to complete the non-PFC project.

28. PROJECT SCHEDULES AND ENVIRONMENTAL, AIRSPACE, AND ALP REQUIREMENTS. Project schedules must consider regulatory requirements for both subsequent use applications and project implementation as provided in chapter 4. The public agency's schedule should be carefully reviewed to ensure it is realistic and consistent with other milestones. For instance, if it appears unlikely the public agency will be able to seek use authority within 3 years of the charge effective date for a project (see paragraph 3-7(b)), the public agency should be discouraged from submitting that project for impose authority. Similarly, the status of ALP, airspace, and environmental actions should be reviewed if the public agency intends to submit projects for "use" approval. Every effort should be made to have all environmental, ALP, and airspace determinations/approvals required for use or impose and use projects completed prior to application submission. Use or impose and use applications are not "substantially complete" until these actions are completed.

PFC projects are coordinated with other FAA offices in the same manner as other non-Federal projects. The public agency should be informed that it will be responsible for any required coordination of construction activities with the appropriate FAA offices (Airports, Airway Facilities, Air Traffic, Security, and Flight Standards) after the FAA has granted project approval.

2-10. ALTERNATIVE PROJECTS (for impose only projects). The public agency must provide and consult with its air carriers on eligible alternative uses to cover at least 5 years of collection or the value of the impose only projects, whichever is less (see paragraph 4-14).

2-11. PREPARATION FOR AND TIMING OF CARRIER CONSULTATION. The application formulation meeting presents an opportunity to discuss the consultation experiences of other public agencies.

The FAA should advise the public agency that the carrier consultation meeting should take place at least 30 days prior to the planned submission of the PFC application (see paragraph 2-21). In the case of a "use only" application, where a meeting may not be

required (see paragraph 2-22), the written notice to air carriers should be issued at least 30 days prior to submission. In addition, the public agency may need to allow additional time to prepare its required responses to carriers' comments, to be included in the application package.

The public agency, with the consent of air carriers, may seek to expedite the consultation/application process. In some instances, the FAA has agreed to a reduction in the 30-day notification time before and/or after a consultation meeting provided that all the air carriers serving the airport concur in writing with the reduced time frame. However, the public agency should be discouraged from basing its planned submission on an assumption that air carriers will waive the notification times. The objection or non-response of only one air carrier would mandate that the full notification periods be provided.

Although the regulation is silent on just how far in advance of the application submission a carrier consultation can occur, it is advisable that it be no more than 6 months in advance (some exceptions will apply). Longer time periods between consultation and application submission increase the risk that the public agency will be required to re-consult due to a change in project cost, scope, or other developments. For instance, the FAA has determined that a public agency must re-consult with air carriers prior to submission of an application if one or more air carriers not invited to the initial consultation begin service at the airport during the period between the consultation and the submission of the application. The longer the time period between consultation and application, the greater is the risk.

Finally, the public agency should be reminded that the FAA has no active role in carrier consultations. The FAA may attend the consultation meeting as an observer; however, this attendance is not mandatory.

2-12. APPLICATION FORMS. The PFC application must be submitted in the form specified in section 3-6. The FAA Airports office should discuss the procedures and format with the public agency. These forms are located in the FAA PFC Branch, APP-530 public access internet site, referred to as the PFC internet document site.

2-13. PUBLIC AGENCY PFC ASSURANCES. The FAA should review the PFC assurances with the public agency, paying particular attention to the linkage between PFC collection authority and the public agency's compliance with 49 U.S.C. 47524 and 47526 (see paragraph 4-12), formerly known as the Airport Noise and Capacity Act of 1990 (ANCA), and revenue diversion assurances (see paragraph 4-l 3). In addition, if the application includes terminal construction or rehabilitation projects, the public agency should be informed that it will have to assure the FAA that the terminal or portion of the terminal funded with PFC's will comply with the assurances pertaining to nonexclusivity of contractual agreements, carryover provisions, and competitive access assurances (see paragraphs 15-10 to 15-12). The public agency should be informed that it may need to provide the FAA with a copy of the lease for PFC-funded terminal areas which will be leased to air carriers, and that submission of these documents to the FAA in advance of

the submission of the application will minimize PFC processing time. It should also be pointed out to the public agency that by signing the Passenger Facility Charge Application, FAA Form 5500-1, it has agreed to comply with all assurances.

2-14. EXEMPTION OF A CLASS OR CLASSES OF CARRIERS. Any proposed class of carrier exemption definition should be discussed with the public agency prior to the air carrier consultation meeting. This is especially important if the public agency chooses not to consult with carriers listed in the proposed excluded class(es). In particular, if the carriers in an excluded class are not consulted and that class is subsequently disapproved by the FAA, the entire application could be disapproved or substantially delayed. Moreover, the public agency should be warned that the FAA cannot offer a final determination on the eligibility of the class until the application has been formally submitted--thus emphasizing the value of a fully inclusive consultation. Each class exemption must not exceed 1 percent of the airport's total annual enplanements and should otherwise conform to the requirements described in chapter 4.

2-15. ADDITIONAL REQUIREMENTS FOR IMPOSING A PFC LEVEL ABOVE $3. Any public agency requesting a PFC level above $3 is required to provide additional information for the FAA to make specified findings beyond those required under the PFC statute and regulation for PFC levels of $3 or less (see chapter 10).

2-1 6. IDENTIFICATION OF ADDITIONAL INFORMATION. Additional project information which may be needed for the FAA's review of PFC project eligibility once the application is formally submitted should be identified at this time. Additional information that may be useful or necessary for the inclusion in the application includes:

a. Sketch(es) depicting proposed projects;

b. Part 150 studies;

c. Noise contours supporting noise mitigation projects;

d. Pavement condition surveys;

e. Documentation of demand by critical aircraft, including haul length;

f. List of Federally funded/PFC financed equipment;

g. Snow removal plan;

h. Airport leases for terminals;

i. Airport capacity information for ground access projects (see paragraph 4-8);

j. Information on existing air carrier competition at the airport (see paragraph 4-8); and

k. Competition plans for a qualifying airport (see paragraph 1 O-27).

2-17 to 2-20. RESERVED.

SECTION 3. CONSULTATION MEETING

2-21. REQUIREMENT TO CONSULT. Section 158.23 of the PFC regulation states that, prior to submitting an application to the FAA for authority to impose a PFC, the public agency shall provide written notice of the consultation meeting to all air carriers and foreign air carriers operating at the airport (see paragraph 4-15), except those carriers that the public agency may choose to request not to collect PFC's (see paragraph 4-l 1). This notice shall specify the date and location of a consultation meeting at which the public agency will present projects being considered for impose or impose and use authority to air carriers and foreign air carriers operating at the airport. This meeting should be held no sooner than 30 days nor later than 45 days after issuance of the written notice, although a meeting may be held sooner than 30 days from issuance with unanimous air carrier concurrence (see paragraph 2-l 1). For a use application, a meeting is not required if there are no significant changes from the original impose only application.

2-22. CONTENT OF NOTICE TO CARRIERS. The written notice to air carriers shall include the following information:

a. Description of project(s) being considered for funding by PFC's (including alternative project(s) in the case of impose only project(s));

b. The PFC charge level, the proposed charge effective date, the estimated charge expiration date, and the estimated total PFC revenue;

c. For a request by a public agency that any class or classes of carriers not be required to collect the PFC:

(1) The designation of each class,

(2) The names of the carriers belonging to each class (to the extent the names are known),

(3) The estimated number of passengers enplaned annually by each class, and

(4) The public agency's reasons for requesting that carriers in each class not be required to collect the PFC; and

d. For an impose only, impose and use, or use application for which a consultation meeting is required, the date and location of a meeting at which the public agency will present such projects to air carriers and foreign air carriers operating at the airport.

For a use application, a meeting is not required unless there are significant changes from the original impose only application; a letter notice will suffice. In this case, the carriers have 30 days from the date of issuance of the letter to submit their certificate of agreement/disagreement to the public agency. However, if the use application includes changes that would otherwise require consultation under the requirements for processing amendments (e.g., a significant change in project scope or increase in cost), then a consultation meeting is required (see paragraph 12-6).

Public agencies should send a copy of the notice to carriers to the FAA Airports office.

2-23. CARRIER WRITTEN ACKNOWLEDGMENT. Within 30 days following issuance of the written notice from the public agency to the air carriers, each carrier must provide the public agency with a written acknowledgment that it received the notice. If the air carrier does not provide written acknowledgment of the notice, it will be assumed that it has received notification. The public agency is strongly encouraged to send its notice "return receipt requested." The returned signed receipt is adequate carrier acknowledgment and is invaluable for verifying carrier notification in the event that one or more carriers should later challenge the thoroughness of the notification procedure. Such a challenge could complicate and/or delay a decision on the PFC application.

2-24. CONSULTATION MEETING. In addition to the information contained in the written notice, the public agency is required to provide the explanatory information to the air carriers at the consultation meeting. However, the FAA Airports office should strongly encourage the public agency to include as much of the required information as possible prior to the meeting in its "Notice to Carriers" to allow carriers sufficient time to review the proposals in-depth, and yield a more useful exchange at the consultation meeting itself. Supplemental information may also be sent after the notice, but prior to the meeting, preferably allowing the carriers sufficient time to review it.

In addition to the information required in the notice, the public agency is required to provide the air carriers and foreign air carriers with the following information in sufficient detail to allow for carrier review and evaluation:

a. A description of each project (and alternative projects in the case of impose only projects);

b. An explanation of the justification for each project (and alternative projects in the case of impose only projects); and

c. A detailed financial plan for the projects including-

(1) The estimated allowable project costs to be paid for with PFC revenue allocated to each project,

(2) The anticipated total amount of PFC revenue that will be used to finance the project(s), and

(3) The source and amount of other funds, if any, needed to finance the project(s).

The requirement for a detailed financial plan does not apply to alternative projects submitted with an impose-only project.

The consultation meeting should be viewed as an opportunity for the public agency and the carriers to discuss issues surrounding the scope, financing, and timing of the proposed projects. In this context, while acceptable as meeting the regulatory requirements for consultation, a public hearing is not the recommended forum for consultation.

2-25. CARRIER WRITTEN CERTIFICATION OF AGREEMENT OR DISAGREEMENT. Within 30 days following the consultation meeting, each carrier must provide the public agency with a written certification of its agreement or disagreement with each proposed project. Conditional agreements and agreements with comments are generally considered an agreement. However, the public agency should be advised to address any substantive issues raised in these comments in that these comments may raise issues of concern to the FAA. A certification of disagreement shall contain the reasons for such disagreement. The absence of such reasons shall void a certification of disagreement.

2-26. CARRIER FAILURE TO PROVIDE WRITTEN ACKNOWLEDGMENT OR CERTIFICATION OF AGREEMENT/DISAGREEMENT. The regulation states that if a carrier fails to provide the public agency with timely acknowledgment of the written notice or timely certification of agreement or disagreement with each proposed project, the carrier is considered to have certified its agreement. Any comments of disagreement received from an air carrier within the 30 days following the consultation meeting must be addressed in the public agency's application (see paragraph 2-27), even if that air carrier neglected to acknowledge the public agency's written notice. Although not required, the FAA should encourage a public agency receiving a certification of disagreement after the 30 day comment period to address the carrier's objections. This practice assures that the FAA has all information needed to evaluate comments that may be received through the Federal Resister review process.

2-27. SUMMARY OF MEETING. Section 158.25(b)(11) requires the public agency to provide a summary of the consultation process in its PFC application. Although a format for the summary is not specified, the regulation states that the summary shall include:

a. A list of carriers operating at the airport and those carriers notified;

b. A list of carriers that acknowledged receipt of the notice;

c. Lists of carriers that certified agreement and that certified disagreement with each project; and

d. A summary of substantive comments made by carriers in any certifications of disagreement with the project, and the public agency's reasons for proceeding in the face of this disagreement.

The public agency must address all air carrier adverse comments. This analysis and summary is to be provided in the attachment B of the PFC application. Although not required by regulation, the public agency should be encouraged to keep a transcript or detailed notes of the meeting in the event a question is later raised as to whether a specific project was discussed at the meeting.

2-28. CHANGES BY PUBLIC AGENCY AFTER THE CONSULTATION. A public agency may decide to change project descriptions, scopes, and/or estimates of allowable project costs after the consultation is completed. These changes could be necessitated by new engineering studies, changes in aviation demand, responses to air carrier concerns, or new cost information, particularly if there is a long period between the time of the consultation and the time the application is ready to be submitted to the FAA. In such cases (other than as a result of air carrier consultation), procedures and guidelines specified for consultation on amendments are applicable (see paragraph 12-7). As a general rule, an increase in allowable costs for projects in the application of 15 percent or more, or a significant change in the scope of any project, would require a new consultation and a new meeting before the application could be submitted. Adding new projects or changing a project's status from "alternative" to "primary" always requires re-consultation and a new meeting.

2-29 to 2-35. RESERVED.

SECTION 4. DRAFT PFC APPLICATION REVIEW

2-36. OVERVIEW. The public agency may submit a draft of the PFC application to the FAA Airports office for review and comment. The completeness of the carrier notification list, the adequacy of the public agency's response to carrier disagreements, the timeliness of project schedules, the status of required ALP, environmental, or airspace approvals, and the acceptability of any carrier class exemption definitions deserve particular attention. If substantive questions remain, a working meeting with the public agency can be scheduled to resolve issues prior to formal submittal. The public agency should be informed that any opinions expressed by the FAA during the draft application

process are preliminary and could be modified based on new information or further analysis prior to the final decision being issued.

2-37 to 2-40. RESERVED.

CHAPTER 3. APPLICATION SUBMITTAL

SECTION 1. GENERAL

3-1. OVERVIEW. This chapter provides information on the PFC application, its availability, the public agency's timing considerations for submitting an application, the processing of the application from the time FAA receives it through the issuance of the Federal Register notice requesting public comment on the application, and the official application file requirements.

The FAA may request clarification of any information received from the public agency at any time during the review process. A written record of any such request and the public agency's response should be maintained in the official file. However, the public agency should not use such a request as an opportunity to present additional arguments including new justifications, as opposed to clarifying information. Submission of a new justification, rather than clarifying information, may cause procedural problems requiring the need for additional Federal Renister comment periods (see Air Transport Association v. FAA, 169 F. 3d 1 (D.C. Cir., 1999)).

3-2. FLOW CHART OF APPROVAL/DISAPPROVAL PROCESS. A flow chart of the approval/disapproval process from the time of the FAA Airports office's receipt of application through approval/disapproval is provided in appendix 1.

3-3 to 3-5. RESERVED.

SECTION 2. PROCEDURES FOR SUBMITTAL

3-6. FORM. The PFC application form, FAA Form 5500-1, including instructions for preparing the attachments and the format for Attachment B, is provided in the PFC internet document site and is also available at the FAA Airports office. This form must be used by all public agencies that submit applications. Failure to use the prescribed format may result in a determination that the application is not substantially complete. Three copies of the completed application should be submitted to the FAA as indicated on FAA Form 5500-I: two copies to the FAA Airports office and one copy to APP-530. If the FAA Airports office advises the public agency to submit all copies to it, the FAA Airports office is required to immediately forward one copy to APP-530. The FAA strongly encourages the electronic submission of Form 5500-I and the associated attachments to facilitate the processing of applications.

3-7. TIMING OF SUBMISSION.

a. Initial application. The regulation requires that the air carriers be provided with a 30-day comment period following the consultation. Accordingly, the application cannot be submitted until at least 30 days after the consultation meeting with the

carriers (see also paragraph 2-l 1). In the case of use applications for which a meeting is not required, the application can be submitted no sooner than 30 days after the written notice to air carriers concerning the application. In addition, the public agency may need to allow additional time to prepare its required responses to carriers' comments which must be included in the application package. There is no regulatory time limit on submitting an application after conclusion of consultation, but a lengthy period may result in the need for re-consultation (see paragraph 2-l I).

b. Subsequent use applications. In the case of an impose only project, once the FAA approves an application, the public agency has up to 3 years from the charge effective date to submit an application to use PFC revenue for the project.

An important exception to this requirement occurs when the public agency obtains additional impose only (collection) authority for new projects in subsequent application(s) before previously granted impose collection authority has expired. In this case, the use application(s) for these latter impose only projects must be submitted to the FAA within 3 years of the date that the FAA approves the application authorizing those impose only project(s).

For example, the first application approved for the public agency controlling the airport TMS, 95-01-I-00-TMS, authorized 20 years of impose only collections and was signed on January 25, 1995 with a charge effective date of April 1, 1995. The public agency for TMS would be required to submit a use application for this approval by April 1, 1998, three years after the charge effective date. Later, on June 5, 1997, the FAA approved a second impose only application, 97-02-I-00-TMS, with a charge effective date of April 1, 2015 (the date when the 20 year collection authority for 95-01-I-OO-TMS terminates). The use application for 97-02-I-00-TMS would be required to be submitted by June 5, 2000, 3 years after the approval date of 97-02-I-00-TMS — not April 1, 2018, 3 years after the charge effective date for that application.

If the public agency has several impose only projects, it may elect to file one combined application or several separate use applications during the 3-year timeframe allowed for the use application(s). In addition, the public agency may request an extension (the extension may be for up to 2 years for a maximum impose only time not to exceed 5 years) to submit an application for project use approval, if progress toward implementation of an impose only project has been delayed for valid reasons (subject to other time restrictions, see chapter 9). The FAA Airports office will assist the public agency in monitoring this requirement for submission of use applications (see chapter 8).

c. Subsequent impose only or impose and use applications. The public agency may submit a new impose only or impose and use application at any time. However, the new application should be submitted at least 180 days prior to the charge expiration date of the previous application if the public agency wishes to maintain PFC collections without interruption. The FAA Airports office and the public agency should monitor the rate of collections and the estimated charge expiration date, although the

ultimate responsibility resides with the public agency. If another PFC application is expected, the FAA Airports office should advise the public agency the best practice is to begin work on that application at least 1 year before the collection for the current application is projected to expire. This will allow for the orderly development, consultation, and evaluation of the new application.

If the subsequent application is not submitted in a timely manner, the public agency puts itself at risk of having to stop and restart collections. These brief interruptions in PFC collections are administratively burdensome to the air carriers, the FAA, and the public agencies. The public agency should make every effort to avoid brief interruptions in collections.

3-8. APPLICATION FILE. An application file is a collection of documents pertinent to a particular PFC application. The PFC file system is established and maintained by the FAA Airports office. File information includes documents tracking a project from receipt of the PFC application (and any official correspondence to or from the FAA leading up to the application) through PFC application closeout. Files of disapproved PFC applications contain all information through item k. below. At a minimum, the application file must include the following information (document sources or references are indicated):

a. PFC application (PFC internet document site) including attachments;

b. Checklist for Review of Application (PFC intranet document site for FAA access);

c. Letter to the public agency on application completeness (PFC intranet document site);

d. Public agency notice of application supplement, if applicable (see paragraph 3-l 8(c));

e. Application supplement, if applicable (see paragraph 3-l 8(c));

f. Federal Register notice, as published (see paragraph 3-18(d) or 3-l 9(b));

g. Public comments resulting from Federal Resister notice (see paragraph 5-13);

h. Additional information/clarification requested by the FAA Airports office used to assist in preparing a recommendation;

i. Determination of Delegation (see paragraph 5-6(a));

j. Recommendation package including a copy of the Attachment(s) B and G with the “FOR FAA USE” portions completed (PFC internet document site), PFC Application Recommendation Form (PFC intranet document site), PFC Alternative Project

Recommendation Form (PFC intranet document site), if applicable, and any memoranda or similar documentation supporting the FAA Airports office's recommendation for approval/disapproval. The recommendation package submitted to APP-530 will also contain a copy of the comments identified in item g. above;

k. A copy of the signed determination package, including the letter to the public agency and the record of decision (ROD) (PFC intranet document site);

l. Public agency notification to carriers to begin collection of PFC's (see paragraph 6-2);

m. Public agency quarterly reports (see paragraph 7-6);

n. Public agency annual August 1st report, if applicable (see paragraph 7-7);

o. Documents associated with amendments and extensions (see chapters II, 12 and 9);

p. Documents associated with termination proceedings (see chapter 13);

q. Public agency annual audit(s), if requested (see paragraph 7-l 8);

r. Termination protection documentation for stand-alone PFC financing, if applicable (see paragraph 13-33);

s. Close out project completion certificate (see paragraph 14-11); and

t. PFC application closeout report (see paragraph 14-18).

An application file should be maintained until all projects within it have been physically and financially completed and the application has been closed out. Following close out, it is suggested that the file be reduced to include only the signed determination package, amendments, extensions, and the letter sent by the FAA to the public agency to confirm application close out. However, the FAA Airports office should use discretion and retain materials that may be relevant to future evaluations of projects completed under the application, particularly if there is known controversy concerning those projects.

38 to 3-15. RESERVED.

SECTION 3. APPLICATION COMPLETENESS REVIEW

3-16. OVERVIEW. This section covers the regulatory requirements and procedural guidance for making a determination of application completeness, preparing a Federal Register notice, and processing an application supplement, if applicable.

3-17. RECEIPT OF APPLICATION. Upon receipt of the application, the FAA Airports office will write the date received in the appropriate box on the application form and will notify APP-530 (and the FAA Airports Regional Office, if appropriate) promptly of the date of receipt.

3-18. DETERMINATION OF COMPLETENESS.

a. Review checklist. The PFC application will be reviewed for completeness using the checklist (PFC intranet document site) and by completing the appropriate "FOR FAA USE" portions of Attachment(s) B. This checklist and FAA-completed Attachment(s) B serve as the official FAA record for the determination of completeness.

Within 30 days after receipt of an application, the FAA Airports office will determine whether the application substantially complies with the requirements of the PFC statute and regulation. During review of the application for completeness, the FAA Airports office should determine if:

(I) The application contains the required information in sufficient detail that a determination on each project can be made;

(2) Sufficient eligible alternatives have been provided for impose only projects;

(3) Environmental, ALP, and airspace requirements are complete for impose and use or use projects; and

(4) Air carrier consultation was conducted properly.

The FAA's objective should be to notify public agencies of concerns as soon as possible in the review process, although ideally, such concerns would have been anticipated in the application formulation meeting (see paragraph 2-6). The project description, justification, and financial plan must provide sufficient detail that a person not familiar with the airport will be able to understand the project.

In addition, depending on the specifics of the project, a terminal development project may require additional detailed information. This additional information is necessary in order to meet the regulatory requirement calling for public agencies to discuss any existing conditions that limit competition between and among air carriers, any initiatives the public agency proposes to foster opportunities for enhanced competition between or among such carriers, and the expected results of such initiatives. See section 4-7(d) for specifics regarding the type and specificity of additional information needed. This information is required for all airport sizes and is independent of the requirement that some airports must have a current competition plan (see paragraph 10-27).

Projects for which impose only PFC authority is requested must address the issue of alternative PFC uses (see paragraph 4-14). If sufficient eligible alternatives are not

included in an application that contains impose only projects, the application must be found not substantially complete. In such cases, the public agency will have to consult with the air carriers on new or additional alternatives. Alternatively, the public agency could move sufficient primary projects, which were included in the consultation, to alternative status to provide the needed coverage. The public agency could also choose to withdraw, by letter to the FAA, some or all of the proposed impose only projects from the application. Either of these approaches would eliminate the need for reconsultation. The requirement for consultation on alternatives is a result of a court decision on an early PFC decision (see Northwest Airlines, Inc. v. Federal Aviation Administration, 14 F. 3d 64 (D.C. Cir. 1994)).

Assuring environmental, ALP, and airspace requirements are completed for impose and use or use projects warrants special attention. A notice that the FAA has found an impose and use or use application to be substantially complete, published in the Federal Register is acknowledgment that the FAA has completed actions and issued findings in these areas.

If the FAA reviewer determines an item(s) on the checklist does not meet requirements or is not included in the application, this deficiency will be noted on the checklist and the application determined to be not substantially complete. An exception to this, however, may be the lack of certain general items, such as a telephone number, which do not impair the FAA's ability to render a decision.

The FAA reviewer must verify certain dates which are stipulated by regulation. One such date is the consultation meeting with carriers, which is to be held no earlier than 30 days nor later than 45 days from the date of written notice to the carriers. The other date requirement is that at least 30 days must have passed from the date of the consultation meeting to the date of the public agency submitted its application to the FAA, to allow for carrier certification of agreement or disagreement (see paragraph 4-15(a)(2)). If the public agency has not complied with these timeframes, the application will be determined to be not substantially complete. An exception would be where the public agency has moved a date to accommodate an accelerated schedule and/or an air carrier and the air carriers affected by the change, once advised of it, register an affirmative agreement (see paragraph 2-l I). If more than one carrier is affected, agreement must be unanimous.

If the FAA Airports office is aware of any ongoing investigations or findings with regard to non-compliance with ANCA (see paragraph 4-12) or revenue diversion (see paragraph 4-l 3), APP-530 and APP-600 and/or AAS-400 must be consulted. Depending on the status of the ANCA or revenue diversion issue, the application may be found not substantially complete, in that the FAA would lack sufficient information to make a positive determination of compliance.

The reviewing FAA official shall make a finding of completeness, sign, and date the checklist.

b. Preparation of letter. After the checklist is completed, the FAA Airports office shall advise the public agency, in writing, of the application's completeness. The format for a "substantially complete" letter and a "not substantially complete" letters are shown in the PFC intranet document site. The appropriate letter must be signed by the regional Airports Division Manager or designee.

c. Supplement to application. When the FAA determines the application is not substantially complete, the public agency is afforded one opportunity to formally supplement its application. However, a request by the FAA Airports office for clarification of an item during the review process is not a formal supplement to the application.

The public agency has 15 days from the date the FAA issues a not substantially complete letter to provide written notice that it intends to supplement its application, or it may choose to withdraw any project(s) which has been found to be not substantially complete. Note that only a written notice of intent to supplement is required, not the actual supplement to the application.

Once the public agency has indicated it intends to supplement, the regulation provides no specific time period in which the supplement must be submitted to the FAA. If a significant change is made in the application, reconsultation with the carriers may be needed. Apply guidance contained in chapter 12 concerning amendments in determining what application changes necessitate re-consultation with the carriers. If the public agency declines to supplement the application, the FAA Airports office should follow the procedures for processing an application as set forth in paragraph d. of this section.

If the public agency supplements its application, the statutory 120-day approval period restarts at day 1 when the FAA receives the supplemental information. Section 3-19 provides guidance for processing a supplemented application.

d. Preparation of Federal Register notice.

(1) Substantially complete application. The FAA Airports office prepares a Federal Register notice in accordance with the instructions and format provided in the PFC intranet document site. The Federal Resister notice should be prepared at the same time as the "completeness" letter. This simultaneous preparation will save time in the 120-day approval process.

(2) An application found not substantially complete which the public agency does not intend to supplement. If the public agency does not respond in writing within the 15-day period following a "not substantially complete" determination, the FAA Airports office prepares a Federal Register notice in accordance with the instructions and format provided in PFC intranet document site. This notice includes the reason(s) the application was found not substantially complete.

(3) Processing. The Federal Resister notice should be sent to the Office of the Docket, AGC-10, for publication in the Federal Register. Appropriate procedures should be established to verify that the notice has been forwarded to and/or received by AGC-10 in a timely manner. If transmitting several Federal Resister notices in the same package, special effort should be made to highlight each notice.

3-19. PROCESSING OF APPLICATION SUPPLEMENT.

a. Review of previous checklist. When it receives a supplement to an application, the FAA Airports office will review the previously prepared "completeness" checklist and FAA-completed Attachment(s) B to determine if the supplement provides the information necessary to complete the application.

The FAA Airports office may prepare another letter to the public agency acknowledging receipt of the supplement. This letter may be similar to the substantially complete letter described in section 3-18(b). This letter is not required by regulation, but provides useful documentation to the public agency and the application file.

b. Preparation of Federal Register notice.

(1) Supplemented application complete. The FAA Airports office will prepare a Federal Register notice as shown in the PFC intranet document site.

(2) Supplemented application with unresolved deficiencies. The FAA Airports office will prepare a Federal Register notice as shown in the PFC intranet document site. This notice will include the reason(s) the application was found not substantially complete and why the supplement did not successfully resolve the issue(s).

(3) Processing. The Federal Register notice is sent to the Office of the Docket, AGC-IO, for inclusion in the Federal Register. If transmitting several Federal Register notices in the same package, special effort should be made to highlight each notice.

c. Washington coordination. As discussed in section 3-6, the public agency is required to send a copy of the application to APP-530. If the application is supplemented, the FAA Airports office will send a copy of the application supplement to APP-530.

3-20. PUBLIC AGENCY COORDINATION. The FAA Airports office will forward a copy of the published Federal Register notice to the public agency. The public agency shall make available for inspection by the public, upon request, a copy of the application, Federal Register notice, and other documents germane to the application. The public agency may also opt to publish the Federal Resister notice in a local newspaper of general circulation.

3-21 to 3-25. RESERVED.

CHAPTER 4. PROJECT AND APPLICATION REVIEW

SECTION 1. GENERAL

4-I. OVERVIEW. This chapter contains the criteria and procedures for evaluating all applications and projects. See chapter 10 for additional requirements that apply to projects at the $4 and $4.50 PFC level of collection.

4-2. APPLICATION EVALUATION. The FAA Airports office will evaluate the application and prepare its recommendations for PFC revenue collection and project approval, partial approval, or disapproval based on the regulatory criteria and procedural guidelines for the following items:

a. Project eligibility;

b. Project objective;

c. Project justification;

d. Amount and duration of the PFC;

e. Collection process;

f. Exclusion of a class of carriers;

g. Compliance with the ANCA;

h. Compliance with airport revenue use requirements;

i. Alternative uses;

j. Consultation requirements;

k. Air carrier and public comments;

l. ALP/airspace/NEPA requirements;

m. Schedule for project implementation; and

n. Financial viability.

Each of these criteria is discussed in the following paragraphs. These criteria may vary in applicability depending on whether an application is to impose or to use. Accordingly, where the criteria apply to approving projects with only authority to impose but not use a PFC, "(impose only)" is indicated after the criteria heading. Where the criteria apply to approving impose authority, with or without accompanying use authority, "(impose)" is

indicated. Where the criteria apply to approving use authority, with or without accompanying impose authority, "(use)" is indicated. Where the criteria apply uniformly to all types of authority, "(all)" is indicated.

4-3 to 4-5. RESERVED.

SECTION 2. EVALUATION CRITERIA

4-6. PROJECT ELIGIBILITY. (All)

a. Eligibility criteria. Each project in an application must qualify under one of the following criteria:

(1) Airport development eligible under subchapter I of 49 U.S.C. chapter 471;

(2) Airport planning eligible under subchapter I of 49 U.S.C. chapter 471;

(3) Terminal development as described in 49 U.S.C. 471 IO(d);

(4) Airport noise compatibility planning as described in 49 U.S.C. 47505;

(5) Noise compatibility measures eligible for Federal assistance under 49 U.S.C. 47504, without regard to whether the measures have been approved under §47504, (as implemented by 14 CFR Part 150);

(6) Construction of gates and related areas at which passengers are enplaned or deplaned and other areas directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport. These areas do not include restaurants, car rental facilities, automobile parking facilities, or other concession space; or

(7) Air Traffic Modernization Cost Sharing program.

In addition to the eligibility project types listed above, debt service and financing costs associated with projects meeting the above criteria are also eligible.

The description of the project should define the project to the extent that a person unfamiliar with the airport can understand what the project will accomplish and determine the project's scope. A project within some PFC applications may consist of two or more project elements grouped into a single, larger project (e.g., terminal construction or rehabilitation). A detailed description of the elements of such projects should be provided in order for the FAA to determine the eligibility of each project

element. Applications which lack sufficient details about each project element could lead to a qualified eligibility determination that mandates additional FAA review of project plans for eligible items prior to project implementation or PFC expenditure (see paragraph 5-12(c)).

Eligibility can only be determined by the FAA, therefore, the public agency portion of the Attachment B should not state the eligibility, thereby prejudging the determination.

b. PFC/AIP eligibility. The FAA Airports office will make its eligibility recommendation for items (1) through (4) above based on the latest edition of FAA Order 5100.38, AIP Handbook, as supplemented by PGL's and other guidance. AIP and PFC eligibility of projects is identical for projects within these categories--if it is not AIP eligible, it is not PFC eligible. AIP funding priorities do not affect project eligibility.

Special attention should be given to safety and security projects specified in item (a)(l) above. Section 308, Authority To Use Certain Funds for Airport Security Programs and Activities, of the Federal Aviation Reauthorization Act of 1996 (codified at 49 U.S.C 44901 note) states that "Notwithstanding any other provision of law, funds referred to in subsection (b) may be used for the improvement of facilities and the purchase and deployment of equipment to enhance and ensure the safety and security of passengers and other persons involved in air travel." The referenced subsection (b) includes project grants made under the AIP and application approvals made under the PFC program. The FAA interprets this provision to mean that there is potential AIP or PFC eligibility for some security equipment and facility projects that may not have been formerly eligible under FAA Order 5100.38. However, there are other requirements such as FAA standards for equipment design or FAA standards for whether an airport qualifies for such equipment/facilities, that must be met for eligibility purposes. Therefore, to the extent that a public agency proposes a project that would not otherwise be eligible under FAA Order 5100.38 or other FAA guidance, a determination as to whether the project is an eligible security project should be deferred to APP-510 after coordination with the appropriate Civil Aviation Security Division or Civil Aviation Security Field Office (CASFO) at the regional level, and the Federal Security Manager at selected airports who will consult with the appropriate Headquarters security personnel.

c. Noise eligibility. For item (a)(5) above, noise project eligibility under the PFC program is the same as described in FAA Order 5100.38 except that the project need not be included in an approved Part 150 Noise Compatibility Plan (NCP).

AIP eligible noise projects, which are also PFC eligible, include: projects in an approved Part 150 NCP (but not including costs related to the development of new flight procedures, operational and administrative costs of an airport for ongoing noise mitigation programs, and demonstration programs to test the effectiveness of new noise mitigation technology); and noise insulation projects at public buildings used primarily for educational or medical purposes even if the associated airport does not participate in the Part 150 program. Projects identified in an approved EIS to mitigate the noise impacts of an airport infrastructure project are also eligible for funding as allowable

costs of the infrastructure project under the AIP and PFC. However, the eligibility of these projects is established by the eligibility of the infrastructure project (e.g., capacity) and not on the basis of noise mitigation.

PFC eligible noise projects which are not AIP eligible include any project that would qualify for inclusion in a Part 150 NCP, even though the public agency has not undertaken and/or completed a Part 150 study or the project is not included in an implemented NCP. However, the eligibility of any proposed PFC noise project not in an approved Part 150 NCP must be supported by noise contours, which could be prepared in conjunction with a Part 150 study, airport master plan, environmental assessment, or other suitable planning analysis.

On April 3, 1998, FAA issued the "Final Policy on Part 150 Approval of Noise Mitigation Measures: Effect on the Use of Federal Grants for Noise Mitigation Projects" (Federal Register, Volume 63, Number 64, pp. 16409-16414). The FAA will approve under Part 150 only remedial noise mitigation measures for existing non-compatible development and only preventive noise mitigation measures in areas of potential new non-compatible development. The FAA will not approve remedial noise mitigation measures for new non-compatible development that occurs in the vicinity of airports after the effective date of the final policy even though such remedial projects are technically eligible for inclusion in a Part 150 program. Because the latter projects will not, as a matter of policy, be approved under Part 150, they cannot be AIP funded. However, because they remain technically eligible for inclusion, they remain eligible for PFC funding.

d. Terminal eligibility. PFC eligibility of terminal development projects encompasses and expands upon the types of terminal development eligible under the AIP. AIP eligibility and, consequently, PFC eligibility varies according to the airport hub size.

(1) Hub airports. At large, medium, and small hub primary airports, terminal facilities directly related to the movement of passengers and baggage in air commerce that are not revenue-producing (i.e. multi-modal terminal facilities; public-use areas associated with baggage claim delivery; automated baggage handling equipment; public-use corridors to boarding areas; central waiting rooms; restrooms; holding areas (not exclusively leased to an air carrier); foyers and entryways; and loading bridges are eligible under the AIP program. A flight information display system, which is available for use by all air carriers, is eligible. Under AIP eligibility for hub airports, gates and airline ticketing areas, including passenger check-in facilities and other revenue producing areas are not eligible for AIP funding.

The PFC statute and regulation incorporate AIP eligibility and expand PFC eligibility to include non-concession areas directly related to the movement of passengers and baggage in air commerce regardless of their revenue producing status. Thus, gates, airline ticketing areas, and passenger check-in facilities at hub airports are PFC eligible even though they are not AIP eligible. Because a gate facility cannot function without

the access to passenger and baggage movement services, eligible gate-related areas include ticket counters, incoming and outgoing bag facilities (including baggage make-up areas), and baggage carousels.

Public seating for a food court is not eligible, because the food court seating is a concession facility. The FAA Airports office should consult with APP-530 on the eligibility of any item not covered in the above description.

(2) Expanded eligibility under AIR-21. Section 151 of AIR-21, codified under 49 U.S.C 40117(a)(3)(F), expanded the PFC eligibility of gates and related areas. A project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate if the project is required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport. Costs associated with providing the tenant finishes are not eligible.

Section 40117(a)(3)(F) effectively expands eligibility of gates and related areas to include air carrier or airport operations space, concession space, and aircraft fueling facilities directly under or adjacent to a gate and its associated hold room or ticket counter. However, those otherwise ineligible facilities not in the footprint of gates or related areas would not be eligible.

(3) At non-hub primary, non-primary commercial service, and reliever airports, public use terminal development comprising those areas which are eligible at larger hub airports as well as space for gates, airline ticketing areas, passenger check-in areas, restaurants, car rental facilities, and other concessions are AIP eligible regardless of their revenue-producing status. PFC eligibility at these small airports, as well as airports participating in the Military Airport Program, mimics AIP eligibility. However, while the space for concession facilities is eligible, the build-out of the facilities themselves is not.

(4) Terminal operational areas and maintenance. Consistent with AIP provisions, no project in the terminal that is appropriately categorized as operational areas for airports and air carriers, or maintenance, is eligible for PFC funding, subject to the exception created under 940117(a)(3)(F). For example, carpet replacement and painting, as stand-alone projects, are not PFC eligible. However, carpet replacement or painting necessitated by a major eligible project would be eligible as an incidental part of that project.

e. Ground access/Intermodal eligibility. As stated in the Preamble to Part 158, the FAA determines the eligibility and justification for ground access projects, no matter the technology proposed (e.g., road, heavy or light rail, water), on a case-by-case basis after a review of the particulars associated with each unique proposal. In general, an airport access project must be eligible for funding under the AIP and must

meet at least one of the PFC objectives-typically construed to be capacity preservation or enhancement for access projects, although other objectives may apply (e.g., enhancement of competition). Additionally, airport ground access projects must be for the exclusive use of airport patrons and airport employees, be constructed on airport-owned land or rights-of-way acquired or controlled by the public agency, and be connected to the nearest public access facility or point of sufficient capacity. More than one access facility and/or connection point may be eligible if the airport traffic is of sufficient volume to require more than one access route.

In some cases, a state or local government agency (other than the public agency) may condition its approval of a critical airport terminal or airside project with the requirement that the public agency also build an airport ground access project. In such cases, to qualify for PFC funding, the airport ground access project must, on its own merits, be Alp-eligible and satisfy one or more of the PFC objectives, as well as conform to the other requirements of the PFC statute and regulation. Eligibility, objectives, or other PFC conditions that may be met by the terminal or airside project cannot be imputed to the access project simply because the construction of these projects has been conditioned on the construction of the access project.

Coordination with APP-530 and APP-510 regarding eligibility is required on any intermodal or multi-modal project. Any application containing intermodal or multi-modal projects should immediately be brought to the attention of APP-530 (see paragraph 5-6).

f. Financing eligibility. Unlike AIP, PFC's may be used to fund project financing costs and debt service as described in l-6. In addition, reasonable and necessary costs exclusively for administration of the public agency's PFC program are eligible for PFC funding (see paragraph 4-9 and 5-12).

g. Eligibility for payments of funds to Federal agencies. Another area of divergence between the AIP and the PFC program regarding funding eligibility involves payment of funds to Federal agencies. General appropriation law forbids the payment of Federal funds from one Federal agency to another Federal agency unless specifically authorized by Congress. Accordingly, AIP grants may not be used on an otherwise eligible project if those funds will go to another Federal agency. Such occasions may take place when an airport must replace or demolish a facility owned by the Department of Defense. However, because PFC funds are not Federal funds their payment to Federal agencies for an otherwise eligible project is not completely barred. However, eligible PFC payment to the Federal government is limited by the AIP eligibility requirements that would apply were the facility not federally owned. In all such cases involving payments to Federal agencies, consultation with APP-530 and APP-510 is necessary (see FAA Order 5100.38).

h. Air Traffic Modernization Cost Sharing. AIR-21 introduced a new eligible project type for PFC funding involving a pilot project under the FAA's facilities and equipment (F&E) program. In particular, this statute authorized a pilot program for cost sharing of air traffic modernization projects to encourage non-Federal investment on a

pilot program basis in critical air traffic control facilities and equipment. The statute limits the pilot program to 10 eligible projects through 2003. The PFC may be used as part of the public agency's local share (65 FR 49625).

Pilot program projects selections will be made by ARR-1. The FAA Airports office should consult with APP-530 if any public agency expresses interest in PFC funding for a project under this pilot program.

4-7. PROJECT OBJECTIVE. (All) The public agency must explain, in the Attachment B of its PFC application, how the project would meet one or more of the PFC objectives. Specifically, each project must meet at least one of the following objectives:

(1) Preserve or enhance safety, security, or capacity of the national air transportation system;

(2) Reduce noise or mitigate noise impacts resulting from an airport; or

(3) Furnish opportunities for enhanced competition between or among air carriers.

Economic development, promotion of tourism, or other non-aviation objectives--although important to a community--do not fall under the three PFC objectives specified above.

a. Safety and security. A determination that a proposed project meets safety and security objectives in (1) above may be based on its conformance with existing FAA eligibility guidance and/or the determination by APP-510, who will consult with FAA safety or security personnel that the project is eligible as **a** safety or security project (see paragraph 4-6).

b. Capacity. Capacity expansion projects are initiatives primarily intended to reduce airport-associated delay time or accommodate new air services. Capacity enhancement benefits should accrue to aircraft operators, aircraft passengers, airport employees, or other airport users. Capacity rehabilitation projects including projects to make facilities ADA-compliant, to upgrade utilities, or to rehabilitate common-use corridors are categorized as preserving capacity.

c. Noise mitigation. Projects intended to mitigate existing noise impacts or promote compatible land uses may meet objective (2) above. Such projects do not have to be part of an approved Part 150 NCP, but must be supported by noise contours or other analyses prepared for another airport purpose demonstrating that noise mitigation is required and will be achieved by the proposed project.

d. Competition. Most projects intended to enhance competition between or among air carriers are terminal development projects although other types of projects may meet this objective. The FAA interprets terminal development projects, in this context, to include any new construction, rehabilitation, or demolition that directly affects

the accommodation of air carriers at an airport. Under §158.25(b)(7) of the PFC regulation, any terminal development project that affects gates, ticket counters, baggage carousels, or other air carrier operations, the public agency must address competition issues in its application.

With the issuance of this order (and in part to implement the recommendations of the October 1999 FAA/DOT report "Airport Business Practices and Their Impact on Airline Competition," the FAA will now require public agencies to demonstrate compliance with section 158.25(b)(7). Accordingly, public agencies must provide, either as a part of the Attachment B for the project or as a separate document appended to the Attachment B, a written description of limitations to competition at the airport, and, if such limitations exist, how the PFC terminal development project (or some other planned development regardless of the planned funding source) is intended to correct the limitations. To facilitate the FAA's ability to verify compliance with this requirement, the public agency must quantify the terminal development project's effect on the number of gates, ticket counters, baggage carousels, or other items linked to accommodation of air carriers at the airport. This information should separately measure the facilities to be built with PFC funds, to be refurbished with PFC funds, and/or to be demolished with PFC funds, and should also indicate the number of these facilities that will be allocated to new entrant or incumbent air carriers, and under what terms (e.g. preferential long-term lease, common use). If the PFC project enables accommodation of a new entrant elsewhere at the airport (even if the project itself is allocated to an incumbent), this effect should be noted and quantified. Finally, the public agency should specifically address how its compliance with the PFC assurances linked to PFC facility leasing will promote competition at its airport (see paragraphs 15-10, 15-11, and 15-12).

e. Priority of objectives. The PFC statute and regulation do not place any one PFC objective above another in terms of priority. If a project accomplishes any of the PFC objectives and is otherwise eligible for approval, the FAA must approve the project. However, particularly in the case of a terminal development project (as defined above), the public agency should be encouraged to address the possible role of the project in enhancing competition at the airport. Even if the public agency emphasizes the role of the terminal development project in preserving or enhancing capacity, the role of competition should be explicitly addressed as part of the air carrier competition discussion required under Part 158.25(b)(7).

4-8. PROJECT JUSTIFICATION. (All) The Federal Aviation Administration Authorization Act of 1994, Pub. L. 103-305, (August 23, 1994) established that "adequate justification" is required for each PFC project. This provision of the PFC statute was formally added to the PFC regulation as part of the PFC Final Rule published on May 30, 2000. Report language that accompanied Pub. L. 103-305 offered no guidance on "adequate justification." However, even prior to the specific statutory direction to apply "adequate justification" as a standard, the FAA had applied a consistent approach to the assessment of a project's ability to meet PFC objectives. This approach became the basis of an "adequate justification" standard, made on an application-by-application basis, following the statutory direction to apply this standard.

The determination of "adequate justification" ties directly to a project's cost-effective contribution to one or more of the PFC objectives in §158.15(a). Ideally, the framework for the justification should establish the following:

(1) The project accomplishes the PFC objective(s);

(2) The project is cost-effective compared to other reasonable and timely means to accomplish the objective(s); and

(3) Based on informed opinion or published FAA guidance, the cost of the project is reasonable compared to the capacity, safety, security, noise, and/or competition benefits attributable to the project.

The public agency must provide sufficient detail(s), in the Attachment B, to demonstrate the need for the project.

The role of informed opinion in establishing these criteria is critical. Informed opinions may be provided by the public agency, persons providing comments on the project, and FAA personnel based on information provided in the PFC application. The FAA should discuss its evaluation of these opinions in the Attachment B.

In general, the more costly a project is, the more substantial should be its benefits with regard to the desired PFC objective(s) it is intended to meet. However, unlike the AIP, there is no requirement for benefit-cost analysis (BCA) of PFC projects exceeding a certain cost threshold. Thus, informed opinion need not conclude that a project would pass a BCA. Rather, it need only conclude that the sum of aeronautical benefits would not be disproportionately less than project costs, However, in the event that a BCA is available on a project, its inclusion in the project application materials should be encouraged.

Specific justification requirements for projects falling under PFC objectives are described below.

a. Safety and security projects. Aircraft rescue and firefighting (ARFF) vehicles, security systems, and other safety and security equipment items are justified when determined by the FAA to be necessary to meet safety, security, or operational requirements under 14 CFR Parts 139 or 107. Similarly, land for protection zones, runway and taxiway lighting and marking, and related projects require relatively simple justifications. When such items are specifically prescribed by the FAA, the public agency should cite the specific FAA requirement or recommendation that is being met by the proposed project. The requirement or recommendation should be annotated to indicate the date and basis of the certification or security finding in the Attachment B. In particular, security projects must have CASFO signoff. This will be considered sufficient documentation.

Determinations on the adequate justification of safety and security equipment and projects not covered by published guidance are to be made based on consultation with FAA safety and security personnel (see paragraph 4-6). Moreover, FAA Airport Safety and Standards personnel may be consulted about any infrastructure project intended specifically to bring an airport into compliance with FAA design standards, especially if such project involves a large expenditure of funds, to confirm that it is reasonable and justified.

Public agencies should include the age and condition for any safety or security equipment or facility being reconstructed/rehabilitated.

b. Capacity projects. The public agency must provide a clear explanation of the capacity problem to be solved by a proposed PFC capacity project. This explanation should establish one or both of the following:

(1) The types of inefficiencies that would result if the project is not pursued (e.g., aircraft and/or passenger delay); or

(2) The number or types of operations that could not be conducted if the project were not pursued.

In addition, the public agency must show that the proposed project would correct the capacity problem in a reasonable and cost-effective manner. As noted above, the FAA cannot mandate the use of BCA methodologies to establish the justification for a project. In addition, the FAA cannot specify the implementation of a project not proposed by the public agency to correct a capacity problem. However, the FAA can disapprove a project proposed by a public agency if the FAA determines that alternative methods, particularly if used at the airport in the past and within the public agency's ability to implement in a timely manner, would accomplish the same capacity objectives at a much lower cost.

Moreover, the FAA must conclude that the capacity improvements attributable to a project are justified in proportion to the cost of the project. In some cases, the cost of a project may be so large as to raise reasonable questions about the value of the proposed capacity benefits, Careful attention should be given to airline and public comments that challenge the capacity merits of a proposed capacity project.

Airfield Projects. Projections of capacity benefits should be supported by information developed in the public agency's planning process. Care should be taken to make sure claims made on capacity impacts conform to information in the environmental documents. Available computer simulations demonstrating delay reduction could also serve as a basis for establishing capacity enhancement as an objective. Facility construction or extension should be intended to accommodate identified demand, rather than speculative demand. Such demand could be in the form of established operations or a firm, written commitment to initiate such operations. In addition, public agencies should include the age and condition of the current facility for projects involving an

overlay of pavement, or reconstruction/rehabilitation of pavements, equipment, or other facilities. Airfield reconstruction, rehabilitation, or overlay projects identified as preserving capacity should be justified based on criteria for similar new projects.

Terminal projects. Rehabilitation of a portion of a terminal, replacement of a terminal, or renovations to a terminal, where no additional gates or concourses are being constructed, should be justified based on the continued need for the facility as well as the age, condition, or functional inadequacy of the existing facility. New terminals, gates, or concourses are justified based on documented current demand. An eligible terminal project may make reasonable accommodation for growth, considering such factors as economies of scale, local economic and near term (e.g., 5 years or less) passenger growth or a desire to limit frequent construction disruptions at a rapidly growing airport. It is important to note that, as a matter of compliance with Part 158.25(b)(7), the impact of the terminal project on competition at the airport must be addressed in the terminal project description and as part of the project justification, even if the project is undertaken solely for the purpose of capacity preservation or enhancement on another non-competition objective (see paragraphs 3-l 8,4-7(d) and (e), and 4-8(d)).

Airport ground access and intermodal projects. In that airport ground access projects are typically intended to enhance the capacity of the airport system, the justification should be framed in terms of effect on the airport's capacity. To date, the FAA has employed two airport capacity measurement methods to determine adequate justification in decisions pertaining to airport rail projects. An airport ground access project can be found adequately justified if it has the effect of alleviating a ground access constraint that otherwise would impede or constrain use of the airport by air passengers. Using this method, the public agency must demonstrate that, but for the proposed system, use of the airport would be substantially less, either now or in the future, than it would otherwise be due to ground access constraints. For very costly projects, this standard becomes higher.

Justification can also be determined if the public agency demonstrates that the benefits of the project in terms of reduced time of access to the airport (either for passengers using the project or for all air passengers who benefit from less congested roadways) are reasonable relative to the cost of the project. However, this analysis would be voluntary by the public agency, as the FAA cannot require (directly or indirectly) a BCA on a PFC project. However, the requirement for adequate justification is not voluntary. A decision not to do a BCA does not relieve a public agency of the need to demonstrate adequate justification of the project in some other way.

In the case of standard airport access road projects, the case for new or enlarged roads can usually be made by a straightforward traffic study. The traffic study should demonstrate the impact of the access road project in reducing roadway congestion and trip times to the airport. Typically, the need for new road capacity is evident to all users of an airport and can be clearly demonstrated based on these studies.

An intermodal airport ground access project (especially a rail or fixed guideway system) often involve issues of significant national precedent. Accordingly, intermodal project decisions are not, as a matter of policy, delegated to the FAA Regions. In general, the FAA will work in cooperation with the Federal Transit Administration to understand the justification of intermodal projects. Public agencies should be encouraged to contact the FAA early in the planning/study process to identify a mutually acceptable approach to establishing adequate justification.

Land acquisition. Land for aeronautical development is justified based on the justification requirements for the planned ultimate development. The public agency must demonstrate a valid aeronautical need for the land.

Navigational aids. Justification for distance measuring equipment, terminal very high frequency omnidirectional radio range, and nondirectional beacons should show, as would be the case for AIP funding, that the airport will meet the establishment criteria in FAA Order 7031.2 within 5 years.

c. Noise projects. Noise mitigation projects included in Part 150 NCP's are considered to be adequately justified, although concerns about the project raised during the consultation and Federal Register comment processes should be fully addressed. If the project is not in a Part 150 NCP, the public agency must demonstrate, through land use NCP's, environmental analysis or other published planning documents, that the project would qualify for inclusion in a Part 150 NCP (e.g., the project is within the 65 LDN zone, single event noise exceeds 70 dB). In the case of projects not in Part 150 NCP's, the FAA PFC analyst should consult with FAA environmental personnel familiar with the airport in question to determine if inclusion criteria are met.

d. Increased competition. For a project to meet the competition objective, the public agency must describe the following: existing conditions that limit competition between or among air carriers and foreign air carriers at the airport; the manner in which the project will foster opportunities for enhanced competition between or among such carriers; and the expected results of such initiatives. In the case of terminal development projects, the public agency should explicitly address these elements as a matter of compliance with Part 158.25(b)(7), even if the justification of the project is not to enhance competition and/or the impact of the project on competition will be neutral (see paragraph 4-8(b)). The FAA will rely on the public agency's documentation (including simulations and market studies) and air carrier and public comments to determine if the proposed projects would enhance competition (see paragraph 4-7(d)).

e. Adequate justification of AIP local share matches. If the proposed project is being partially funded by an AIP grant, the justification used for the AIP grant can be used in the PFC application. The simple statement that the PFC project is a reimbursement of an AIP local share is not considered adequately justified. The statute and regulation require that all PFC projects be subject to consultation and public comment such that the description is adequate to allow a person, unfamiliar with the airport, to determine the project scope. A simple description of AIP local match without

stating the project objective and justification could adversely affect the ability of air carriers and the public to offer meaningful comment.

f. Application of adequate justification standard. The FAA's application of the above adequate justification standard was found by the U.S. Court of Appeals for the Second Circuit to satisfy the requirements of the PFC statute (see Southeast Queens Concerned Neighbors, Inc. and The Committee for Better Transit, Inc. v. Federal Aviation Administration, 229 F.3d 387 (2d Cir. 2000), rev. den. 234 F.3d 1263 (2d Cir. 2000)). The following excerpt is from a more extensive discussion on adequate justification in that decision:

"We conclude that the FAA's interpretation of the PFC statute is reasonable and consistent with the statute's purpose. There is nothing in the statute or legislative history that suggests that Congress intended the FAA to employ a formal cost/benefit analysis or other test of general applicability in determining whether 'adequate justification' for a specific project has been demonstrated. Although a decision of the FAA concerning adequate justification would likely be vacated if it did not provide objective and articulable reasons in support of its conclusion, we cannot find that Congress intended anything more.

4-9. AMOUNT AND DURATION OF THE PFC. (Impose) The FAA must find that the amount and duration of the PFC collection will not result in revenue that exceeds the amount necessary to finance the project(s) in order to approve, or partially approve, an application.

a. Reducing duration of the PFC. If the total requested PFC revenue plus interest exceeds the estimated allowable costs for the approved projects, the approved estimated duration of authority to impose the PFC must be reduced from the public agency's request to reflect as closely as possible the estimated allowable costs. This adjustment must be made in increments of one month of collection authority. The FAA's estimated PFC expiration date must be the first day of a month, meaning that collections may continue until, but not including that date.

b. Increasing duration of the PFC. If the total requested PFC revenue plus interest is less than the estimated allowable costs for the approved projects, the FAA cannot increase the duration of authority to impose a PFC beyond the public agency's requested duration. In particular, the FAA may not approve collection or duration in excess of that shown in the Federal Register notice. Section 6-5 provides the procedure for a public agency to extend the duration of collection due to the rate of collection being less than was anticipated. If the public agency needs to increase the total estimated PFC revenue and, as a result, extend the duration of collection, they should refer to the amendment process in chapter 11 or 12.

c. Stand-alone PFC administrative costs. A public agency may submit a "stand-alone" project to recover reasonable and necessary costs of administering its PFC program. An Attachment B must be completed for a stand-alone PFC administrative costs request. If indirect or pro-rata administrative costs are included, the

public agency must have a cost allocation plan retained in its files, documenting the basis for indirect administrative costs to be reimbursed with PFC revenues (see paragraph 5-l 2(e)).

d. Project reimbursement restrictions. PFC revenue cannot be used to reimburse a public agency for that portion of the final project costs for which state or Federal grants have been expended. Also, PFC revenues cannot be used for final project costs for which airline rates and charges have been expended unless the public agency adjusts the rates and charges (see paragraph 15-1 3). This prohibition does not apply to interim use of funds from state grants for those states that allow fungibility for cash flow purposes that are not ultimately reflected in the final accounting of project costs.

e. Legally enforceable debt. If the public agency is proposing to use PFC revenue to pay debt service expenses associated with an approved project, the indebtedness must be a debt of the public agency that is legally enforceable by the lender. This means that the lender has the legal authority, as a creditor, to bring suit, in its own name, directly against the borrower to recover funds advanced by the lender to the borrower. Loans from a public agency's general fund to an airport capital fund are often not legally enforceable debts. Any financial plan in a PFC application that includes debt service expenses associated with a loan from another public fund must be accompanied by a legal opinion that such a debt is legally enforceable. In addition, the interest rate for the loan cannot exceed applicable market rates. These requirements protect against the possible diversion of PFC and other airport revenues, through higher than market interest rates or other charges, to the source providing the loan. APP-530 should be contacted early in the process if there is a question as to whether a proposal would constitute a legally enforceable debt.

4-10. COLLECTION PROCESS. (Impose) The collection process must be reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law. To determine this, consideration is given to:

(1) The public agency's charge effective date;

(2) The public agency's comments in response to any air carrier's certification of disagreement concerning the collection process and the charge effective date; and

(3) Comments received as a result of the Federal Register notice relative to the collection process and the charge effective date.

The FAA, in its ROD approving an application, authorizes an earliest charge effective date. This date is based on the regulatory requirement that a charge effective date must be the first day of a month that is at least 60 days from the date the application is approved. The FAA cannot specify a charge effective date that is earlier than that requested by the public agency.

a. 60-day waiver. A public agency may request authority from the FAA to waive the 60-day requirement for subsequent PFC applications, particularly in instances where this waiver will prevent a short-term lapse in PFC collections that would be disruptive to both airlines and the public agency. The FAA will grant this permission only if the public agency has requested and received an affirmative written response in support of the waiver from each air carrier serving the airport (see paragraph 2-11). The public agency cannot assume that the lack of response by an air carrier is an affirmation of the requested waiver. The FAA will not approve a waiver of the 60-day period for first time PFC applications.

b. Postponing the charge effective date. A public agency, in its notification to the carriers to begin collections, may specify a date that is later than the charge effective date stated in the ROD. This action directly postpones the commencement of time limits for subsequent use applications and project implementations specified in $158.33. However, the FAA will not, as a matter of policy, accept a deferral of the charge effective date of more than one year beyond the approved charge effective date. This limitation is intended to assure that the information on which the project was consulted and evaluated remains timely. Similar, but more restrictive language to provide this protection was included in the Notice of Proposed Rulemaking to the original PFC regulation, which would have required public agencies to file applications not more than one year in advance of proposed charge effective dates. However, as noted in the preamble to the final regulation, the FAA concluded that it was unlikely that a public agency would file an application to impose a PFC more than one year in advance of its proposed charge effective date, and deleted the provision from the final rule. However, experience with the PFC program has shown that long delays in starting collections do occur. Because a start-of-collection time limit was excluded from the final rule for brevity and not due to opposition, the FAA construes the one year time limit defined above to be both acceptable and enforceable under FAA's existing authority to determine a reasonable collection process.

4-11. EXCLUSION OF CLASS OR CLASSES OF CARRIERS. (Impose) Public agencies may define a class or classes of carriers to be excluded from the requirement to collect PFC's in their application. The FAA will determine whether the public agency's request, not to require a class or classes of carriers to collect PFC's meets regulatory requirements.

Each class exemption must not exceed 1 percent of the airports total annual enplanements, although more than one class may be designated. Carrier classes not required to collect PFC's can be based on common carrier classifications found in FAA operational regulations (14 CFR Part 121, 135, 129) and DOT economic regulations (14 CFR Part 298 and 241), or on any other basis that is reasonable, not arbitrary, nondiscriminatory and otherwise in compliance with the law.

Examples of classes which have been approved by the FAA include but are not limited to:

-Part 135 air taxi/commercial operators;
-Unscheduled Part 121 charter carriers;
-14 CFR Part 298 operators; and
-On-demand air taxi/commercial operators that enplane fewer than 500 passengers per year.

Using the most recent final Air Carrier Activity Information System Database (ACAIS) Report, the FAA Airports office should verify that each proposed excluded class represents no more than 1 percent of the total annual enplanements at the airport where the PFC is imposed. If the FAA Airports office determines that a proposed class exceeds the 1 percent threshold, the FAA Airports office should note this finding and contact the public agency for clarification. Unless the public agency can provide current data showing that the class does not exceed 1 percent, the class exemption must be disapproved.

The public agency should review the excluded classes each year to ensure each class did not exceed 1 percent of total enplanements. If a class exceeds 1 percent, the public agency must apply for an amendment to the ROD to eliminate or modify the class. Excluded classes based on an operational or economical regulation should also be reviewed for changes within the regulation. For instance, FAA regulations were changed in 1996 to meet the “one level of safety” requirement for air carriers. Several Part 135 operators changed to Part 121 and were no longer eligible for the excluded class “Part 135 operators”, as approved in the earlier ROD. To continue to exclude these carriers, the public agency would have had to apply for an amendment to the ROD to modify any excluded class of carrier after establishing that the class does not exceed 1 percent (see paragraph 12-6(d)).

a. Computer reservation systems limitations. It is important to note that computer reservation systems (CRS's) used by the airlines and their agents do not accommodate the entire range of class definitions. As background, the Air Transport Association of America (ATA) serves as a clearing house providing the Airline Tariff Publishing Company (ATPCO) with a ROD for each approved PFC. ATPCO provides CRS vendors with tariff information including PFC data. For the two most common exemptions, air taxis and charters, ATPCO can identify which carriers are in those classes. However, public agencies may define an excluded class of carrier based on seating capacity or number of passenger enplanements in a given year. Because the specific air carriers comprising the excluded class are not listed in the ROD, ATPCO does not, through its own information resources, have the information to code these exemptions.

However, the ATPCO product does allow for specific carrier or carrier/flight range exemptions. Therefore, it is critical that each public agency take upon itself to notify the carriers in the approved excluded class. The FAA includes this recommendation in the

letter to the public agency when a ROD is issued. Additionally, all carriers should be made aware by the public agency that in order for ATPCO to provide these exemptions to its subscribers, the affected carrier must instruct ATPCO directly about the specific carrier or carrier/flight range exemptions.

b. Impact on Air Carrier Consultation Requirement. As noted in section 2-14, air carriers in excluded classes need not be included in the air carrier consultation process. However, the FAA generally recommends that these carriers be invited to the consultation. In particular, if the carriers in an excluded class are not consulted and that class is subsequently disapproved by the FAA, the entire application could be disapproved or substantially delayed. The preamble to the regulation, in its discussion of §158.11, states that "...disapproval by the Administrator of the proposed class would require the public agency to engage in reconsultation with all carriers operating at the airport and subsequent application." However, if the public agency originally consulted with all carriers, including the proposed excluded class, disapproval of that class would not necessarily result in a need for reconsultation, but would require PFC collection from the disapproved class(es) of carriers.

c. Special exclusion for air service to isolated communities. AIR-21 created authority to enable a public agency to request an exclusion for air service to isolated communities, even if such service by air carriers as a class would exceed 1 percent of the airport's total annual enplanements. This new exclusion category would largely affect air service in Alaska (see paragraph 10-32(c)).

4-12. COMPLIANCE WITH THE ANCA. (All) The FAA will determine whether the public agency has been found to be in compliance with 49 U.S.C. 47521 et seg. (formerly known as The Airport Noise and Capacity Act of 1990, or ANCA) and its implementing regulation, 14 CFR Part 161 (Part 161). Under sections 47524(e) and 47526 of Title 49, the FAA must make a positive determination that the public agency is in compliance. If the FAA cannot make a positive determination of compliance with Part 161 due to receipt of a substantial complaint and/or evidence collected from on-going or completed investigations, and therefore has initiated the informal resolution process under Subpart F of Part 161.503, the public agency's application will be disapproved in whole. Typically, a situation leading to disapproval would arise if, during or prior to the 120-day PFC decision period, the FAA had made a preliminary written finding of ANCA non-compliance and had entered into an informal resolution process with the public agency on the ANCA issue. However, a public agency may opt to grant the FAA an extension to the 120-day PFC decision period to allow for more time to resolve the ANCA issue rather than receive a disapproval on the 120th day (see paragraph 5-12(a)).

Questions on Part 161 compliance should be directed to the Community and Environmental Needs Division, APP-600. In addition, APP-530 should be consulted in advance of any occasion where a finding of non-compliance appears likely. If there is an ongoing ANCA investigation, but no preliminary written findings of non-compliance have been issued, the application could be approved (assuming all other conditions for

approval are met). However, the finding in the ROD regarding ANCA may need to be modified from the standardized text based on the particular circumstances (see paragraph 5-12(a)).

4-13. COMPLIANCE WITH AIRPORT REVENUE USE REQUIREMENTS. (Impose) Pursuant to 49 U.S.C. 471 11(e) (Action on Grant Assurances Concerning Revenue), the FAA is required to withhold approval of a PFC application for an airport where the FAA has established a violation of 49 U.S.C. 47107(b) (Written Assurances on Use of Revenue) and 49 U.S.C. 47133 (Restriction on Use of Revenue). This section states that, if the Secretary finds a violation of 49 U.S.C. 47107(b), as further defined under §47107(l) (Policies and Procedures to Ensure Enforcement Against Illegal Diversion of Airport Revenue), or a violation of an assurance made under 47107(b), and the Secretary has provided an opportunity for the public agency to take corrective action to cure such violation, and such corrective action has not been taken within the specified time, the Secretary shall withhold approval of new AIP grants, or increases in existing grants, and withhold approval of any new PFC application to impose a PFC until such time as the Secretary finds that the corrective action has been taken and the violation no longer exists. This action will not affect approved PFC applications, or decreases to an approved application(s) until such time as the public agency amends an approved application to increase collections or PFC level. Note that the formal compliance process must be well underway-to the point where the period for the prescribed corrective action has expired-to withhold an approval. If there is an ongoing investigation, the finding in the ROD regarding revenue diversion may need to be modified from the standardized text based on the particular circumstances (see paragraph 5-I 2(b)). The FAA Airports office should coordinate any change to the revenue diversion language with APP-530, who will further coordinate the language with AAS-400.

4-14. ALTERNATIVE USES. (Impose only) The FAA will make a finding regarding any alternative uses of the PFC revenue to ensure such revenue can be used on approvable projects if a proposed primary project is ultimately abandoned or disapproved. Alternative projects must be capable of meeting the eligibility criteria and PFC objectives, as would any primary project. As with an impose only project, an alternative project does not have to meet the ALP, airspace, and environmental requirements at the time it is listed. Alternative projects must be able to be implemented within 5 years of the charge effective date. In addition to alternative projects, early retirement of outstanding PFC-funded project debt for approved impose and use or use projects can be an acceptable alternative use of PFC's collected.

For an impose only application, the public agency must provide eligible alternative uses to cover at least 5 years of collection or the value of the impose only projects, whichever is less. The “5 year rule” results from the regulatory requirement that all projects must be implemented within 5 years of the charge effective date or the application approval date (as applicable below), or collection will be terminated. Therefore, the maximum PFC revenue not committed to a project approved for use authority would be the amount of revenue collected in 5 years. For first time applications, or applications that

follow a lapse in collections, the 5-year period applies to the 5 years following the charge effective date. For a subsequent application, the 5-year period begins on the date the application is approved.

In the case where one or more projects approved for use in a prior PFC application(s) would cover the next 5 years or more of collection (after deducting already-realized collections for the previously-approved project(s)), the public agency could use this collection to satisfy the 5 year requirement for the pending application. In contrast, a previously approved impose only project may not be used to satisfy the 5-year requirement, as it is uncertain if the prior impose only project will be implemented.

Finally, in a pending application that combines impose only and use projects where a use project would require at least the next 5 years of collections, the public agency may opt not to provide alternative projects to cover the impose only project(s) in that application as the collection period for the use project in the application meets the 5 year collection requirement. However, the public agency assumes a risk in this course of action. If the FAA should not approve the use project, the FAA would either have to (1) disapprove the impose only project(s) due to a lack of consulted alternatives; or (2) convert one or more impose only or impose and use projects to alternative status (based on consultation with the public agency) to reach the 5 year requirement. Similar actions may be required if only 5 years of alternatives are consulted and the public agency subsequently converts an impose and use project to impose only after the consultation. Accordingly, the FAA should advise the public agency to provide alternatives in an application even when use projects in that application would, if approved, meet the alternative requirements for the impose only projects.

4-l 5. CONSULTATION PROCEDURES. (All) With some exceptions, all consultations must include all air carriers and foreign air carriers operating (that is, conducting take-offs and landings) at the airport. The public agency should also include air carriers which they reasonably expect will start service at the airport in the foreseeable future. The FAA Airports office should use the most recent final ACAIS database publication as a guide in determining whether all carriers operating at the impose airport have been consulted.

Air carriers for which the public agency will seek the FAA's approval to exclude from PFC collection (under $158.1 I) may be excluded from the public agency's notification list. However, a decision not to notify carriers in a proposed excluded class could jeopardize or significantly delay the public agency's PFC application approval in the event that the FAA Airports office does not approve the proposed excluded class (see paragraph 4-l 1 (b)).

The FAA acknowledges that the ACAIS list may not be current in some cases. Accordingly, the public agency is not required to contact air carriers in the ACAIS list that are incorrectly identified as serving the airport, have officially ceased service to the airport, or serve the airport so infrequently that their continued use of the airport is

uncertain. However, the public agency must provide the FAA with the reason for not notifying any carrier on the ACAIS list. The FAA strongly suggests that these reasons be discussed with the FAA Airports office prior to the notification of consultation.

a. **Impose.** In the case of an application seeking impose authority for one or more projects, a recommendation of approval/disapproval of the application must consider the public agency's compliance with consultation requirements specified in the regulation (§158.23(a)(4)). These are:

(1) The consultation meeting with carriers is held no earlier than 30 days nor later than 45 days from the date of written notice to the carriers; and,

(2) The public agency has allowed for at least 30 days from the date of the consultation meeting to receive carrier certification of agreement or disagreement and any comments.

See 2-11 for more discussion of these notice requirements.

b. Use only. In the case of an application seeking use only authority, the public agency must further consult with air carriers and foreign air carriers prior to submitting the application to use. Although notice is mandatory, a meeting is optional, provided there are no changes to the project(s) which would otherwise require a consultation meeting when applying the guidance contained in chapter 12. The notice to the carriers should provide for a comment period of 30 days. A shorter comment period is permissible if all air carriers provide an affirmative written response. The FAA's review of the adequacy of the consultation relative to regulatory requirements should be based on the use application and any comments received.

In the case of an application seeking "impose and use" authority for a project, or "use only" authority for a project in an application that also seeks impose authority for other projects, the consultation requirements for the impose projects should be applied to all projects.

4-16. AIR CARRIER CONSULTATION COMMENTS. (All) When an air carrier(s) disagrees with a project(s) during the consultation process, the public agency must present its rationale for why the project(s) should proceed. The FAA must review this analysis and determine the validity of the disagreements. In general, these comments and responses should be evaluated in the context of section 4-8 (Project Justification), although objections may be raised on section 4-6 (Project Eligibility) and section 4-7 (Project Objective) as well. Public disagreement arising during the consultation process, although rare, must be considered as well. Environmentally-related comments, unless equally applicable to PFC approval criteria, should be considered in the context of the environmental finding process rather than at the PFC approval/disapproval stage. In general, if there are disagreements expressed during the consultation process, particularly from a major carrier, it may be assumed that these

disagreements will also be submitted during the Federal Resister comment period. In these cases, the decision on the application will not be delegated to the FAA Airports Division Manager (see paragraph 5-6).

4-17. ALP/AIRSPACE/NEPA REQUIREMENTS. (Use) All applicable requirements pertaining to ALP approval, airspace, and NEPA for all projects for which use of PFC revenue is requested, must be met prior to the application being found substantially complete and the subsequent publication of the Federal Register notice inviting comment on the application. The reviewing official will make a determination that each proposed project, as appropriate, is on the approved ALP and that the airspace and environmental determinations have been completed and are favorable. This determination will be based in part on the dates included in Attachment B of the application. If the FAA cannot verify through a review of its files that the ALP, airspace, and/or NEPA requirements have been met, the FAA should consult the public agency.

The FAA Airports office must identify any projects that do not meet these requirements as early as possible during the completeness review, thereby allowing the public agency the opportunity to obtain the necessary approvals, delete the project, or choose not to provide supplementary information. If the public agency opts to retain the deficient project in the application and declines the opportunity to supplement the application, the FAA shall publish a Federal Resister notice stating that the application is not substantially complete. This notice must include information on the deficiencies.

4-18. SCHEDULE FOR PROJECT IMPLEMENTATION.

a. Use. For a project to be recommended for approval for use authority, the project must be implemented or scheduled for implementation within 2 years of the date of approval to use PFC revenue.

b. Impose. For a project to be recommended for approval for impose authority, the project must be scheduled for implementation within 5 years of the charge effective date. If the public agency is already imposing a PFC at the time new impose authority is granted, the implementation must occur within 5 years of the application approval date. The public agency must also show that it will submit the use application(s) for the impose-only projects within 3 years of the charge effective date, or application approval date, as applicable. Note that if a public agency submits an application in less than 3 years after the impose approval, the project implementation date will be less than 5 years after the appropriate date.

c. Project implementation. The following information is provided to clarify what is meant by "project implementation." Where there are two options for the start of a project (other than land acquisition), such as when the notice to proceed is on April 1 and the commencement of work is on April 15, the earlier of the two dates, in this case April 1, is the date used to determine the start of the project. If there are two options for the start of the project for land acquisition, consult with APP-530. In the preponderance of project types below, the PFC statute and requlation require that implementation must

occur or must have occurred on or after November 5.1990. AIR-21 extends the timeframe for PFC eligibility of terminal development for public agency's meeting certain requirements (see paragraph 10-27(d)).

Tvpe of Project	Start of Project
Construction (includes construction projects combined with design and/or land acquisition)	Date of notice to proceed or start of physical construction for the PFC project or an element thereof
Equipment/Vehicle (Refurbish)	Date of award of contract to refurbish the vehicle or equipment
(New)	Date of award of contract or delivery date for new equipment
Land	Date of commencement of title search or execution of a contract/agreement for the purchase of the parcel
Planning	Date of notice to proceed or commencement of work
Project formulation costs (includes appraisals, engineering, title searches, etc.) as a separate project(s)	Date of notice to proceed or commencement of work

4-19. FINANCIAL VIABILITY. (All) PFC revenues alone or with other funding sources such as Federal funds and state and local revenues must be sufficient to cover the costs of each project. Public agencies may forecast future AIP entitlement grant funds in their financial plan. For large and medium hub airports, the required AIP entitlement reduction (49 U.S.C. 47114(f)) must be taken into account when the public agency forecasts future entitlements. Public agencies must include any current LOI funding schedules (discretionary and entitlement) as part of their financial plan. Public agencies may also estimate future discretionary AIP levels but must have a viable alternate financial plan in the event such discretionary funds are not made available. The approval of a PFC application cannot be considered a commitment of future AIP discretionary funds and this should be specifically stated in any project determination where discretionary funds are shown as part of the financial plan. The FAA Airports office must address the reasonableness of any proposed AIP funding in its review of the Attachment B.

The financial plan for each project should include information on the following items:

(1) Estimated allowable costs of each project;

(2) Anticipated total amount of PFC revenue to be used to finance the capital cost of the project broken out by pay as you go and bond capital, as applicable;

(3) PFC revenue needed for bond financing and interest costs for each project, including coverage;

(4) Anticipated and existing AIP entitlement and discretionary funds;

(5) Source and amount of other funds, if any, needed to finance each project;

(6) Viable alternate funding source plan for AIP discretionary projections; and

(7) Estimated total project cost.

This financial information for each project is combined to determine that the total revenue and duration of the PFC will not result in revenue that exceeds the amount necessary to finance the approved project(s). It also serves to assure that PFC funds will be invested in projects that can be completed given available financial resources.

4-20 to 4-25. RESERVED.

CHAPTER 5. APPROVAL/DISAPPROVAL OF APPLICATION

SECTION 1. GENERAL

5-I. OVERVIEW. This chapter provides information on the appropriate office, Headquarters or Regional Airports Division, to issue the ROD; formats for various decision scenarios; treatment of certain unique situations; and procedures for notification of approval/disapproval. This chapter also addresses how Headquarters treats Federal Resister comments.

5-2 to 5-5. RESERVED.

SECTION 2. DECISIONMAKING AUTHORITY

5-6. DETERMINING DELEGATION OF RECORD OF DECISIONS.

a. Application summary. The FAA Airports office will review PFC applications for completeness within the initial 30-day review period after receipt of the application. Following the completeness review, and no later than 45 days after receipt of the application, the FAA Airports office will forward a summary of the application (PFC intranet document site) to the Associate Administrator for Airports (ARP-I), through APP-530, specifying if delegation of the decision to the FAA Airports Division Manager is expected (pending receipt of Federal Register comments). Even if the conditions cited in (b) below are held not to apply by the FAA Airports office, ARP-1 may elect upon receipt of the summary, or at any subsequent time, to retain decision authority for the PFC application based on information contained in the summary, or PFC application, or due to national concerns. Moreover, if no controversy is expected based on the carrier consultation, but controversy subsequently emerges in response to the Federal Register notice, ARP-1 will retain decision authority. However, instances of unexpected controversy should be relatively rare.

b. Applications retained by Headquarters. Applications which will be retained by Headquarters are those which involve:

(1) Significant policy precedent, meaning that the decision could establish or change the FAA's policy on a project or issue;

(2) Significant legal issues, as determined by either the Assistant Chief Counsel or FAA Airports office, particularly if the issues can be expected to result in litigation;

(3) Significant controversy, as evidenced by opposition expressed in the public agency's consultation with air carriers. Adverse comments received in response to the Federal Register notice constitute significant controversy, unless the category of controversy is specifically exempted in writing by FAA Headquarters. In addition, factors such as significant AIP discretionary funding requirements, environmental

controversy, and/or congressional interest shall be considered in determining whether coordination with APP-530 is required for any given PFC application.

(4) Multi-modal or intermodal projects;

(5) Significant airport noise, access issues, including compliance with 49 U.S.C. 47521 et seq., (formerly known as ANCA) and 49 U.S.C. 47111 (e) (Action on Grant Assurances Concerning Airport Revenue);

(6) Termination protection language; and/or

(7) Case-by-case eligibility determinations as per the latest edition of the AIP Handbook and PGL's.

The FAA Airports office will use its best judgment in determining whether any given issue is “significant” as the term is used above. There is a critical need to maintain national consistency in applications of the statute and regulation, particularly as amended by AIR-21. On this basis, regular discussion of program and project issues between and among the regions and APP-530 is expected.

In further interest of national program consistency, eligibility determinations for which FAA Order 5100.38, AIP Handbook, refer field staff to Headquarters offices, or which require a case-by-case eligibility determination, must be coordinated through APP-530 even in the case of delegated decisions.

c. Delegated decisions. Applications to which the above conditions do not apply and which are not retained by Headquarters will be delegated to the FAA Airports Division managers. For delegated applications, the FAA Airports office will determine whether PFC projects are eligible and if they are adequately justified, and meet other requirements described in this order while conducting any required Headquarters coordination as described above. The FAA Airports office will also determine public agency compliance with requirements of the PFC regulation.

Once analysis of the application is complete, the FAA Airports office will prepare the draft and final ROD for delegated applications. Coordination of the draft and final ROD with the Assistant Chief Counsel will be at the option of the FAA Airports office, with the following exception.

Coordination of draft and final ROD (for delegated applications) with the Assistant Chief Counsel is required when a Federal Environmental Impact Statement has been or is required for either the PFC projects proposed or related, non-separable development, regardless of the funding source for the related development. In this context, the goal of the FAA Airports office will be to make the PFC application, attachment B checklist, and draft ROD available for Assistant Chief Counsel review at least 30 days before the 120-day decision date. In view of the 120-day statutory deadline for PFC decisions, the Assistant Chief Counsel’s goal should be to return review comments within 5 days.

Given the necessity of meeting the 120-day decision requirement, all parties must understand that the final document may be presented for formal coordination on short notice. However, the FAA Airports office goal will be to present the final ROD for Assistant Chief Counsel sign-off at least 5 days prior to the 120 day decision due date. The delegated ROD will be signed by the FAA Airports Division Manager.

5-7 to 5-10. RESERVED.

SECTION 3. ROD PREPARATION PROCESS

5-11. APPLICATION APPROVAL/DISAPPROVAL DOCUMENTATION.

a. Preparation of Decision Document. Paragraphs b, c, and d below address the consolidation of all relevant information developed in the analysis described in chapters 3 and 4 of this order.

b. Format for project and application approval/disapproval in ROD's. The PFC intranet document site contains formats and instructions for use in documenting the review of each project in the application and the application as a whole.

c. Timing and content of recommendation package for non-delegated decisions. No later than 45 days before the 120-day decision date, the FAA Airports office will submit to APP-530 a copy of the recommendation form with the FAA completed Attachments B and G documenting the regional recommendation. In addition, a copy of all comments received during the Federal Reaister notice period must be submitted to APP-530 at this time.

d. Approval/disapproval documents. In keeping with the discussion in 5-6, the approval/disapproval documents will be prepared by FAA Airports office for delegated decisions and by APP-530 for non-delegated decisions.

5-12. ROD language to address exceptional circumstances. The format and instructions in the PFC intranet document site for preparing the ROD will be followed for each PFC application. However, conditions may arise that require further review by APP-530, APP-600, AAS-400, and AGC-600 before reaching a decision on whether the application may be approved. In such cases, the ROD may need to be supplemented with additional language providing further guidance to the public agency on any conditions which must be met in order to remain in compliance with the approval.

a. Compliance with 49 U.S.C. 47524 and 47526, formerly known as ANCA. A PFC application for a public agency may be decided while the FAA and the public agency are in discussions about potential ANCA compliance issues. The decision will be closely coordinated with APP-600. The FAA may approve the ROD (assuming all other conditions of approval are met) at the end of the 120-day PFC decision date if there is not yet a preliminary finding of non-compliance with ANCA that has caused the

FAA to initiate informal resolution under Subpart F of Part 161, §161.503 (see paragraph 4-12). In this case, the ROD shall identify the potential ANCA compliance issues and how the public agency has been working to address the compliance issues. If the public agency is subsequently found to be in violation of ANCA, the public agency may lose its authority to collect PFC revenues.

However, if the FAA has made a preliminary written finding of ANCA non-compliance and has entered into an informal resolution process with the public agency on the ANCA issue, the FAA would not issue an approval of the PFC application, even if a formal determination of ANCA non-compliance had not been reached. Instead, the FAA would advise the public agency that it would be unable to approve the PFC decision at the end of the 120-day PFC decision period. The public agency would then be given the option of granting the FAA an extension to the 120-day PFC period until the ANCA issue is formally resolved. If such an extension is not granted, the FAA would disapprove the application by stating in the ANCA section of the ROD that it could not make a determination that the public agency is in compliance with ANCA.

b. Compliance with Subsection 47107(b) governing the use of airport revenue. If the PFC application of a public agency is being decided while the FAA and the public agency are working to resolve revenue diversion issues, the FAA Airports office and APP-530 will closely coordinate the release of the ROD with AAS-400 and AGC. Unless there is a formal determination of revenue diversion, a ROD approving collection authority may be issued (assuming all other conditions of approval are met) at the end of the 120-day PFC decision period. The ROD should identify the outstanding airport revenue compliance issues and state how the public agency is working with the FAA to resolve the compliance issues. Moreover, a use only PFC application in which the public agency is not requesting collection of PFC revenue is not subject to disapproval even if there is a formal finding of non-compliance pertaining to revenue diversion. The FAA is barred only from approving new PFC collection authority when a public agency has violated subsection 47107(b).

c. Conditioned approval of PFC use authority. A project may be approved for use with a condition attached that requires the public agency to provide additional information to the FAA prior to expending any of the PFC revenue on that particular project. The most common situations in which this occurs is in the construction or rehabilitation of a terminal or intermodal projects. Language is often inserted requiring the public agency to submit final plans and specifications to the FAA Airports office in order for the final eligibility to be determined. The public agency will be informed in the ROD that it must immediately amend the amount of collection for that project to reflect any decrease in the amount approved.

Similarly, if the FAA knows at the time the ROD is issued that certain components of the project, such as administrative offices in a terminal, maintenance facilities for a rail project, or road segments leading to an ineligible parking structure are a part of the overall description, the determination paragraph must clearly identify these components

as ineligible. In addition, the method of funding these ineligible components should be discussed, if applicable.

d. Further conditions for certain impose only projects to aid justification in the use application. Some impose only projects, while clearly intended to meet a PFC objective, are unavoidably indeterminate in scope, and nominally eligible. Under certain circumstances, these projects may be approved for impose only authority with special conditions to be addressed before use authority may be approved. An example of this is a large terminal rehabilitation or construction project prior to the completion of detailed plans. The FAA may request that the public agency meet specific conditions, listed in the determination, in order to aid in the project justification. These conditions usually include: considering alternatives to the development described in this project, including alternatives presented by air carriers; reconsidering costs of these alternatives; phasing development related to demand forecasts; and reviewing traffic projections and other supporting planning materials to determine timing and scope of the proposed project.

A planning project may also have special provisions listed in the determination which are a condition to its approval. The provisions would be incorporated into the determination as an aid to determining specific justification for the ultimate development project. The determination could include a requirement for the public agency to structure the study process to ensure that planning continues only as long as successive analyses point toward a positive determination that the development projects would enhance the capacity of the national air transportation system. This language might also require the planning process to be discontinued if the study projects demonstrate that the development projects are infeasible with respect to such factors as cost, ridership, construction, or environmental determinations, or are not of benefit to air transportation. These conditions would most likely apply to a novel and costly project that has not progressed beyond preliminary planning stages. Other requirements could include the public agency continuing to consult with air carriers, and the public agency coordinating with the local FAA Airports office during the course of the study to ascertain the specific eligibility of individual components of the study.

e. PFC administration costs. The allowable cost definition of §158.3 states that the public agency's reasonable and necessary costs of administering the PFC program are eligible. The FAA notes that public agencies may chose to accomplish the PFC administration tasks by contracting through a consultant, use of its internal personnel, or a combination of the two. The public agency may wish to use Advisory Circular 150/5100-10A "Accounting Records Guide for Airport Aid Program Sponsors" as a guide to determine reasonable and necessary costs. The public agency may allocate these costs by use of an indirect cost allocation plan similar to those used for the AIP or may directly allocate them.

The public agency may plan to use a portion of the approved PFC revenue to fund a part or full time position for the administration of its PFC program. The tasks to be performed by the part or full time person shall be listed in the project description of the

ROD. As a condition for the FAA's approval of a dedicated PFC position, the FAA Airports office should make sure that the ROD requires that the public agency provide to the FAA each year of the PFC collection and/or use (from the date of issue of the ROD) a letter certifying that the funds expended for the part or full time position are directly and exclusively used for PFC administrative tasks during the preceding year, along with a record showing the hours spent on each major PFC related task listed in the description of this project during that year. The allowable portion of the public agency's direct costs of administering its PFC program do not include costs associated with operations and maintenance to support the position, general purpose equipment such as computer hardware, nor benefits including, but not limited to leave, retirement, or overhead. It also does not include project management activities. The public agency will have to consult with the FAA Airports office regarding the eligibility of costs not directly addressed in the ROD.

5-13. TREATMENT OF FEDERAL REGISTER COMMENTS IN ROD's.

a. Adverse Federal Register comments. Experience with the PFC program to date reveals that the majority of PFC applications will not receive negative comments during the 30 day Federal Register comment period. However, adverse comments submitted by air carriers during the air carrier consultation are frequently re-submitted during the Federal Register comment period, particularly if these carriers are represented through the ATA. The receipt of adverse comments during the Federal Register comment period requires that the ROD be handled at FAA Headquarters (see paragraph 5-6(b)).

b. Treatment of adverse comments. Adverse comments generally discuss a projects eligibility, objective(s), or adequate justification. Assertions challenging the projects merits on any one of these components should be carefully checked against the guidance provided in sections 4-6, 4-7, and 4-8. In addition, any evidence presented that a project being considered for use authority has not correctly completed the required environmental, airspace, and ALP approvals, or that any other requirement of the PFC regulation has not been met (e.g., non-conformance of the public agency with the PFC assurances), should be given special attention.

If the comment reveals that a use project has not reasonably met any of these requirements, and further investigation of information contained in the application (subject to clarification by the public agency) confirms this, the project in question cannot be approved in the ROD. A clear case of ineligibility or the improbability of meeting PFC objectives or justification for an impose only project should also lead to disapproval or withdrawal by the public agency of the project in the ROD. However, if there is a disagreement with the merits of the objective(s) or justification of an impose only project which might be clarified with additional information, it may be appropriate to include a requirement in the ROD for additional specific analysis or justification which the public agency would provide with the use application (see paragraph 5-12(d)).

c. Adverse comments pertaining to facility leases. Particular attention should be given to charges that a facility will be leased on exclusive use terms to an air carrier. The lease in question should be carefully checked to determine the merit of these charges relative to the requirements of assurances 5, 6, 7, and 8 of the regulation. As a matter of good practice, any lease pertaining to PFC facilities should be reviewed, even without controversy (see also paragraphs 15-I 0 through 15-13).

d. Adverse comments pertaining to cargo, general aviation, and international facilities. In some cases, adverse comments are made on projects because the projects are not directly used by air carriers or their passengers and employees. For instance, air carriers frequently object to funding of cargo or general aviation facilities or to funding of international projects in proportions that exceed the international passenger share of total traffic. The use of PFC funds for cargo, general aviation, or international facilities is permitted by the statute and regulation. Moreover, there is no requirement in the statute or regulation that PFC funds be allocated to projects in proportion to the number of PFC-paying passengers that use them.

e. Adverse comments concerning priority of PFC objectives. In other cases, comments will be submitted that oppose the funding of a project meeting one PFC objective because the commentor believes that another project that would meet a separate PFC objective should be given higher priority. In such cases, it is appropriate to note in the ROD that the application of PFC funds by a public agency to projects meeting one class of objectives, in preference to other PFC objectives, is fully within the discretion of the public agency. In other words, the FAA can and, in fact, must approve a project that preserves or enhances capacity even if the project yields no measurable increase in competition. However, the FAA has never knowingly permitted a- project to proceed by satisfying one PFC objective if that project would obstruct any other PFC objective-particularly competition. Where anti-competitive effects of a project are suggested, the FAA must explicitly investigate such charges prior to approving the project. The finding that a project works substantially against any PFC objective, particularly competition, should lead to its disapproval.

In the case of PFC levels above $3, a comment that a landside project is being funded in preference to an unfunded airside project, regardless of the objective of either project should be investigated under the guidance in section 10-8.

f. Discussion of adverse comments in the ROD. APP-530 will fully describe and address in the ROD all Federal Register comments opposing a project. In a ROD handled by APP-530 or a delegated ROD handled by the FAA Airports office, Federal Register comments supporting a project must be summarized but need not be analyzed.

5-14. NOTIFICATION OF APPROVAL/DISAPPROVAL.

a. Written notice to public agency for non-delegated decisions. APP-530 will transmit via fax or other means, a copy of the signed letter of transmittal and ROD to the public agency and the regional PFC contact. APP-530 will then mail the original signed transmittal letter, ROD, and related enclosures to the public agency. In addition, APP-530 will provide a copy of the ROD to ATA, International Air Transport Association (IATA), and Airports Council International-North America (ACI-NA) who assist in distributing this information to their members.

b. Written notice to the public agency for delegated decisions. The FAA Airports office will transmit via fax or other means, a copy of the signed decision package to APP-530 immediately after signature. The responsible FAA Airports office will then distribute the original signed transmittal letter, ROD, and related enclosures to the public agency. In addition, the FAA Airports office will provide a copy of the ROD to ATA, IATA, and ACI-NA who assist in distributing this information to their members.

c. Federal Register notice. APP-530 publishes a monthly notice of all nationwide PFC approvals and disapprovals as well as amendments in the Federal Register as required by regulation.

d. Judicial Review of the Record of Decision. The FAA's decision is made under the authority of 49 U.S.C. 46110 and 40117. The decision constitutes a final agency order approving, in whole or in part, the public agency's application for authority to impose and/or use PFC revenue for projects at the airport. Any party to the proceeding having **a** substantial interest may appeal the decision to the United States Court of Appeals for the District of Columbia or the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed within 60 days after the issuance of the decision.

The responsibility for responding to the petition and compiling the certified index of administrative record will remain in the FAA office signing the ROD in cooperation with the Assistant Chief Counsel that provides legal support to that office. APP-530 will provide technical assistance as resources permit, but is not responsible for the delegated final ROD nor information in support of delegated decisions.

5-15 to 5-20. RESERVED.

CHAPTER 6. COLLECTION, HANDLING, AND REMITTANCE OF PFC'S

SECTION 1. GENERAL

6-l. OVERVIEW. This chapter provides procedures for initiating PFC collection by public agencies, adjusting the duration of collection, and for collection, handling, and remittance of PFC's by air carriers. In addition, this chapter provides information on the compensation for program costs that air carriers collecting PFC's are entitled to receive.

SECTION 2. PUBLIC AGENCY COLLECTION ISSUES

6-2. PUBLIC AGENCY NOTIFICATION TO CARRIERS.

a. General. The public agency shall provide written notification to air carriers and foreign air carriers required to collect PFC's at its airport of the FAA's approval of an application to impose a PFC. The public agency shall provide a copy of the notification to the FAA Airports office and that office shall send a copy of the notice (without the ROD) to APP-530 so that APP-530 can maintain a national registry of remittance addresses.

b. Scope. The notification shall contain, as a minimum, the following information:

(1) The level of PFC to be imposed;

(2) The total revenue to be collected;

(3) The charge effective date, which will be at the earliest, the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC (unless the ROD specifically permits a lesser period (see paragraphs 4-l 0 and 6-4);

(4) The estimated charge expiration date;

(5) A copy of the ROD; and,

(6) The address where remittances and reports are to be filed by carriers and any other information required for remittance.

c. **FAA review.** The FAA Airports office will review the notice. If the FAA Airports office determines that any of the required information is missing, the public agency should be notified as soon as possible so that it can revise or supplement the notice as appropriate.

d. Subsequent notice. If an air carrier or foreign air carrier begins service at the impose airport after the date the notification identified above is provided, the public agency must send notification and provide a specific charge effective date to the new air carrier. In order to provide the same preparation time afforded to the incumbent carriers, the charge effective date should be the first day of a month at least 60 days from the date the new air carrier agrees to provide service to the airport unless the carrier agrees in writing to an earlier date.

6-3. PUBLIC AGENCY NOTIFICATION TO EXCLUDED CARRIERS. If the FAA has approved a request to exclude a class or classes of air carriers from the requirement to collect the PFC, the public agency shall notify those carriers identified in the application as belonging to the proposed class, that the exclusion has been approved (see paragraph 4-l 1). This notice should include a reminder that the excluded class will be reevaluated on an annual basis to ensure that enplanements for the class remain below 1 percent of the total annual enplanements for the airport. The air carriers should also be reminded that if the enplanements rise above 1 percent, the public agency will provide further notice to begin collections.

6-4. BEGINNING COLLECTION. The earliest charge effective date is the first day of the month which is at least 60 days from the date the public agency notifies the carriers of the FAA's approval to impose the PFC. Although most public agencies applying for PFC's request the earliest charge effective date, some public agencies either request a later charge effective date or withhold notice to the air carriers until a later date (not to exceed 1 year from the approval date). Except in the case of a subsequent application, collection cannot start until a minimum of 60 days after the public agency notifies the air carriers of the FAA's approval. In the case of a subsequent application by a public agency to continue PFC collection, the 60-day requirement can be waived to avoid interrupting collection (see paragraph 4-10). On, and after, the charge effective date, tickets issued for enplanements at airports approved to impose a PFC must include the required PFC, except as provided in 4-11, 6-13, 6-14, 6-15, 6-23, and 10-27(b) and (c).

6-5. ADJUSTMENTS TO THE DURATION OF COLLECTION. The public agency's authority to collect PFC's expires automatically when the charge expiration date as designated by the FAA is reached or when collections plus interest earned thereon equal the amount approved, whichever is earliest. Public agencies must carefully monitor their collections in order to avoid an overcollection and to ensure the approved amount of PFC revenue will be collected over the duration of the impose authority. Brief interruptions in PFC collections are administratively burdensome to the airline industry and interrupt PFC revenue flow to the public agencies. Accordingly, when collections have been either faster or slower than anticipated, public agencies must provide timely notice to the FAA, air carriers, and foreign air carriers to change the charge expiration date. This notice should be issued to the collecting carriers and to the FAA Airports office at least 60 days prior to either the date when the public agency's PFC revenue collection, plus interest earned thereon, is equal to the total allowable costs for all approved projects, or the existing charge expiration date, whichever is earlier. The FAA

Airports office will acknowledge this change in writing and transmit a copy, in a timely manner, to the ATA and APP-530 (see paragraph 8-21).

This procedure assures that all interested parties are informed and allows the air carriers time to incorporate changes in their computer reservation systems and/or ticketing processes. In accordance with an agreement with the ATA, all charge expiration dates will be on the first day of the month following the month in which the charge expired. This agreement may, on occasion, result in excess revenue above the approved amount. If excess revenue is collected, the public agency must follow the procedures in §158.39, including submitting a plan to the FAA Airports office for using the accumulated excess PFC revenue (see paragraph 8-35). In the event of PFC termination, the FAA issues a notice to the carriers to cease collection, as described in chapter 13 of this order.

In the event that the actual allowable costs of the projects in an application are different than the approved PFC collection authority for that application, the public agency may amend the amount of authority, and change the charge expiration date, to reflect the required collection amount. Section 1 l-7 of this order specifies procedures when an amendment under §158.37(a) is necessary due to changes in the allowable costs of approved projects in an application (a cost increase of 15 percent or less or a cost decrease based on the approved use amount). The public agency should provide at least 60 days notification for the carriers to accommodate the change.

Section 12-7 of this order specifies procedures when an amendment under Part 158.37(b) is necessary due to increases in the allowable costs of approved projects in an application (a cost increase of greater than 15 percent based on the approved use amount). However, additional processing time may be required for Part 158.37(b) amendments, particularly in cases of carrier disagreement with the proposed amendment. Therefore, the public agency must anticipate this possibility and allow a minimum of 180 days to process such amendments. Lacking sufficient time to process an amendment, the public agency risks automatic expiration of collection authority. Further, at least 60 days notification should be given for carriers to accommodate the change.

6-6. EXPIRATION OF COLLECTION. The public agency is responsible for notifying the collecting carriers, and the appropriate FAA Airports office of the charge expiration date. The charge expiration date could be the date stated in the ROD, or in a notice from the public agency revising the date (subject to acknowledgement from the FAA, see 6-5), or as required by the Administrator. The charge expiration date for any airport that has received authority to charge a PFC can also be found on the PFC internet document site. The collecting carriers and their agents shall stop collecting the PFC on the charge expiration date.

6-7 to 6-10. RESERVED.

SECTION 3. COLLECTION ON TICKETS ISSUED IN THE UNITED STATES

6-11. COLLECTION OF PFC'S.

a. Air carriers issuing tickets within the United States must follow procedures specified in Part 158.45. Carriers are responsible for all PFC funds from the time of collection from the passenger to the time of remittance to the public agency. Carriers are responsible for their agents' compliance with PFC collection requirements.

b. Air travel tickets are defined in $158.3 as "...all documents pertaining to a passenger's complete travel itinerary necessary to transport a passenger by air, including passenger manifests."

c. The appropriate charge is the PFC in effect at the airport at the time the ticket is issued, irrespective of when the travel takes place.

d. Issuing carriers, and their agents, shall collect the PFC's based upon the itinerary at the time of ticket issuance:

(1) 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 an enplaned revenue passenger only for the first two airports where PFc's are imposed. For example, a passenger plans a one-way itinerary from Baltimore to Los Angeles. In order to get the lowest one-way fare, the passenger's itinerary is: Baltimore-Chicago (Midway)-Saint Louis-Phoenix-Los Angeles. Assuming that each stop entailed a new ticket coupon (or equivalent) and all the airports collect PFc's, the passenger would pay a PFC for Baltimore and Chicago (Midway) only.

(2) For each round trip, a PFC shall be collected only for enplanements at the first two enplaning airports (on the outbound leg) and the last two enplaning airports (on the return leg) where PFC's are imposed. For example, a passenger plans a round-trip itinerary from Baltimore to Tucson. In order to meet scheduling requirements, the passenger's itinerary is: Baltimore-Chicago (O'Hare)-Phoenix-Tucson outbound and Tucson-Denver-Chicago (O'Hare)-Baltimore inbound. Assuming that the passenger changed planes for each segment, requiring a new ticket coupon or equivalent record, and each airport collects PFc's, the passenger would pay a PFC for Baltimore and Chicago (O'Hare) outbound, and Denver and Chicago (O'Hare) inbound.

6-12. INFORMATION REQUIRED ON TICKETS. Issuing carriers and their agents shall note as a separate item on each air travel coupon, or equivalent record for which a PFC is collected, the total amount of PFC's paid by the passenger and the airports for which the PFC's are collected.

6-13. ADJUSTMENTS. Air carriers must collect PFc's from, or refund PFC's to, passengers for itinerary changes initiated by the passenger, as appropriate, for the new itinerary if the changes require an adjustment to the total amount paid by the passenger.

An example would be a passenger who pays for a ticket from New York City (Kennedy) to Los Angeles and return, via a connection in Denver in both directions. All three of these airports collect a $3 PFC. The carrier would collect a total of $12 in PFC's for two points out and two points in return. Subsequently, the passenger, at his or her own request, rebooks on a non-stop flight from New York (Kennedy) to Los Angeles with a return trip the same way for a slight increase in airfare. The passenger would now be required to pay $6 (for New York outbound and Los Angeles on return) and would be entitled to receive a refund of $6 for two of the previously paid PFC's.

PFC's are remitted to public agencies according to the original itinerary for itinerary changes initiated by the air carrier. For example, if the same itineraries in the above example were applied to a case where an air carrier, due to a flight cancellation, overbooking, or other situation, initiates itinerary changes, a refund would not be issued to the passenger and the carrier would remit the PFC's as originally ticketed.

6-14. ESSENTIAL AIR SERVICE (EAS). Issuing carriers and their agents shall not collect PFC's from a passenger on any flight to an eligible point on an air carrier receiving EAS compensation on that route under 49 U.S.C. 41731-41742. The "eligible point" is defined as the airport that is guaranteed air service on an EAS designated route. PFC's are collected from passengers traveling on air carriers not receiving essential air service compensation on that route. The list of approved EAS points is maintained in the DOT, EAS and Domestic Analysis Division, X-53 and is available on its internet website and can also be accessed through the PFC internet website.

The limitation to the collection of PFC's on EAS compensated travel does not affect the ability of public agencies that control EAS-designated airports to collect PFC's. These public agencies are eligible to apply for a PFC and can collect from passengers enplaning at the airport, regardless of an EAS designation or subsidy.

6-15. FREQUENT FLYER AWARDS. Section 204 of the Federal Aviation Administration Authorization Act of 1994, Public Law No. 103-305, enacted on August 23, 1994, [codified at 49 U.S.C. 40117(e)(2)(C)], precludes collection of a PFC from a passenger enplaning at an airport if the passenger did not pay for the air transportation which resulted in such enplanement, including any case in which the passenger obtained the ticket for the air transportation with a frequent flyer award coupon without monetary payment.

The FAA interprets this provision to prohibit the collection of PFC's from passengers considered to be nonrevenue passengers under existing DOT Regulations and from passengers who obtained their ticket with an award coupon issued under a frequent flyer or similar bonus award program ("frequent flyer award coupon"). For purposes of this provision, the FAA considers a "frequent flyer award coupon" to be a zero-fare award of air transportation that an air carrier or foreign air carrier provides to a passenger in exchange for accumulated travel mileage or trip credits in a customer loyalty program. The definition of "frequent flyer award" does not extend to redemption of accumulated credits for awards of additional or upgraded service on trips for which

the passenger has paid a published fare. The FAA does not construe §204 as applying to "two-for-the-price-of-one" and similar marketing programs, or to air transportation purchased for a passenger by other parties,

6-16. EXEMPTIONS FOR CERTAIN FLIGHTS IN HAWAII AND ALASKA. AIR-21 exempted certain new classes of air carriers or air service from PFC collections. In particular, a PFC may not be collected on flights, including flight segments between two or more points in Hawaii, or aboard an aircraft having a certificated seating capacity of less than 60 passengers in Alaska (see paragraph 10-32(b)).

6-17 to 6-20. RESERVED.

SECTION 4. COLLECTION OF PFC'S ON TICKETS ISSUED OUTSIDE THE UNITED STATES.

6-21. REGULATORY OPTIONS FOR COLLECTING PFC's. The FAA recognizes the operational practices of air carriers and foreign air carriers issuing tickets outside the United States for international air travel (i.e., travel through a United States gateway airport) require multiple options for collecting PFC's. To accommodate these various operational practices, the FAA created two regulatory options for collection of PFC's. An air carrier or foreign air carrier which issues tickets outside the United States may follow the requirements of either Part 158.45 (section 3 of this chapter) or Part 158.47 of the PFC regulation. The air carrier or foreign air carrier may choose the approach which best fits its business practices. However, the air carrier or foreign air carrier must use Part 158.45 for any tickets it issues purely for travel within the United States, regardless of the point of ticket issuance.

6-22. NO AIR SERVICE TO UNITED STATES. Not withstanding any other provision of the PFC regulation, no foreign air carrier is required to collect a PFC on air travel tickets issued on its own ticket stock unless it serves a point or points in the United States. However, a carrier which issues tickets outside of the United States solely for travel within the United States must follow Part 158.45.

6-23. COLLECTION FOR THE GATEWAY AIRPORT. Those air carriers which choose to comply with the requirements of Part 158.47 will be required to collect a PFC only for the public agency controlling the gateway airport. The gateway airport is defined as the last enplaning airport prior to departure from the United States.

If the gateway airport does not collect PFC's, no PFC will be collected. The PFC will not be collected for any preceding airport on the ticket, even if other airports on the itinerary collect PFC's. An example would be a passenger who plans a trip from Singapore to Seattle and return. Due to scheduling requirements, the itinerary is Singapore-Guam-Los Angeles-Seattle outbound and the reverse inbound. The ticket is issued outside the United States by an air carrier serving the United States. Assuming all United States points charge PFC's and ticket coupons are issued for all segments, then a PFC would

only be collected for Guam on the return leg, since it is the departure gateway. However, if Guam were not collecting PFC's, no PFC would be collected for this trip, even though Los Angeles and Seattle impose a PFC.

The foreign air carrier complying with Part 158.47 may collect the PFC either at the time the ticket is issued or at the time the passenger is last enplaned prior to departure from the United States. The carrier may vary the point of collection (ticket issuance or passenger enplanement) among its flights. The carrier shall provide a written record to the passenger that the PFC has been collected. The record shall appear either on the ticket or with the ticket and will include the same information required by Part 158.45. However, the information is not required to be preprinted on the ticket.

6-24. COLLECTION AT TICKET ISSUANCE. For carriers collecting the PFC at the time of ticket issuance, the charge shall be the PFC level in effect at the time the ticket is issued, based upon the itinerary. Any changes in itinerary that are initiated by a passenger and that require an adjustment of the amount paid by the passenger are subject to collection or refund of the PFC as appropriate. The air carrier collecting the PFC at the time of ticket issuance will not be required to check each enplaning passenger's ticket for that flight, whether or not the ticket was sold by the operating carrier.

6-25. COLLECTION AT TIME OF ENPLANEMENT. If the carrier chooses to collect the PFC at the time of enplanement, tickets of each enplaning passenger must be examined for payment of a PFC on and after the charge effective date to the gateway airport. The air carrier shall collect the PFC from any passenger whose air travel ticket does not include a written record indicating that the PFC was collected at the time of issuance. This would include tickets issued before the charge effective date for travel occurring after the charge effective date, since no PFC would have been shown on or with the ticket. An example would be if Croatia Airlines, which does not serve a point in the United States, issued a ticket with the itinerary Croatia-London-Washington (Dulles) and return. The Washington-London leg is on British Airways, which (for this example) collects PFC's at the gate for this leg. British Airways is required to examine each ticket of each passenger enplaning at Dulles to determine if a PFC was paid at the time of issuance and collect a PFC from those passengers without such proof. The passenger issued the ticket by Croatia Airlines (which was not required to collect a PFC when it issued the ticket) would be required to pay a PFC at the time of enplanement at Dulles and would be issued a receipt by British Airways for the payment of the PFC.

6-26. HANDLING OF PFC. The collected PFC shall be distributed as noted on the written record provided to the passenger. The collecting carriers shall be responsible for all funds from the time of collection to remittance. The collecting carriers and their agents shall stop collecting the PFC on the charge expiration date stated in a notice from the public agency, or as required by the FAA.

6-27 to 630. RESERVED.

SECTION 5. AIR CARRIER ACCOUNTING AND HANDLING OF PFC REVENUE COLLECTED

6-31. OVERVIEW. Collecting carriers are required to establish and maintain a financial management system to account for PFC's in accordance with the DOT's Uniform System of Accounts and Reports (14 CFR Part 241). Carriers not subject to 14 CFR Part 241 are required by §158.49(a) to establish and maintain an accounts payable system to handle PFC revenue subaccounts for each public agency to which the carrier remits PFC revenue.

6-32. AIR CARRIER REMITTANCE OF PFC REVENUE COLLECTED. PFC's collected by carriers shall be remitted to the public agency on a monthly basis. PFC revenue recorded in the accounting system of the carrier, as set forth in section 6-31, shall be remitted to the public agency no later than the last day of the following calendar month (or if that date falls on a weekend or holiday, the first business day thereafter).

Remittance is not defined in the PFC statute or regulation. In particular, the PFC regulation does not specify whether remittance occurs at the time of the sending of the funds by the air carrier or the time of receipt of the funds by the public agency. This lack of specificity has been a source of controversy between air carriers and public agencies. Until this issue can be resolved through rulemaking or legislative action, the FAA cautions that any receipt of a payment instrument by a public agency that occurs more than 5 days after the remittance date specified above will be treated as a potential late remittance by the FAA.

6-33. PROPERTY INTERESTS. PFC revenue must be accounted for separately by a collecting carrier, but the revenue may be commingled with the carrier's other funds. The collecting carrier holds PFC revenue collected as trust funds for the beneficial interest of the public agency imposing the PFC. All PFC revenue collected and held by the air carrier is property of public agencies in which the carrier holds neither a legal nor equitable interest, except for any handling fee or retention of interest collected on unremitted proceeds as authorized in $158.53 of the PFC regulation (see paragraph 6-34). Collecting carrier shall disclose the existence and amount of PFC funds held in trust in their financial statements. The FAA has determined that carriers may use the DOT Form 41 reporting process to make this disclosure. Alternatively, a carrier may utilize its annual publicly-released financial statements.

In contrast, public agencies have a property interest in PFC revenue collected on their behalf. Therefore, the FAA will, in the first instance, look to public agencies to resolve reporting and remitting irregularities directly with the collecting carriers. State laws governing trust accounts define the public agency's legal rights to PFC revenue collected on its behalf and the procedures available to the public agency to enforce those rights. However, if the direct resolution by the public agency is not successful, the FAA and the Office of the Secretary of Transportation, Assistant General Counsel for

Environmental, Civil Rights, and General Law (C-l 0), may facilitate voluntary resolution and, if necessary, assist in applying administrative compliance and judicial remedies available to it.

Part 158 is silent on whether public agencies may propose penalties and interest on PFC revenue that is past due. Therefore, a public agency's authority to collect interest would depend on state or local law or the public agency's contractual relationship with the carrier. The FAA does not consider the PFC regulation's silence on this subject to preclude the collection of penalties and interest based on local law or contract, and the FAA does not object to this practice as long as it is applied in a non-discriminatory manner.

6-34. COLLECTION COMPENSATION. As compensation for collecting, handling, and remitting the PFC revenue, the collecting air carrier shall be entitled to:

a. Retain $0.08 of each PFC remitted (prior to June 28, 1994, this amount was $0.12), or any such amount that the FAA may set subsequent to the release of this order through a rulemaking action; and

b. Any interest or other investment return earned on PFC revenue between the time of collection and remittance to the public agency.

Collecting carriers are only entitled to compensation for PFC's remitted to the public agencies, rather than for all PFC's collected. The following formula should be used by the collecting carriers to calculate carrier compensation:

Number of PFC's collected - Number of PFC's refunded X $0.08 = amount of carrier compensation,

As stated above, collecting carriers have no property interest in PFC revenue. Therefore, they have no legal basis for withholding or delaying payments in contravention of Part 158. In addition, carriers are not entitled to any interest earned on PFC revenue that is held beyond the remittance period allowed in the rule.

635 to 6-40. RESERVED.

CHAPTER 7. REPORTING, RECORDKEEPING, AND AUDITS

SECTION 1. BACKGROUND

7-l. OVERVIEW. This chapter contains the requirements for reporting, recordkeeping, and auditing of PFC accounts maintained by collecting carriers and public agencies.

7-2 to 7-5. RESERVED.

SECTION 2. PUBLIC AGENCY REPORTING REQUIREMENTS

7-6. QUARTERLY REPORT. The public agency shall provide quarterly reports to carriers collecting PFC's for the public agency in a form that is mutually acceptable to the public agency and the collecting carriers. This form may be in hard copy and/or electronic copy available through the internet (on a web site or via e-mail). A copy of the report shall also be sent to the FAA Airports office. The quarterly report is designed to provide the air carriers and the FAA with sufficient information for oversight of PFC revenue.

a. The public agency shall identify each project for each approved application. The current estimated or actual project implementation and physical and financial completion dates (month and year), the charge effective and use approval dates, amounts of use approval, and current PFC cost estimates shall be listed for each project in each quarterly report. Inclusion of the current PFC and total project cost estimates are helpful in providing an early notification to air carriers of changing project financial needs.

In addition, the quarterly report shall include information for the quarter on the total PFC revenue received from the collecting carriers, interest earned on the PFC's collected, and expenditures of PFC revenue on each project approved for the use of PFC revenue. In addition, the cumulative PFC revenue received, interest earned on PFC unexpended balances, and expenditures of PFC revenue on each project approved for the use of PFC revenue must be included in all quarterly reports.

For accounting purposes, the public agency may choose to report expenditures of bond or line of credit proceeds as counting toward PFC approved amounts. In this case, PFC quarterly expenditures will appear to greatly exceed PFC quarterly (and even cumulative) receipts. If this accounting approach is taken, it is important that the public agency acknowledge its use of this method and use this same accounting method on all subsequent quarterly reports to facilitate the accurate tracking of PFC expenditures relative to approved amounts. As a matter of best practice, the FAA strongly encourages public agencies that use debt financing on PFC projects also to report PFC quarterly revenue receipts and expenditures (e.g. PFC payments to debt service).

b. The report shall be provided on or before the last day of the calendar month following the calendar quarter or other quarterly period agreed to by the public agency and collecting carriers. The public agency's quarterly report should be based on the PFC revenue they have actually received from the carriers during the quarter, not on the amounts stated in the air carriers' quarterly reports. The public agency should not wait until receiving the quarterly reports from the carriers before issuing their own quarterly report. In summary, the quarterly report should fairly represent the transactions in the public agency's PFC account (see paragraph 7-l 8).

7-7. LARGE/MEDIUM HUB AIRPORT YEARLY REPORT. This provision applies to public agencies imposing a PFC at airports which enplane 0.25 percent or more of the total annual enplanements in the United States for the prior calendar year, as determined by the Administrator. Public agencies subject to this provision must provide to the FAA Airports office, by August 1 of each year, an estimate of PFC revenue to be collected for each such airport in the ensuing fiscal year. The FAA Airports office will forward this information to APP-530. The public agency's estimate is the basis for reducing funds apportioned under 49 U.S.C. 47114(c) in the ensuing fiscal year.

7-8. ANNUAL COLLECTIONS REPORT.

a. The FAA Airports office shall forward a spreadsheet containing actual PFC collection totals (not including interest earned) for the calendar year (January 1 through December 31) just concluded to APP-530 by the first business day on or after February 20. The PFC collections information on this spreadsheet may be obtained either from the public agency directly or by summing the PFC collection amounts on the public agency quarterly reports covering the time period in question. This information is used in various FAA reports to Congress, industry groups, and the public as well as internal FAA reports.

b. For large and medium hub airports which were subject to AIP reductions in the previous Federal fiscal year, the annual collections spreadsheet must also provide the actual PFC collections totals (not including interest earned) for that fiscal year (October 1 through September 30). Again, this information may be obtained either directly from the public agencies or by summing the PFC collection amounts on the quarterly reports covering the time period in question. These data on large and medium hub collections are compared to the AIP reductions which occurred to determine if adjustments need to be made in the reduction amounts in accordance with §158.95(c). This information may be submitted at the same time as the information in paragraph a above, or at any point after the close of the fiscal year and prior to February 20.

7-9 to 7-10. RESERVED.

SECTION 3. AIR CARRIER REPORTING REQUIREMENTS

7-l 1. QUARTERLY REPORT. Each carrier collecting PFC's for a public agency shall file quarterly reports to the public agency, unless other arrangements are agreed to by the collecting carrier and the public agency. The carrier's quarterly report provides an accounting of funds collected and funds remitted to each public agency.

a. Unless otherwise agreed to by the collecting carrier and public agency, the reports shall state the collecting carrier and airport involved, the total PFC revenue collected, the total amount of PFC revenue refunded to passengers, and the amount of collected revenue withheld by the collecting carrier for reimbursement of expenses in accordance with §158.53(a) (see paragraph 6-32). The report shall include the dates and amounts of each remittance for the quarter.

b. The report shall be filed on or before the last day of the calendar month following the calendar quarter, or other period as agreed to by the collecting carrier and public agency, for which funds were collected.

7-12 to 7-15. RESERVED.

SECTION 4. RECORDKEEPING AND AUDITING-PUBLIC AGENCY

7-16. ACCOUNT. Each public agency shall keep any unexpended PFC revenue remitted to it by collecting carriers on deposit in an interest bearing account or in other interest bearing instruments used by the public agency's airport capital fund. Interest earned on such PFC revenue shall be used, in addition to the principal, to pay the allowable costs of approved PFC-funded projects. PFC revenue may only be commingled with other public agency airport capital funds in deposits of interest bearing accounts. In certain instances, the public agency airport capital funds are further commingled with other capital funds in order to simplify capital accounting and to earn higher interest rates, Such arrangements are not specifically prohibited under Part 158; however, the public agency must account for all PFC revenue including interest earned, as specified in §158.67(a). In no event may PFC revenue be expended on unapproved projects or projects which have only been approved for impose only authority. Moreover, PFC funds may not be used indirectly, such as in the form of an internal loan, to fund unapproved or impose only projects. This prohibition extends to public agencies "grandfathered" under the AIP revenue assurance (FAA Order 5100.38A, appendix 1, (C)(25)) to use airport income for other agency projects. The "grandfathering" provisions do not apply to PFC revenue.

7-17. ACCOUNTING RECORD. Each public agency shall establish and maintain a separate accounting record for each approved application. The accounting record shall identify the PFC revenue received from each collecting carrier, interest earned on such revenue, the amount used on each project, and the amount reserved for currently approved projects.

7-18. AUDIT. At least annually during the period the PFC is collected, held, or used, each public agency shall provide for an audit of its PFC account. The audit shall be performed by an accredited independent public accountant and may be of limited scope. Limited scope means that the public accountant must perform only those tests and procedures necessary to render the opinions required below. The accountant shall express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding, and using PFC revenue (also known as an examination of the public agency's system of "internal controls"). The accountant shall also express an opinion on whether the quarterly report required under section 7-6 fairly represents the transactions within the PFC account (also know as a "report on PFC schedules").

a. The audit may be--

(1) Performed specifically for the PFC account; or

(2) Conducted in conjunction with an audit under the Single Audit Act Amendments of 1996 (Pub. L. 104-I 56), provided that the PFC program is specifically addressed by the auditor.

b. The auditor must, as a minimum, provide the opinions described above as well as a schedule of PFC transactions. Specific audit guidelines and a sample schedule for the PFC program are contained in the Passenger Facility Charge Audit Guide for Public Agencies, (65 FR 62794), also available on the PFC internet document site.

c. 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. In addition, a copy of the audit shall be provided to the FAA Airports office upon request, in accordance with the "Federal Oversight" provisions contained in §1 58.71 of the PFC regulation (see paragraphs 7-19, 7-20, and 7-36).

7-19. ACCEPTABLE LEVEL OF ASSURANCE. The FAA has determined that the use of the procedures in the Passenoer Facility Charge Audit Guide for Public Agencies will provide sufficient programmatic assurance that the public agency has met the requirements of 14 CFR 158 or is correcting items noted in its audit report such that the FAA would not normally require additional reports, undertake an audit of the public agency, or request DOT, Office of the Inspector General (DOT OIG), intervention on the FAA's behalf. The FAA would not normally initiate further monitoring efforts unless a subsequent alleged gross violation of the regulation is substantiated.

However, the FAA will not have the same level of confidence that a public agency which has not used the guidance is in compliance with the collection and remittance requirements of 14 CFR Part 158. Accordingly, alleged collection and remittance

discrepancies raised against public agencies that have not used the guidance are more likely to trigger additional FAA monitoring activities, including requiring additional reports, the undertaking of an audit, or a request for DOT OIG intervention. Such an approach shall not foreclose other FAA options for responding to and enforcing correct holding and use procedures.

7-20. FAA REVIEW OF PUBLIC AGENCY AUDITS. The FAA Airports office should request that each public agency subject to the PFC annual audit requirement submit a copy of its audit to the FAA Airport office each year. The FAA Airports office should promptly review each audit to determine whether the auditor has issued an unqualified opinion. If a public agency fails to complete an audit, or if the auditor issues other than an unqualified opinion, the FAA Airports office should notify APP-530. Moreover, APP-530 should be notified if any air carrier or other party reports potential problems with the audit findings. The FAA intranet documents site includes a checklist that is recommended for use in reviewing public agency audits.

7-21 to 7-25. RESERVED.

SECTION 5. RECORDKEEPING AND AUDIT-AIR CARRIERS

7-26. ACCOUNT. Collecting carriers shall establish and maintain, for each public agency for which they collect a PFC, an accounting record of PFC revenue collected, remitted, refunded, and compensation retained under §158.53(a). The accounting record shall identify each airport at which the passengers were enplaned.

7-27. AUDIT. Each collecting carrier that collects a PFC from more than 50,000 revenue passengers annually shall provide for an audit, at least annually, of its PFC account.

a. The audit shall be performed by an accredited independent public accountant and may be of limited scope. Limited scope means that the public accountant must perform only those tests and procedures necessary to render the opinions required below. The accountant shall express an opinion on the fairness and reasonableness of the carrier's procedures for collecting, holding, and dispersing PFC revenue (also known as an examination of the air carrier's system of "internal controls"). The opinion shall also address whether the quarterly reports required under §158.65 of the PFC regulation fairly represent the transactions in the PFC account (also known as a "report on PFC schedules"). Transactions are defined as the account transactions required to represent the receiving, holding, and dispersing of PFC revenues by the air carrier.

b. The auditor must, at a minimum, provide the opinions described above. Specific audit guidelines for the PFC program are contained in the Passenger Facility Charge Audit Guide for Air Carriers, (64 FR 44777), also available on the PFC internet document site.

c. For the purposes of an audit under this section, collection is defined as the point when agents or other intermediaries remit PFC revenue to the carrier.

d. Upon request, a copy of the audit shall be provided to each public agency for which a PFC is collected. The FAA may request copies of air carrier audits under the "Federal Oversight" provisions contained in §1 58.71 of the PFC regulation (see paragraphs 7-28, 7-29, and 7-37).

e. In those cases where the FAA deems that an audit may be necessary for those carriers with less than 50,000 PFC passengers annually, the audit would be petformed by the Administrator, the Secretary or the Comptroller General, or their designee, as provided in $158.71.

7-28. ACCEPTABLE LEVEL OF ASSURANCE. The FAA has determined that the use of the procedures in the Passenger Facility Charge Audit Guide for Air Carriers will provide sufficient programmatic assurance that the air carrier has met the requirements of $158.69 or is correcting items noted in its audit report such that the FAA would not normally require additional reports, undertake an audit of the air carrier, or request DOT OIG intervention on the FAA's behalf. The FAA would not normally initiate further monitoring efforts unless a subsequent alleged gross violation of the regulation is substantiated.

However, the FAA will not have the same level of confidence that a air carrier which has not used the guidance is in compliance with the collection and remittance requirements of §1 58.69. Accordingly, alleged collection and remittance discrepancies raised against air carriers that have not used the guidance are more likely to trigger additional FAA monitoring activities, including requiring additional reports, the undertaking of an audit, or a request for DOT OIG intervention. Such an approach shall not foreclose other FAA options for responding to improper collection and remittance practices and enforcing correct collection and remittance procedures.

7-29. REVIEW OF AIR CARRIER AUDITS. APP-530 will request copies of air carrier annual audits to review them for completeness. Possible problems in air carrier annual audits identified by public agencies should be promptly reported to APP-530 and the Office of the Secretary of Transportation, Assistant General Counsel for Environmental, Civil Rights, and General Law (C-IO).

7-30 to 7-35. RESERVED.

SECTION 6. FEDERAL OVERSIGHT

736. PUBLIC AGENCY. The FAA may periodically audit and/or review the 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 the regulation and 49 U.S.C. 40117. As noted in 7-19, the FAA will be less likely to undertake an audit of a public agency if the public agency follows the steps recommended in FAA's Passenger Facilitv Charge Audit Guide for Public Agencies.

7-37. AIR CARRIERS. The FAA may periodically audit and/or 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 the regulation and 49 U.S.C. 40117. As noted in 7-28, the FAA will be less likely to undertake an audit of an air carrier if the air carrier follows the steps recommended in FAA's Passenger Facilitv Charge Audit Guide for Air Carriers.

7-38. ACCESS TO DOCUMENTATION. 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 PFC's.

7-39 to 7-45. RESERVED.

CHAPTER 8. APPLICATION OVERSIGHT

SECTION 1. GENERAL

8-1. OVERVIEW. Once the FAA has approved the project(s) in an application, the public agency has the responsibility to ensure that project(s) are undertaken within the timeframes specified by the PFC regulation. In particular, the public agency must submit further applications (if necessary for authority to use collected PFC revenue) within the timeframes established by regulation, implement the project(s) within the regulatory timeframes, and use any excess PFC revenue associated with expired, terminated, or completed project(s) in accordance with the regulation. Complying with these responsibilities may necessitate a change in the charge expiration date, amendments of approved project(s), or submissions of new applications. Failure to undertake projects in compliance with the regulation will result in automatic expiration or termination of PFC collections, and may result in adjustments in AIP funding.

The FAA Airports office should, as appropriate, notify public agencies of timeframe requirements in an effort to aid the public agency in meeting these regulatory requirements.

8-2 to 8-5. RESERVED.

SECTION 2. DURATION OF AUTHORITY TO IMPOSE PFC'S BEFORE PROJECT IMPLEMENTATION

8-6. TIMING.

a. Under §158.33(a) of the regulation, a public agency shall not impose a PFC for an approved project that has not been implemented beyond the earlier of the following dates:

(1) (Projects approved for use or impose and use) Two years after approval to use PFC revenue on an approved project if the project has not been implemented.

(2) (Projects approved for impose with a subsequent use approval) The earlier of two years after the use approval date or five years after the charge effective date, or the impose application approval date (see paragraph 4-18), if an approved project is not implemented. For first time applications to impose a PFC, or applications that follow a lapse in collections, the 5-year period applies to the 5 years following the charge effective date. For a subsequent application, the 5-year period begins on the date the application is approved.

If the FAA Airports office determines that insufficient progress has been made toward project implementation of a project granted use authority, the FAA Airports office shall make a recommendation to APP-530, to begin termination proceedings through the informal resolution process. If the Associate Administrator for Airports and the Administrator concur with this assessment, the FAA Airports office shall begin termination proceedings under subpart E of Part 158 (see chapter 13). The FAA has no statutory or regulatory authoritv to grant extensions on projects that have received use authority but which have not met the required implementation dates. However, termination proceedings begin with informal resolution. The FAA may conclude that project implementation during this informal resolution period is sufficient to meet the implementation requirement thus ending the need to pursue termination (see paragraph 13-6).

b. Under §1 58.33(c) of the regulation, the authority to impose a PFC following impose only approval shall automatically expire without further action by the FAA on the following dates:

(1) 3 years after the charge effective date (or for a subsequent application, 3 years after the approval date, see 3-7(c)) unless:

(a) The public agency has filed an application with the FAA Airports office for approval to use PFC revenue for an eligible project;

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

(c) The public agency seeks from and is granted by the FAA an extension of up to 2 years (see chapter 9 for a discussion of the extension process); or

(2) If a full 2-year extension has been granted, 5 years after the charge effective date (or for a subsequent impose or impose and use application, 5 years after the approval date, see 3-7(c)), unless the public agency has obtained project use approval. If use approval has been obtained, but implementation has not occurred, 8-6(a)(2) applies and termination action is required.

Submission of a use application within 3 years of the charge effective date technically meets the requirements of 8-6(b)(l), whether or not the FAA Airports office finds that the application is substantially complete. However, the use application must be, at a minimum, a properly filled out and signed FAA Form 5500-l. Should the FAA determine that the application is not substantially complete, the FAA's letter finding the application not substantially complete will specify the attachments and information required for a substantially complete finding.

Automatic expiration prevents the continued receipt of PFC revenue by the public agency for that project without expenditure for the purpose(s) intended. Although it has been the FAA's practice in the past to provide notification of such an action through an

administrative amendment to the next available ROD for the public agency, such administrative amendments are difficult to identify and locate. This practice is neither timely nor is the action traceable to a source document, as the administrative amendment action would be recorded in any ROD approved after the expiration occurs. For example, if an administrative amendment deleting a project in 95-01-I-00-TMS were recorded in the summary decision table of 01-05-C-00-TMS, a person seeking information on the status of the 95-01 project would likely not think to look there, particularly if the projects in 01-05 were unrelated to the deleted project. Therefore, notification of an automatic expiration should be issued as a separate correspondence and included with the file containing the 95-01 ROD.

8-7. RESERVED.

8-8. NOTIFICATION OF CARRIERS. If the public agency's authority to impose a PFC expires due to failure to submit a use application within the specified timeframes under §158.33(c), the public agency must, under §158.33(d), provide the FAA Airports office with: (a) a list of the air carriers and foreign air carriers operating at the imposing airport; and (b) a list of all collecting carriers that have remitted PFC revenues in the preceding 12 months. The FAA Airports office shall then notify each listed carrier of the expiration and its effect on total approved collections and the collection expiration date. However, only in the instance where the expiring project is the sole justification for ongoing PFC collections would this notice by the FAA also require the air carriers to terminate PFC collections on a specific date no later than 30 days after the date of the written notice. The FAA Airports office shall also provide a copy of notice to APP-530 and the ATA. The notice shall be in the format prescribed in the PFC intranet document site, as appropriate.

8-9. RESTRICTION ON AUTHORIZATION TO RE-IMPOSE A PFC. Whenever the authority to impose a PFC for a project(s) has expired, been terminated under the conditions described in this chapter, or been deleted/withdrawn under threat of termination for nonimplementation or to avoid automatic expiration, the Administrator will not grant new approval to impose a PFC for that project in advance of implementation of that project. This requirement assures that public agencies are not permitted to impose a PFC for a project indefinitely by filing successive applications for authority to impose a PFC for that project.

8-10 to 8-20. RESERVED.

SECTION 3. DURATION OF AUTHORITY TO IMPOSE A PFC AFTER PROJECT IMPLEMENTATION

8-21. OVERVIEW. A public agency that has begun implementation of an approved project is authorized to impose a PFC until one of the following actions occurs:

a. The charge expiration date is reached. If it becomes evident that insufficient collections will have been received by the charge expiration date as a result of the rate of collection being less than anticipated, the public agency shall notify collecting carriers of its intent to extend the collection period, thereby revising the charge expiration date accordingly. Similarly, if the public agency becomes aware that excess collections will occur before the charge expiration date, it should shorten the collection period by notice. The public agency should submit a copy of this notification to the appropriate FAA Airports office. The FAA Airports office will forward a copy of its acknowledgement of the notification (see PFC intranet document site) to APP-530 and the ATA. Every effort should be made to provide the acknowledgement of the extension of duration at least 60 days in advance of the current charge expiration date in order to allow for sufficient notification time (see paragraph 6-5).

b. The total PFC revenue collected plus interest thereon equals the allowable cost of the approved project. If the authorized collection amount is inadequate as a result of an increase in allowable project costs, the public agency must initiate an amendment to the approved PFC application increasing the total approved PFC revenue (see paragraph 6-5 and chapter 11 or 12). In some cases, the FAA may strongly encourage the public agency to undertake such action if the project cannot otherwise be completed;

c. The authority to collect the PFC is terminated by FAA in accordance with chapter 13 of this order; or

d. The FAA determines that the public agency is in violation of 49 U.S.C 47524 and 47526 (see paragraphs 4-l 2 and 5-12). That statute's implementing regulation, 14 CFR Part 161, provides separate termination procedures. Once the FAA issues a final decision terminating collection authority, the air carrier notification procedures outlined in this order should be followed.

8-22 to 8-30. RESERVED.

SECTION 4. EXCESS PFC REVENUE

831. OVERVIEW. FAA has a statutory and regulatory responsibility to prevent collection of excess PFC revenue. Excess revenue is defined as the amount by which revenue collected from air carriers, plus accumulated interest thereon, exceeds allowable project costs. The duration of authority to impose a PFC is ultimately contingent upon PFC revenue plus interest on PFC balances being equal to allowable project costs. Excess revenue may also include revenue generated from the sale of property purchased with PFC funds.

8-32. FAA MONITORING OF PROJECT COSTS. The FAA Airports office will maintain a monitoring system, utilizing financial information from the quarterly reports

(see chapter 7), to ensure that changes in project costs do not result in the collection of excess PFC revenue.

a. Periodically, the FAA Airports Office should compare the approved costs in the ROD, as amended, to the quarterly report.

b. If there is an indication that excess PFC revenue may be collected prior to the authorized charge expiration date or at a total less than specified in the application approval, the FAA Airports office will notify the public agency that the authority to impose a PFC will expire. The notification should be at least 9 months in advance of the time the discrepancy in collections is estimated to occur although a failure of the FAA to provide such notice will not enable excess collections to occur. The public agency may choose to respond through use of one or more of the following actions:

(I) Reduce or extend the collection period by notice (see paragraphs 6-5 and **8-21**(a));

(2) Amend its application to reduce the level of collection (see paragraph 6-5 and chapter 1 I);

(3) Amend existing approved projects, including accelerated retirement of outstanding PFC financed bonds (see paragraph 6-5 and chapter 11 or 12); and/or

(4) Submit a new application to use revenue that would otherwise be excess (see paragraph 8-35).

c. Excess revenue may also include revenue generated from the sale of property purchased with PFC funds. Property purchased with PFC funds, which is subsequently sold, shall reimburse the PFC fund with the fair market value of the property. A common example of this is a public agency that purchases land for noise mitigation and later resells it. The public agency will reimburse the property's fair market value into its PFC fund.

d. If the FAA finds that excess revenues have already been collected, or if authority to collect a PFC has expired or been terminated under $158.33 of the PFC regulation (see paragraph 8-6), the public agency must submit a plan on how it will begin using accumulated PFC revenue according to §158.39(d) (see paragraph 8-35).

8-33 to 8-34. RESERVED.

8-35. EXCESS PFC REVENUE PLAN. Section 158.39(d) of the PFC regulation specifies that within 30 days after the authority to impose a PFC expires or is terminated, if excess PFC revenues have accumulated, the public agency shall present to the FAA Airports office a plan for using the accumulated excess PFC revenue. The plan shall include the date the public agency intends to submit to the FAA an application

for authority to use PFC revenue on a project, if applicable. The plan shall include a timetable for submission of any necessary application to use the PFC revenue.

If the public agency fails to submit such a plan or submits an unacceptable plan, the FAA Airports office shall recommend to APP-530 that an AIP offset of apportioned funds be authorized. APP-530 will coordinate this recommendation with APP-520 and consult with the Associate Administrator for Airports and the Administrator. The Associate Administrator, in consultation with the Administrator, will make a final determination on the adequacy of the plan and whether to offset Federal AIP amounts apportioned funds. The amount of the reduction is to be equal to the excess collected or not used as approved.

8-36 to 8-40. RESERVED.

CHAPTER 9. EXTENSIONS

SECTION 1. GENERAL

9-l. OVERVIEW. Extensions may be requested only for those projects with impose only authority. Under §158.33(c) of the regulation, a public agency must submit an application to use PFC revenue no later than 3 years after the charge effective date (or approval dates as discussed in 4-18(b)) for an impose only project or its authority to impose a PFC for that project will automatically expire. However, under $158.35 the public agency may request one extension of this deadline, provided that the public agency must receive FAA approval to use PFC funds for the project no later than 5 years after the charge effective date. This chapter explains requirements for requesting an extension and the FAA's approval/disapproval process with regard to extensions. The FAA has no other authority to extend regulatory deadlines for application submissions.

9-2 to 9-5. RESERVED

SECTION 2. NOTICE

9-6. PUBLIC NOTICE. The public agency is required to publish a notice in a local newspaper of general circulation at least 30 days prior to its submission to the FAA of a request for an extension. This notice shall include information on the progress of the application to use PFC revenue, a revised schedule for obtaining use approval, and the public agency's reason(s) for the delay in submitting the application. The notice shall also include a request for public comment on the extension. This local notice and comment period provides the carriers and the general public with an opportunity to register their views on the delay.

9-7 to 9-10. RESERVED

SECTION 3. REQUEST FOR EXTENSION

9-11. REQUEST. The public agency's request for an extension shall be submitted to the FAA at least 120 days prior to the automatic expiration date (i.e., the date which is 3 years from the charge effective date or approval date, as applicable). This request shall include the items described in sections 9-12 through 9-18 and any additional information needed by the FAA. This schedule allows the FAA sufficient time to process the request in advance of the automatic expiration date.

9-12. DESCRIPTION OF PROGRESS. The request shall include a description of the progress on the use application to date. This description may include information on application formulation meetings (planned or held), carrier consultation meetings

(planned or held), and environmental, airspace, or ALP determinations/approvals (needed or received).

9-13. SCHEDULE. The request shall include a revised schedule for submitting the application. This schedule must allow for submission of the use application prior to the end of the requested extension and at least 120 days prior to the 5-year use application approval deadline described in §158.33(c)(2) (see paragraph 4-l 8).

9-14. EXPLANATION FOR DELAY. The request shall include an explanation of the reason(s) for the delay in submitting the application.

9-15. SUMMARY FINANCIAL REPORT. The request shall include a summary financial report depicting the total amount of PFC revenue collected plus interest, the projected amount to be collected during the period of the requested extension, and any public agency funds used on the project(s) for which reimbursement may be sought.

9-16. CARRIER CONSULTATION. The regulation does not require the public agency to conduct further consultation with the carriers at this time. However, the public agency may always engage in additional carrier consultation and, in most instances, the public agency should be encouraged to undertake further consultation. If there is any further consultation regarding this request with air carriers and foreign air carriers operating at the airport, the public agency must include a summary of the consultation in its request for extension.

9-17. LOCAL NOTICE COMMENTS. The request shall include a summary of the comments received in response to the local notice. Although not required by regulation, the public agency may wish to provide its reasons for proceeding in the face of any negative comments received.

9-18. CONFIRMATION/VALIDATION OF ALTERNATIVE PROJECTS. The request shall include a confirmation that the alternative projects listed in the ROD remain valid.

9-19 to 9-20. RESERVED.

SECTION 4. REVIEW AND APPROVAL/DISAPPROVAL

9-21. REVIEW. The FAA Airports office will notify APP-530 in writing when a request for extension is received. The FAA Airports office shall review the public agency's request for an extension with regard to the three points described below.

a. Good cause. The FAA Airports office will analyze the public agency's request, including the schedule in the approved application and the summary of comments received as a result of the local notice and any consultation meetings. This analysis will be used by the FAA Airports office to determine whether the public agency has shown good cause for the delay in applying for authority to use PFC revenue. If the

public agency's reasons for delay include a delay in processing environmental, airspace or ALP requirements, the FAA Airports office should determine whether the public agency has proceeded with diligence or whether the delays are a result of the public agency's inaction. If the FAA Airports office recommends disapproval of the request due to a lack of good cause, a narrative statement with the basis of the recommendation should be attached to the Extension Decision package.

b. Schedule. The FAA Airports office shall determine that the public agency's revised schedule for submission of the application is satisfactory. The schedule must allow for application processing (120 days), approval, and project implementation within 5 years of the charge effective date or approval date, as applicable. If the public agency's schedule is not satisfactory, the FAA Airports office should disapprove the extension request and indicate the deficiencies in a narrative statement attached to the Extension Decision package.

c. Collection. The FAA Airports office shall review the summary financial report to determine if further collection will result in excessive accumulation of PFC revenue. The FAA Airports office will recommend a revised charge expiration date if a determination of excessive collection is made (see section 4 of chapter 8). A calculation sheet or narrative statement, as applicable, shall be attached to the Extension Decision package.

9-22. APPROVAL/DISAPPROVAL. The FAA has 90 days from the receipt of the request for extension to advise the public agency in writing of the FAA's approval/disapproval.

a. Recommendation. The FAA Airports office will review the public agency's request on the basis of the criteria identified in 9-21 and will forward an Extension Decision package to APP-530 no later than 45 days from the date of receipt of the request. The issuance of extensions has not been delegated to the FAA regions. The Extension Decision package will include a memo recommending approval/disapproval of the public agency's request and recommending the duration of the extension (which may vary from the duration requested by the public agency based on the assessment in 9-21), any narrative statements or calculation sheets produced as a result of the review of the request, a draft approval/disapproval letter, and a copy of the public agency's request. In determining an extension date, care should be taken to ensure that application approval and project implementation will begin within 5 years of the charge effective date (or date of impose application approval, see 4-18(b)). See the PFC intranet document site for the formats of the approval and disapproval letters.

b. Washington coordination. APP-530 will coordinate the Extension Decision package for the Administrator's or Associate Administrator's signature and will issue the approval/disapproval letter to the public agency.

c. Disapproval. If the public agency's request for extension is disapproved, the FAA should send a letter to the public agency notifying it of the disapproval and the

reason(s) for it. The letter should inform the public agency that PFC collection authority for the project will expire 3 years from the charge effective date (or 3 years from the date of impose application approval) unless a use application is received by that time. If this date arrives and a use application has not been received (see paragraph 8-6), the FAA will send a letter under §158.33(d) of the regulation (described in paragraph 8-8) to the carriers notifying them that collection authority for the project has expired, along with information about the effect of this expiration on total PFC collections and the duration of collections at the airport(s) controlled by the public agency.

In some cases, the public agency may wish to amend an application to withdraw the expiring project in advance of its expiration (see chapter 12). This action is allowable and would preclude the need for the FAA to take additional action with regard to the notice to carriers required by §158.33(d). However, this action would not exempt the public agency from the requirements of §1 58.33(e), which requires implementation of the project prior to granting of a new approval for PFC collections. Any excess collection that occurs due to withdrawal of a project to avoid project expiration must be addressed as described in 8-35 of this order.

9-23 to 9-30. RESERVED.

CHAPTER 10. PFC LEVELS ABOVE $3

SECTION 1. GENERAL

10-I. OVERVIEW. The "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" (AIR-21) (P.L. 106-181) was signed into law on April 5, 2000. Among other important provisions affecting FAA programs, this law grants new PFC collection authority and establishes new requirements and features for the PFC program. It enables a public agency to apply to the FAA to increase the PFC level that it may charge to $4 or $4.50. For a public agency to qualify for a PFC level above $3, the law requires that the FAA must review the public agency's application or amendment request to make specified findings that are additional to those already required under the PFC statute and regulation.

Under AIR-21, the FAA must find the following for any project approved for collection at the $4 or $4.50 level:

1. The project cannot be paid for from funds reasonably expected to be available from the AIP;

2. If the project is an eligible surface transportation or terminal project, the public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates;

3. In the case of a large or medium hub airport seeking the higher PFC, the project will make a significant contribution to improving air 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;

4. In the case of a large or medium hub airport at which one or two air carriers control more than 50 percent of the passenger boardings, the public agency has submitted a competition plan acceptable to the Secretary (effective in FY 2001 and thereafter). (This provision also applies to collections approved at a $1, $2, or $3 PFC level after April 5, 2000.)

Implementation of these and other provisions of AIR-21 was accomplished by the publication of "14 CFR Part 158, Passenger Facility Charge; Final Rule" in the Federal Register on May 30, 2000 (effective June 29, 2000) 65 F. R. 34536. Procedures for implementing these provisions are discussed in sections 2, 3, 4, and 5 of this chapter. Section 5 also discusses other modifications to the PFC program.

1 O-2 to 10-5. RESERVED.

SECTION 2. PFC LEVELS ABOVE $3 AT SMALL AIRPORTS

IO- 6. METHOD TO EVALUATE PFC LEVEL ABOVE $3 AT SMALL AIRPORTS. The procedure for increasing the PFC level is relatively unchanged from that required to approve a $3 PFC. Small airports (here meaning small hubs, non-hub primary, and non-primary commercial service airports) collecting a $1, $2, or $3 PFC under a previously-approved PFC application may raise the PFC level for projects in that application to $4 or $4.50 through a type B amendment (see paragraph 12-6). A new application is required for new projects or new airport locations. Projects in a type B amendment or a new application for which a $4 or $4.50 PFC level is requested must meet the requirements described in this section, in addition to all requirements for a PFC of $3 or less described elsewhere in this order.

10-7. FINDING THAT PROJECTS CANNOT BE AIP FUNDED. If a higher than $3 PFC level is sought for any otherwise-approvable project, the FAA Airports office must find that the project cannot be paid for from funds reasonably expected to be available from the AIP.

a. Method of Determination. One method by which the FAA can make this determination is by analyzing the capital improvement plan (CIP) or other documentation of planned improvements for each airport at which a PFC financed project is proposed. A CIP (or other planning document) has always been required of the public agency under 14 CFR Part 158.25(b)(5), but greater emphasis should now be placed on identifying all planned projects and all proposed funding sources. Other relevant material includes the FAA's Airports Capital Improvement Plan, which identifies candidates for AIP funding on a three-year basis. The FAA Airports office will review each project identified for PFC funding above $3 in this material to determine if AIP funding could reasonably be expected for that project over the period of the plan and at what amount. The FAA Airports office will generally be able to make the required finding on AIP funding without imposing new requirements for financial data on the public agency. However, due to the critical importance of the CIP in this process, the FAA Airports office should caution the public agency that an inadequate or incomplete CIP may hamper the FAA's ability to make this determination and might result in the project being denied approval for the higher PFC level.

As a rule of thumb, all PFC eligible projects in the NPIAS, but not in a region's three year ACIP, would meet the criterion that AIP funding could not reasonably be expected. All projects that fall outside the AIP national priority threshold (and have no extenuating circumstances such as inclusion in any Regional Airport Plan or regional strategic plan) would also meet this criterion. Projects that are included for funding in the first three years of a region's ACIP, or are considered high priority under the national priority system, would not meet this criterion, A PFC matching share to an AIP grant, along with any allowable amount of a project's cost that cannot be AIP funded, would also qualify for the higher PFC.

In the event that the FAA determines that at least a portion of the amount requested for PFC funding could be paid for from funds reasonably expected to be available from the AIP, the FAA cannot approve the full amount requested by the public agency at the higher level. The public agency must anticipate this contingency in its application and select one of two alternate methods for approval through its response to Item 14b (Financing Plan) of the Attachment B for that project. Based on the public agency's election, the FAA will approve the project either for the PFC eligible portion of the full amount requested by the public agency at a $3 PFC level or for the amount of the local match at a $4.50 PFC level. If the public agency fails to complete Item 14b, the FAA will approve the local match at a $4.50 PFC level.

The public agency should be advised that implementation of the project at a $3 PFC level could disqualify the project for a future discretionary AIP grant. This is because, unlike entitlement funds and Letter of Intent (LOI) grants, discretionary funds cannot be used to reimburse project costs already incurred. A project funded at a $3 PFC level could be subsequently reimbursed with an AIP entitlement grant, although this action would require that the public agency submit a plan under Part 158.39 to use the reimbursed PFC revenues (see paragraph 8-35). However, if the "local match at a $4.50 level" is chosen and the remainder of the project costs fail to compete successfully for AIP funding, the public agency could submit a PFC amendment at that time to fund the remainder of the project at the higher PFC level. Similarly, if the "total PFC funding at a $3 PFC level" is chosen and the expected AIP funds do not materialize, the public agency could request an amendment to change the PFC level to $4 or $4.50 for any uncollected amounts outstanding.

In some cases, the FAA may determine that a project could be funded through the AIP, but not in the time period and/or the amount required for implementation of the project by the public agency. In this case, provided the FAA agrees that the timeframe required by the public agency is not arbitrary or unfounded, the FAA could approve the project for funding at the $4.50 or $4 level. Note that this determination must be based on the project implementation schedule included by the public agency in its PFC application.

Unless otherwise advised by APP-500, the FAA Airports office should assume that AIP funding is available at authorized levels under current law for that period. Authorized AIP levels may be known for two or more years in advance and set a ceiling on AIP availability.

b. Procedure. For a new application, the FAA Airports Office will indicate its findings concerning a reasonable expectation of AIP funding by comment in item 14 of the Attachment B for each project proposed for a PFC level above $3 during the review of the application. For an amendment, the FAA Airports Office will prepare a summary (PFC intranet document site) for the application file indicating its findings for each project proposed for a PFC level above $3 prior to issuance of a decision letter on the amendment.

The above process is not significantly different from the process the FAA has used for imposition of a $1, $2, $3 PFC, in that the FAA reviews the public agency's CIP to assure that the amounts requested for PFC collection, when combined with other sources of funding for the project, do not exceed allowable project costs. The one area of difference is that the FAA Airports office now has an obligation to independently review the CIP to determine the amounts, if any, of AIP funds reasonably expected for the project.

c. Examples of Determinations of Reasonable Expectation of AIP Funding.

Example 1: A public agency operating a 14 CFR Part 139 certificated non-hub primary airport applies to impose a $4.50 PFC to finance 100 percent of the costs of acquiring an ARFF vehicle to replace an ARFF vehicle that has outlived its useful life. The ARFF vehicle being replaced is necessary for the airport to meet the minimum ARFF capability requirements of its certificate under Part 139. The ARFF vehicle is projected to cost $500,000. The FAA's ACIP for this airport includes the ARFF vehicle for funding within the next 2 years, and applying current AIP national priority system priorities and current law assumptions about AIP funding levels, the project is reasonably expected to be funded under the AIP. The PFC ROD should approve PFC funding for this project at a $4.50 level in the amount of $50,000 (the local matching share to the AIP grant), unless the public agency has indicated in the Attachment B that it would prefer that the project be approved for 100 percent of the requested amount at a $3.00 PFC level.

Example 2: A small hub airport is proposing to construct a new air carrier runway with total costs (including taxiways and lighting) of $100 million. The FAA has agreed to finance $50 million of total project costs with an LOI, and the proposed LOI is currently pending Congressional review. The public agency proposes to finance the remaining $50 million though a combination of increased landing fees ($15 million) and a $4.50 PFC ($35 million). The ROD should approve PFC funding for this project at the $4.50 level for the $35 million amount requested by the public agency.

10-8. FINDING THAT AIRSIDE NEEDS ARE MET. If the higher than $3 PFC level is sought for an eligible surface transportation project (e.g., access road, light rail connection) or terminal project (other than aircraft gates), the FAA Airports office must find that the public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates, before the FAA can approve the higher PFC level for the non-airside project.

a. Method of Determination. One method by which the FAA can make this determination is by analyzing the airport's CIP, airport layout plan, master plans, airport certification inspection reports, or other planning documents already available to the FAA. The FAA Airports office must be satisfied that there are no unmet airfield development needs which the public agency cannot reasonably expect to fund through AIP grants, or which the public agency has not made provisions to fund through airport rates and charges, state or local grants, PFC's, or other airport revenues. Unmet airfield development needs should be based on current or reasonably foreseeable

airfield traffic requirements, typically over a 3 to 5 year planning horizon. In some cases, a longer development timeframe may be warranted. The FAA Airports office shall prepare a brief written summary of its analysis for inclusion in the PFC application file.

b. Procedure. For a new application, the FAA Airports Office will indicate its findings concerning airside needs being met by comment in item 14 of the Attachment B for each surface transportation or terminal project proposed for a PFC level above $3 during the review of the application. For an amendment, the FAA Airports Office will prepare a summary (PFC intranet document site) for the application file indicating its findings for each project proposed for a PFC level above $3 prior to issuance of a decision letter on the amendment.

1 O-9. TREATMENT OF A PROJECT QUALIFYING FOR PFC APPROVAL AT $1, $2, OR $3 LEVEL BUT NOT AT LEVELS ABOVE $3. A public agency may seek funding for a project at the $4 or $4.50 PFC level that does not qualify under the criteria for the higher than $3 PFC level, but which does qualify at the $3 level. In this case, the FAA would approve a $3 PFC level for the projects not qualifying under the higher than $3 level criteria or the public agency could withdraw the project. The FAA would list in its decision the projects approved at the $4 or $4.50 and $1, $2, or $3 levels, respectively.

1 O-I 0. RESERVED.

SECTION 3. PFC LEVELS ABOVE $3 AT MEDIUM AND LARGE HUB AIRPORTS

IO-I 1. METHOD TO RAISE PFC LEVEL ABOVE $3 AT LARGE AND MEDIUM HUB AIRPORTS. The methods, requirements, and procedures described in section 2 of this chapter for raising the PFC level at small airports must also be met in full by a project at a large or medium hub airport. In addition, to approve a higher than $3 PFC level for a project at a large or medium hub airport, AIR-21 requires that the FAA must find that the project makes a significant contribution to improving air 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. The finding of significant contribution is in addition to the finding of adequate justification already required for all PFC projects.

If more than 50 percent of the enplanements of a medium or large hub airport are attributable to one or two air carriers, the requirements regarding a competition plan (see paragraph 10-27(a)) must also be met.

10-12. DETERMINATION OF SIGNIFICANT CONTRIBUTION. The Final Rule implementing the AIR-21 PFC provisions established the basic items of interest to the FAA in establishing significant contribution. The FAA continues to develop more specific criteria for the significant contribution requirement through individual PFC

RODs. In particular, the FAA will consider all relevant factors, including but not limited to the following, in assessing whether the significant contribution requirement has been met:

a. Safety and security projects. Does the project advance airport safety and/or security? In the case of AIP discretionary funds, highest priority is usually given to those projects that meet regulatory requirements for safety and security under 14 CFR part 139 and part 107, respectively. A similar approach to assessing PFC significance may be appropriate.

b. Congestion (Capacity). Does the project support or is it part of a capacity project to which the FAA has allocated Federal resources or that would qualify for such resources? For example, is the project included in an LOI or does it satisfy the FAA's benefit-cost criteria for large AIP discretionary investments? Has the project been identified as an important item in an FAA Airport Capacity Enhancement Plan? Does the project alleviate an important constraint on airport growth or service?

c. **Noise.** Does the project affect the noise-impacted areas around the airport? Historically, higher priority for AIP discretionary grants has been given to projects in noisier areas over projects in less noisy areas, all other factors being equal. A similar approach to assessing PFC significance may be appropriate.

d. Competition. Does the project mitigate or remove barriers to increased airline competition at the airport? Has the project been identified as an essential component in the airport's competition plan or other similar documents (e.g., the discussion of competition submitted to the FAA as required under §158.25(b)(7))?

The public agency should provide sufficient information to support its assertion that a project makes a significant contribution to one or more of the above categories. In the case of a project to reduce congestion, the information may include a quantified measure of reduced delay per aircraft operation or reference a study that measures the expected congestion reduction benefits. Similarly, an assertion that a project enhances competition may be supported by information on the number of new operations that the project will allow, the number of new entrant airlines it will accommodate, the effect on fares at the airport, and/or other measures of increased competition. In general, because it is a higher standard than adequate justification, more documentation is appropriate to establish significant contribution than is typically needed for adequate justification.

10-13. PROCEDURES.

a. New applications. For each project in an application for which a PFC level above $3 is sought, the FAA Airports office will utilize the FAA response section of item 7 of the Attachment B to sufficiently document its analysis of the project's significant contribution. The FAA Airports office will denote the finding of significant contribution and indicate the source of documentation used in the analysis. If the FAA Airports

office finds that the project does not meet the level of significant contribution or does not meet the requirements of 1 O-7 and 10-8, the reason should be stated in Additional Information section of the ADO/RO recommendation of the Attachment B. The reason(s) for approving or disapproving each project at a level above $3 will be repeated in the ROD determination paragraph.

b. Amendments. Prior to issuance of a decision letter on the amendment, the FAA Airports office will prepare a summary (or will mark up the Attachment B if one is submitted in the amendment request) for the application file indicating its findings for each project proposed for a PFC level above $3. For each project for which a PFC level above $3 is sought and which also meets the requirements discussed in sections IO-7 and IO-8 above, the amendment decision letter will include the specified statements for 10-7, 1 O-8, and IO-12 (modified as needed) as shown on the amendment letter template on the FAA intranet site.

IO-14 to 10-15. RESERVED.

SECTION 4. ESTABLISHMENT OF APPLICATION PFC LEVEL

10-16. OVERVIEW. The introduction by AIR-21 of additional eligibility requirements for projects to be funded with PFC levels above $3 raises the potential that, for any given airport, the FAA may approve some projects at $3 PFC levels and others at $4 or $4.50 levels. This occurrence may be true for projects within a given application and/or projects in different applications. This occurrence is most likely to arise in the case of an application or amendment to increase the PFC above $3 at a medium or large hub airport, where each project must satisfy the significant contribution standard to qualify for the higher level of funding. A project the FAA finds to be adequately justified that did not rise to the level of making a significant contribution could be approved at the $3 level. In that only one PFC collection level can apply at a given time at an airport, this section provides guidance on how to administer the PFC level at an airport which has a mix of specific projects (either within an application or across applications) qualifying at the $3 and $4 or $4.50 levels.

10-17. SETTING THE PFC LEVEL FOR A SINGLE PROJECT APPLICATION. In the case of a public agency with a single PFC application outstanding (either pending or being amended) consisting of a single project, the PFC level that will apply to that application is determined according to the project's compliance with the criteria specified in sections 10-7, 10-8, and (if applicable) 1 O-12.

10-18. POLICY ON SETTING THE PFC LEVEL FOR MULTIPLE PROJECTS WITH MIXED PFC LEVELS. Public agencies typically include multiple projects in a given PFC application. In the case where a public agency has only one application outstanding, and all the projects qualify at a given PFC level, the selection of the appropriate PFC level for the application is clear. However, as noted, the projects in an

application may qualify at different PFC levels, particularly at medium or large hub airports.

Since only one PFC level can apply at an airport at any given point in time, one approach to this issue would be to tie the PFC level to individual projects as though each project were covered by a separate application. Under this approach if a PFC application contained three projects, each valued at $20 million, with two projects meeting the significant contribution test and the third qualifying only for a $3 PFC, the PFC level could be established as follows: a $4.50 PFC would be authorized with a charge effective date coinciding with the earliest charge effective date for the application and a charge expiration date coinciding with the projected date at which $40 million for the two projects would be collected. A $3 PFC would be authorized with a charge effective date set at the expiration date for the $4.50 PFC collection and a charge expiration date set to coincide with the projected date at which an additional $20 million would be collected.

This project-by-project approach, however, is not required to implement the statute and would seriously add to the burden of administering the PFC program as it exists today. The principal unit of administration for the PFC program is the application, typically consisting of multiple projects, rather than the project itself. Moreover, many, if not most public agencies have outstanding approvals for tens, if not hundreds, of individual PFC projects under one or more discrete applications. Each approved application has a charge effective date and charge expiration date. These dates are relied on primarily to establish when an application is financially complete. PFC funds are commingled for all projects within an application. Under the project-by-project approach outlined above, commingling would no longer be possible. Public agencies would be required to account for and track PFC collections on a sequential, project-by-project basis. The amendment process would also become more complex. Carriers and their agents would bear much of the burden of administering constantly changing PFC levels.

An alternate approach, emphasizing the assignment of a single PFC charge to a whole application, is more consistent with current application-based regulatory treatment and would comply with AIR-21. In particular, the $4 or $4.50 authority established by AIR-21 represents a $1 or $1.50 premium above the currently authorized $3 PFC base charge for an application. The premium can be authorized when a sufficient value of projects in the application can be shown to satisfy the higher standards associated with the higher PFC charge.

Thus, on an application basis, the FAA may authorize a public agency to collect the $1 or $1.50 premium over the $3 PFC base level until the total revenue collected through the PFC premium for that application equals the total value of the projects approved for premium collection status. Once that total value is collected, a public agency would no longer be authorized to collect the premium and it would be required to reduce its PFC to $3. However, if in the case of a $4.50 PFC, the value of premium projects equaled at least one-third (33 percent) of the total value of uncollected PFC authority, the total premium value would not be collected before all uncollected PFC authority were

collected and there would be no need to step down the PFC to the $3 level. Likewise, in the case of a $4 PFC, if the value of premium projects equaled at least one-fourth (25 percent) of the total value of uncollected PFC authority, the total premium value would not be collected before all uncollected PFC authority were collected and there would be no need to step down the PFC to $3.

The FAA will administer the PFC program, in the case of an application containing projects with mixed authorized PFC levels, by allowing collection at $4.50 or $4 as long as the minimum thresholds described above (33 percent and 25 percent, respectively) are met, Because of the problems associated with fluctuating PFC levels, FAA Airports offices should encourage public agencies to meet the minimum thresholds allowing collections to remain at the higher level. Only if the thresholds cannot be met would the approved PFC level be reduced to $3 once the value of the premium projects were collected through the assessment of the $1 or $1.50 premium. A discussion of specific application scenarios follows, including strategies to encourage public agencies to successfully meet the minimum thresholds and avoid fluctuating PFC levels.

10-19. PROCEDURE TO SET THE PFC LEVEL FOR A SINGLE APPLICATION WITH MULTIPLE PROJECTS. FAA Airports offices should apply the procedures described in paragraphs a, b, and c below to set a single PFC level for a multiple project application either by new application or by amendment.

a. PFC Level Set Based On Threshold Shares. The method for setting the prevailing PFC level for a multiple project application is based on the percentage of uncollected PFC authority that qualifies for the higher PFC levels. Provided that the approved collections of projects qualifying for this premium authority in an application are, as a share of total approved authority for the application, at least equal to the share that the $1.50 or $1 premium is of the $4.50 or $4 PFC level (33 percent or 25 percent, respectively), the FAA will authorize a $4.50 or $4 PFC level for the overall PFC application.

b. PFC Level When Threshold Levels Are Not Met. If some projects in an application qualify at $4 or $4.50, but the share of qualifying costs falls below the percentages in section 1 O-l 9(a), the FAA will set the PFC level according to one of the following methods, based on instructions provided by the public agency in its application or amendment. The public agency's submission should include documentation that the public agency's election to pursue one of these methods, if needed, was included in the consultation:

(l) Shares Below 33 Percent. If the share of qualifying projects is below 33 percent but above 25 percent, and the public agency requested a $4.50 level, the FAA could approve a $4 PFC level, or a $3 PFC level, or (under the terms of paragraph 10-19(c)) a $4.50 level for a portion of the current collection authority of the application.

(2) Shares Below 25 Percent. If the share is below 25 percent, the FAA could approve a $3 PFC level or (under the terms of paragraph IO-IS(c)) a $4.50 or $4 level for a portion of the current collection authority of the application.

The FAA would also offer the public agency the opportunity to withdraw its request for a higher PFC if the PFC level the public agency requested is less than the level the FAA can approve for the whole application, just as the public agency is now free to withdraw projects from an application before the FAA issues its ROD.

If the public agency has not provided specific instructions, the FAA will approve a mixed level collection under the terms of paragraph 1 O-l 9(c) with the higher level set at the amount requested by the public agency in its application. Should a public agency wish to avoid automatic approval of mixed level collection, it is critical that it identify another preferred alternative in its consultation and its application or amendment.

c. Higher PFC Levels For a Portion of PFC Authority. If the share of costs qualifying at $4 or $4.50 falls below the thresholds specified in 10-19(a), but the public agency still wishes to collect qualifying PFC authority at the higher than $3 level, the FAA may approve the collection of a $4 or $4.50 for a portion of collection authority, with the remaining portion to be collected at the $3 level. This type of authority, allowing two separate collection levels during one application, is referred to as “mixed level” authority. The $4 or $4.50 collection authority would be limited to the period of time required to collect, through the $1 or $1.50 premium, the value of the qualifying premium projects (see Example 2 of section 1 O-20). Such limited collection authority for $4 or $4.50 could take place at the beginning or end of the authorized collection period for the application, as specified by the public agency in its application or amendment. However, unless instructed otherwise, the FAA will assume that the public agency would usually prefer the premium collection to occur at the beginning of the period. The ROD or amendment approval would specify charge effective and charge expiration dates for each level.

The total amount to be collected at the premium level ($4 or $4.50) can be determined by multiplying the value of all premium projects by either 4 (in the case of a $4.00 PFC) or 3 (in the case of a $4.50 PFC). The amount to be collected at $3.00 would be determined by subtracting this amount from the total value of all projects approved for PFC funding at any level in the application. This determination can also be expressed as the following equations:

NT = T – PT (If NT is zero or less, the entire application should be collected at the higher PFC level)

PT = S x 3 (for approvals at a $4.50 PFC level) or x 4 (for approvals at a $4.00 PFC level)

and where:

T = the total amount approved for the application;

PT = the premium total or the total amount to be collected at the $4.00 or $4.50 PFC level;

NT = the non-premium total or the total amount to be collected at the $3.00 PFC level; and

S = the sum of the PFC approved amounts for all of the projects approved at the higher PFC level.

Because of the administrative burden to all parties associated with changing PFC levels, the FAA Airports office should strongly recommend that a public agency seeking a higher than $3 PFC level for an application undertake actions to establish adequate 33 percent or 25 percent percentage shares of qualifying projects. Such actions might include advance consultation with FAA Airports offices on the submission of projects meeting priority development needs.

10-20. EXAMPLES OF PFC LEVEL CALCULATIONS FOR SINGLE APPLICATIONS.

Example 1: A public agency new to the PFC program submits a first time PFC application, for which it seeks a $4.50 PFC level. The application consists of four projects. The public agency seeks $25 million in authority for the first project, and $15 million in authority for each of the other three projects. The FAA's review of the application reveals that the $25 million project does not qualify for $4.50 (although it would qualify at the $3 level), but that the other three projects (with a combined value of $45 million) do qualify. Since more than one-third of value of the projects in the ROD qualify at the higher level ($45 million at $4.50 divided by $70 million of total authority, or 64 percent), the FAA would authorize an overall $4.50 PFC level for the ROD issued for that application.

Example 2: A public agency new to the PFC program submits a first time PFC application, for which it seeks a $4.50 PFC level. The application consists of three projects. The public agency seeks $25 million in authority for the first project, and $50 million in authority for each of the other two projects. The FAA's review of the application reveals that the $25 million project qualifies for $4.50, but that the other two projects (with a combined value of $100 million) do not qualify. Since less than one-third of the value of the projects in the ROD qualify at the higher level ($25 million at $4.50 divided by $125 million of all authority, or 17 percent), the FAA could not authorize an overall $4.50 PFC level for the ROD issued for that application. Instead, the FAA, after consultation with the public agency, could approve a $3 collection level for the whole application, or could specify that either the first $75 million or the last $75 million ($25 million is 33 percent of $75 million) of the authorized collections under that application be at the $4.50 level, with the balance of authority ($50 million) at $3. The FAA would specify dates in the ROD for when both the $3 and $4.50 collection levels would begin and end.

In this example, if the qualifying authority had been at least 25 percent but less than 33 percent of the total authority in the application, the FAA could also have approved the entire application at a $4 level, if the public agency had specifically requested such treatment in its application.

Example 3: A public agency has one ROD outstanding which authorizes PFC collections until December 1, 201 I. Three projects are approved in the ROD, one at $150 million, one at $75 million, and the third at $50 million. The public agency submits a Type B amendment to increase the PFC level to $4.50 from the approved $3 level. The FAA's review of the amendment reveals that the $150 million project does not qualify for $4.50, but that the other two projects (with a combined value of $125 million) do qualify. Since more than one-third of value of the projects in the ROD qualify at the higher level ($125 million at $4.50 divided by $275 million of all authority, or 45 percent), the FAA would authorize an overall $4.50 PFC level for that amended ROD.

10-21. PROCEDURE FOR MULTIPLE RODS. A public agency may have several approved applications (RODs), each covering multiple projects, outstanding at the time it submits a new application or amendment request to the FAA. Collection for each ROD is authorized sequentially in the order that the RODs are approved. Thus, the collection authority for a second ROD begins once the collection authority for the first ROD expires. The collection authority under any one of these RODs may be several months or several years in duration. Some public agencies desiring to implement a $4.00 or $4.50 PFC level as soon as possible may have more than one ROD outstanding and may desire to maintain a uniform $4.00 or $4.50 collection level across the RODs. In many cases each outstanding ROD may contain sufficient premium projects to meet the threshold for a uniform PFC level (a qualifying decision).: In that case, the amendments could be submitted by the public agency and processed by the FAA as individual actions, in accordance with the guidance set forth above.

In some cases, a public agency may be concerned that one or more existing RODs do not contain sufficient premium projects to qualify for the uniform higher level PFC, (a non-qualifying decision). In such cases a public agency may wish to combine the existing RODs or to combine a new application which exceeds the threshold for uniform collection with an existing application that does not, thus creating a combined application that meets the threshold requirement, to maintain a uniform PFC level. In these circumstances, the public agency may request the FAA to commingle authority across applications.

This section describes standard procedures for processing such a request. These procedures are intended to provide flexibility to public agencies to achieve a uniform PFC level while maintaining the practice of treating applications as the principle unit of administration of the PFC program. In addition, as is the case with single applications containing multiple projects, the procedures reflect the long-standing practice of permitting commingling of PFC funds across projects, once a public agency obtains use approval. As the FAA gains experience with administering the higher PFC authority, it

may adjust the procedures and consider deviations from the procedures based on the circumstances of individual cases consistent with the legal framework for the program.

Commingling may be done only upon the specific request of the public agency, in connection with the filing of appropriate Type B amendments and, if approval is sought for new projects, a new application. The Type B amendment must be filed for each ROD that the public agency desires to commingle into a new ROD and the public agency must indicate its intention to request commingling in the consultation with its carriers. Similarly, for new projects, the consultation and new application must include a specific request for commingling authority.

The commingling of RODs into a new ROD is intended to provide a specific benefit to public agencies and carriers – avoidance of fluctuating PFC levels for airports that have multiple PFC approvals outstanding. The granting of commingling authority will impose additional administrative burdens on the FAA and (to a lesser degree) the public agency. Consequently, a request for commingling authority ordinarily should not be granted unless the request will in fact provide the intended benefit of establishing a consistent PFC level.

Accordingly, the first step in FAA's analysis of a commingling request is to determine whether each of the outstanding decisions designated by the public agency and any new application is a qualifying application. To do this, the FAA Airports office should employ the analysis tools provided in sections 10-17 or 10-19, as appropriate. If the FAA determines that each decision is a qualifying decision, the FAA Airports office will process each decision or application as a separate matter, establishing or amending the charge effective dates and charge expiration dates of each, as appropriate. The FAA in its decision (the ROD or amendment approval letter) will indicate that the commingling request has not been granted because each ROD proposed for commingling is a qualifying decision permitting uniform collection at the higher PFC without commingling, Thereafter, the FAA Airports office should work with the public agency to ensure any new applications submitted contain sufficient qualifying projects to establish the desired PFC level.

If one or more individual decisions or the new application does not contain sufficient qualifying premium projects to meet the threshold for the requested uniform PFC level (a "non-threshold application"), the FAA Airports office will grant the request for commingling the non-threshold application(s) with one or more qualifying applications so that the total amount of high-value projects across the commingled applications meets or exceeds the threshold, based on the total approved value of all commingled applications. Commingling should be limited to those decisions, including a new application, that the public agency has identified for commingling. In addition, commingling should encompass only contiguous applications. To the extent feasible, commingling should be done by combining the non-qualifying decision with later decisions, not earlier ones. This will enable earlier decisions to continue to be administered as individual applications, and thereby reduce the administrative burden associated with commingling across applications. The commingled projects would be

combined in a single decision with a new distinct record of decision number. Additional detailed instructions on implementing commingling across applications are set forth below. The notification to the public agency of the FAA's decision will specifically identify any applications being combined as well as any applications that the FAA determined should remain separate.

For commingling across applications to be effective, the qualifying applications to be commingled must have sufficient high value projects to absorb the value of the non-qualifying projects and continue to meet the threshold for the uniform higher PFC level. It may be prudent for the public agency to consult with the FAA Airports office before initiating airline consultations to assure that the existing applications or new application will likely contain sufficient high-value project(s) to support another non-qualifying decision. The FAA personnel should be careful not to issue statements that predetermine the application review process. In particular, the FAA can identify problems and suggest corrections, but cannot make any assurances to the public agency that would constrain its discretion during the formal evaluation of the application.

a. Combining Projects in Existing Applications. The public agency may request the current impose ROD and one or more existing subsequent RODs be combined in order to maintain a higher PFC level if the projects within one of these RODs do not qualify for the higher level of collection. This situation would be handled through filing Type B amendments for each ROD. As discussed in chapter 12, a public agency must offer consultation with air carriers on Type B amendment requests, including a higher PFC level. In the amendment applications to increase the level of collection, the public agency would also request the FAA combine the applications into a single application. The PFC authority for each project in the applications being combined would be transferred to the new combined ROD, including all projects that do not qualify for the higher PFC. Therefore, it is important that the public agency be aware that the applications to be combined must have sufficient premium projects to absorb the non-qualifying projects in order to obtain the higher PFC level.

In the **case** of an amendment to an application that is partially collected at the $3 level at the time the public agency requests commingled $4.50 or $4 authority with other RODs, the FAA will allocate collections received for that application (as of the anticipated charge effective date of the higher PFC level) on a pro-rated basis to all projects within that application, regardless of any other allocation shown in the public agency's quarterly reports submitted under §158.63(a). Thus, if 50 percent of collections under an application consisting of two projects will have already been collected as of the charge effective date, with one project initially approved for $30 million in PFC authority and the other project for $10 million, the FAA would determine that $15 million in uncollected authority remained for the former project and $5 million remained for the latter.

The FAA would create a new application consisting of the projects in the applications to be commingled. The FAA would simultaneously process an administrative amendment to close out the original non-qualifying ROD(s). If the current ROD is to be amended,

that ROD would not be deleted until the 60-day notification time frame (for implementation of the new higher PFC level) has been completed and collection begins on the subsequent ROD. To accomplish deletion, the total approved collections for each ROD to be commingled would be transferred to the new ROD. For any application which has been partially collected, this amount would be noted in the duration of collection and the charge expiration date will reflect the total amount approved for collection less the amount partially collected.

In addition, if the charge effective date for the new ROD is close to the required implementation date for a project that has not been implemented, the FAA Airports office should verify that the project will be implemented within the required time-frame. If there is a substantial likelihood that the project will not be implemented in a timely manner, the project may not be suitable for inclusion in the new ROD. Please consult with APP-530 regarding the disposition of such a project.

b. Combining Projects with a New Application. The public agency may request an existing ROD be combined with a new application in order to maintain a higher PFC level if the projects within the existing ROD do not qualify for the higher level of collection. The public agency would consult with the air carriers regarding the new application and a Type B amendment for the existing ROD to request the higher PFC level. In the amendment request for the existing ROD, and in the new application, the public agency would request the FAA combine the existing ROD with the new application.

The PFC authority for each project in the application(s) being combined would be transferred to the new application, including all projects that do not qualify for the higher PFC. Therefore, it is important that the public agency be aware that sufficient premium projects must be included in the applications to be combined to absorb the non-qualifying projects in order to retain the higher PFC level. The value of projects partially collected under a current application should be pro-rated as specified in 10-21(a). In addition, for any project in the existing ROD that has not been implemented, the required original project implementation date must be retained in the new consolidated ROD.

If the FAA approves the application, the public agency would include information pointing out that the new ROD includes some previously approved projects that have been moved to this new decision in the $158.43 notification to the air carriers. The FAA would simultaneously process an administrative amendment to close out the original non-qualifying ROD(s). If the current ROD is to be amended, that ROD would not be deleted until the 60-day notification time frame (for implementation of the new higher PFC level) has been completed and collection begins on the subsequent ROD. To accomplish deletion, the total approved collections for each ROD to be commingled would be transferred to the new ROD. For any application that has been partially collected, this amount would be noted in the duration of collection and the charge expiration date will reflect the total amount approved for collection less the amount partially collected.

In addition, if the charge effective date for the new ROD is close to the required implementation date for a project that has not been implemented, the FAA Airports office should verify that the project will be implemented within the required time-frame. If there is a substantial likelihood that the project will not be implemented in a timely manner, the project may not be suitable for inclusion in the new ROD. Please consult with APP-530 regarding the disposition of such a project.

10-22. EXAMPLES OF PFC LEVEL CALCULATIONS FOR MULTIPLE RODS.

Example 1: A public agency has one ROD outstanding and plans to submit a new application. In addition, it wishes to implement a $4.50 collection level as soon as possible. Accordingly, the public agency submits a Type B amendment to increase the PFC level for the existing ROD to $4.50 from the approved $3, and applies for a $4.50 level in the new application. The ROD under which the public agency is currently collecting has two projects for which $70 million in PFC collections were approved for each. The FAA estimates (based on the most recent quarterly report) that, at the time of a new charge effective date authorizing a $4.50 level, half the authorized amount of this ROD will have already been collected at the $3 level. In addition, both of these projects have been implemented. The new application has three projects that the FAA will approve at $50 million each. The FAA's review of the amendment reveals that the two $70 million projects in the first ROD do not qualify for $4.50, but that the three $50 million projects in the new application do qualify.

In the case of the first ROD, neither project qualifies for the $4.50 level, but only half the PFC authority remains uncollected. Thus, $70 million in non-qualifying authority remains, compared to $150 million in authority qualifying at $4.50 in the second application. The total share of uncollected authority qualifying in the two commingled RODs would be 68 percent ($150 million at $4.50 divided by $220 million of all uncollected and to-be-approved authority). Thus, the FAA will shift the projects from the first ROD to the second, new, ROD. Although the total value of the second ROD would be the total value of each project, i.e. $290 million, only $220 million in new collections (at the $4.50 PFC level) will be authorized. The FAA would close out the first decision by administrative amendments once the 60-day notification period for the new ROD has been completed and collection begins.

Example 2: A public agency has two RODs outstanding and requests that they be evaluated for $4.50 PFC levels. The first ROD, under which the public agency is currently collecting, has two projects for which $50 million in PFC collections are authorized for each. Both of these projects have been implemented. Based on the most recent quarterly revenue report submitted by the public agency, the FAA estimates that half the authorized amount of this ROD will have been collected at the $3 level by the time of the new charge effective date for a potential $4.50 charge. The second ROD (not yet under collection) has two projects approved at $75 million each. Although neither of these projects has been implemented, the most recent quarterly report submitted by the public agency shows that each project is scheduled to be implemented

within the required timeframes. The public agency submits Type B amendments to increase the PFC level to $4.50 from the approved $3 for both RODs. The FAA's review of the amendments reveals that the two $50 million projects in the first ROD do not qualify for $4.50, but that the two $75 million projects in the second ROD do qualify. As noted, only half the PFC authority remains uncollected in the first ROD. Thus, $50 million in authority not qualifying at $4.50 remains in the first ROD, compared to $150 million in authority qualifying at $4.50 in the second ROD. The total share of uncollected authority qualifying at $4.50 would be 75 percent ($150 million at $4.50 divided by $200 million of all uncollected authority). The FAA would issue a new third ROD combining the first two at the $4.50 level, authorizing $200 million in collections at the $4.50 level. The FAA would close out the first two decisions by administrative amendments once the 60-day notification period for the new ROD has been completed and collection begins.

Example 3: A public agency has two RODs outstanding for which it requests $4.50 authority. The first ROD, under which the public agency is currently collecting, has two projects for which $40 million in PFC collections are authorized for each. Based on the most recent quarterly revenue report submitted by the public agency, the FAA estimates that half the authorized amount of this ROD will have been collected at the original $3 level by the time of the new charge effective date for a potential $4.50 charge. The second ROD has two projects approved at $20 million each. All four projects have been implemented. The public agency submits Type B amendments to increase the PFC level to $4.50 from the approved $3 for both RODs. The FAA's review of the amendments reveals that the two $40 million projects in the first ROD do not qualify for $4.50, and that only one of the two $20 million projects in the second ROD qualifies. Thus, the total share of uncollected premium authority would be 25 percent ($20 million at $4.50 divided by $80 million of all uncollected authority), attributable to the second ROD. The FAA could not authorize a $4.50 level for each ROD on a standalone basis because the 33 percent threshold is not met by combining the RODs. However, because the 25 percent threshold has been met, the FAA could issue a new ROD combining the two RODs at a $4 PFC level if enabled by the public agency's response in item 14(b) of the Attachment B. Alternatively, again based on the public agency's response to item 14(b) in the Attachment B, the FAA could evaluate the amendments independently (as non-commingled RODs), approving a $4.50 PFC level for the second ROD (because the qualifying project in this ROD constitutes 50 percent of the authority of that ROD), while leaving the first ROD at the $3 level. The start date of the $4.50 authority would occur at the charge expiration date of the $3 authority from the first ROD. In this example, if the public agency had not specified how the FAA should treat the RODs if the $4.50 threshold were not met, the FAA would evaluate the amendments independently.

Example 4: A public agency is submitting a new application (application C) and has two RODs (A and B) outstanding. It requests $4.50 authority for all three. The first ROD, under which the public agency is currently collecting, has two projects, both of which have been implemented, for which $75 million in PFC collections are authorized for each. Based on the most recent quarterly revenue report submitted by the public

agency, the FAA estimates that half the authorized amount of A will have been collected at the $3 level by the time of the new charge effective date for a potential $4.50 charge. The second ROD has two projects, which have already been implemented, approved at $10 and $90 million. The new application C has a single project at $100 million.

The FAA would evaluate the new application C under the guidance in section 10-21. In this example, the project in the new application C is found to qualify for a $4.50 level. With regard to the amended RODs A and B, the FAA's review of the amendments reveals that the two $75 million projects in the first ROD qualify for $4.50, but that only the $10 million in the second ROD qualifies at that level. Further analysis shows that combining ROD B with new application C will result in a sufficiently high amount of qualifying projects ($1 IO million of $200 million total value of the two applications or 55 percent) that the PFC level for this new ROD could be set at a $4.50 level. Thus, the FAA would amend ROD A to the $4.50 level, issue a new ROD C which combines the projects from ROD B and the new project, and issue an administrative amendment closing out ROD B.

1 O-23 to 1 O-25. RESERVED.

SECTION 5. OTHER MODIFICATIONS TO THE PFC PROGRAM

1 O-26. ADDITIONAL REDUCTION IN AIP APPORTIONMENTS. AIR-21 provides that, in the case of a medium or large hub airport where a PFC higher than $3 is collected, AIP funds apportioned under 49 U.S.C. 47114 must be reduced by an amount equal to the lesser of 75 percent of the projected revenues from the PFC in the fiscal year or 75 percent of the passenger entitlements otherwise due to the airport. This reduction compares to the 50 percent reduction that applies to medium or large hub airports that collect a $3 or less PFC (see chapter 1, section 5). The reduced apportionment takes effect in the first fiscal year following the year in which the collection of the higher PFC level begins.

The FAA Airports office should remind a public agency which is considering requesting a PFC level above $3 that the reduced AIP apportionment will be implemented at the beginning of the fiscal year following the charge effective date of the higher collection level. This information may affect the timing of a new application or amendment request, or the requested charge effective date, particularly if the higher PFC collection level, when being approved for the first time, cannot begin until late in a fiscal year. In such cases, the reduction of AIP entitlements at the start of the next fiscal year may exceed the amount of funds that could be earned in the partial current fiscal year from the higher PFC.

In the event that a public agency determines that a charge effective date for a PFC level above $3 should not start until the beginning of the next fiscal year, the public agency should specify this date in its amendment notice or its application, so that the FAA's decision can reflect this date. If a public agency decides after a charge effective date

has been approved by the FAA to defer this charge effective date, the instructions in 4-1 O(b) of this order would apply.

AIR-21 provides that certain small hub airports transitioning to medium hub airport status are protected through FY 2003 against a loss in combined year-to-year AIP apportionment and PFC revenues caused by entitlement reductions under 49 U.S.C. 47114(f). The sum of the amount that would be apportioned under 49 U.S.C. 47114 to the public agency controlling that airport in a fiscal year, after application of §1 58.95, and the projected PFC revenues to be collected in such fiscal year, shall not be less than the sum of the apportionment to such airport for the preceding fiscal year and the PFC revenues collected in the preceding fiscal year.

10-27. OTHER EFFECTS OF AIR-21 ON THE PFC PROGRAM. AIR-21 also affects the PFC program in ways that apply to PFC authority in general but not specifically to the increase in the PFC level. These effects are summarized below, with citations to the place in this order where their implementation is addressed.

a. Competition Plans. Beginning FY 2001, the FAA cannot approve a PFC or an AIP grant for a large or medium hub airport at which one or two air carriers control more than 50 percent of the passenger boardings (a "covered airport") unless the public agency has submitted a competition plan acceptable to the Administrator (a "qualifying competition plan"). The guidance for the competition plan is provided through the AIP under Program Guidance Letter 00-3, Requirement for Airline Competition Plans, issued on May 8, 2000. APP will provide an annual list to the FAA regions of medium and large hub airports required to submit a competition plan.

The remainder of this section discusses circumstances in which new or continued PFC authority would be conditioned on submission of a qualifying competition plan or an update. As a practical matter, the FAA expects all covered airports to submit competition plans or updates regularly to maintain eligibility for AIP grants

Under AIR-21, effective October 1, 2000, a public agency cannot impose a PFC approved after the date of the enactment of AIR-21 (April 5, 2000) with respect to a covered airport unless the public agency has submitted a qualifying competition plan. Similarly, an airport that is not a covered airport at the time of a post-April 5, 2000, PFC approval, but which subsequently becomes a covered airport, must thereafter submit a competition plan if it is to continue to collect PFC authority approved after April 5, 2000 (a reasonable time period will be allowed for preparation of the plan). *This* restriction *does not apply to PFC authority approved before the date of the enactment of AIR-21.* Accordingly, the public agency need not submit a competition plan for a covered airport that is collecting under pre-April 5, 2000, PFC authority (although without a competition plan, the airport could not receive new AIP grants).

New PFC authority that would require a qualifying competition plan for collection would be an increase in PFC level (from $1, $2, or $3 to $4 or $4.50) and/or new collection authority applied for through an application or a Type B amendment and approved by

the FAA on or after April 5, 2000. If no competition plan is submitted by a covered airport, only PFC authority approved prior to April 5, 2000 (or as amended under a Type A amendment, which does not require FAA approval) could be collected in and after FY 2001.

For example, in FY 2001, a public agency may seek to increase its previously approved PFC collection authority by more than 15 percent through a Type B amendment. Whereas the previously approved (i.e., approved before April 5, 2000) collection authority would have expired in December 2003, the amendment would extend collection authority to December 2004. FAA could not approve the new collection authority attributable to the Type B amendment unless a qualifying competition plan had been submitted. However, the public agency could continue to collect the PFC under the original authority until it expires in December 2003, even without submitting a plan. In addition, the public agency could implement a Type A amendment increasing approved PFC revenue by 15 percent or less, (see paragraph 1 l-6).

AIR-21 provides for the periodic review of the competition plans for PFC purposes. Thus the FAA requires updated plans for action on subsequent PFC applications. In addition, FAA must have a current competition plan to issue each AIP grant. In an effort to minimize resource impacts, airports can satisfy these requirements by submitting updates to previously submitted plans rather than full competition plans. To satisfy the statutory requirement to review implementation and for an airport to keep its plan current, it will be necessary for public agencies to provide an annual update to their plan before the FAA can approve new PFC authority or process AIP entitlement/discretionary grants.

In order to minimize submittal requirements, an airport submitting a qualifying competition plan to satisfy AIP requirements will be considered to have satisfied PFC requirements and will not be required to resubmit its competition plan as part of a PFC application.

The FAA Airports office will confirm each covered airport has a current accepted competition plan on file during the substantially complete check. The FAA Airports office will note on the checklist if a competition plan is required, the date the plan was submitted to the FAA and the date the FAA accepted the plan or found it to be deficient. If a covered airport does not have an accepted competition plan, the FAA Airports office should contact APP-500.

b. Exemptions. AIR-21 exempts certain new classes of air carriers or air service from PFC collections. In particular, a PFC may not be collected on flights, including flight segments, between two or more points in Hawaii, or aboard an aircraft having a certificated seating capacity of less than 60 passengers in Alaska.

The Hawaii exemption applies to any ticketed flight that begins and ends in Hawaii, as well as any flight segment between two Hawaiian locations for which a ticket is issued that is part of a round trip flight to the Unites States mainland or Alaska. In the case of a

flight between the United States mainland or Alaska and Hawaii, only a ticketed segment between two Hawaiian locations would be exempt--all other segments of the flight remain potentially subject to a PFC.

The Alaska exemption applies to any enplanement in Alaska on an aircraft having a certificated seating capacity of less than 60 seats. Most of these flights will be internal to Alaska, and in such cases no PFC would be charged on a round trip. However, on a round trip flight between Alaska and the lower 48 states by an aircraft with a certificated seating capacity of less than 60 passengers, the PFC could be assessed at airports in the lower 48 states, but not at airports in Alaska.

Previous exemptions (PFC's may be collected on no more than 2 boardings on a one-way trip or a trip in each direction of a round trip; no PFC collections on Essential Air Service routes; and no PFC's on frequent flyer and non-revenue passengers) remain in effect (see paragraph I-l 1 (c)).

c. Exclusions. AIR-21 codified the existing exclusion authority provided in the PFC regulation, in which a public agency may request that collection of PFC's not be required of passengers enplaned by any class of air carrier or foreign air carrier if the number of passengers enplaned by the carriers in the class constitutes not more than 1 percent of the total number of passengers enplaned annually at the airport at which the fee is imposed (see paragraph 4-l I). In addition, AIR-21 expands this authority to enable a public agency to request an exclusion for air service to isolated communities. This new exclusion category consists of passengers enplaned on flights to an airport that has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or to an airport in a community which has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a state. The public agency may request any or all of these exclusions.

d. Expanded PFC Eligibility. AIR-21 extends PFC eligibility to certain items not eligible for AIP funding. Terminal development incurred after August 1, 1986, at an airport that did not have more than 0.25 percent of the total annual passenger boardings in the United States in the most recent calendar year for which data are available (meaning an airport smaller than a medium hub) and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997 is now PFC eligible. The FAA interprets this expanded eligibility to apply to any drop in annual passenger boardings within the period from 1989 to 1997 such that, as of 1997, a drop of at least 16 percent in passenger boardings had taken place at the airport.

In addition, the law clarifies the PFC eligible costs for terminal gates and related areas. In the case of a project required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport, the project for constructing gates and related areas may include structural foundations and floor

systems, exterior building walls and load-bearing interior columns or walls, windows, door, and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate. In the case of a project to build gates and related areas for both the dominant carrier and carriers with less than 50 percent of annual boardings, only those gates and related areas built for and used by the non-dominant carriers would be eligible for this authority. The FAA does not construe this expanded gate and related area eligibility to include ineligible terminal space (e.g., concession space or administrative offices) not integral to the gate facility.

AIR-21 also expands AIP eligibility (and therefore PFC eligibility) to runway incursion prevention devices, emergency call boxes, windshear detection devices, and some pavement maintenance, and clarifies the eligibility of specified intermodal connection items. Appropriate AIP guidance should be consulted for more information on the eligibility of these items.

IO-28 to 10-30. RESERVED

CHAPTER 11. AMENDMENTS NOT REQUIRING CONSULTATION

SECTION 1. GENERAL

1 I-I. OVERVIEW. The amendment procedures of the PFC program allow public agencies flexibility to modify approved projects, increase or decrease the PFC level or approved collection authority, amend or establish a class of carriers not required to collect a PFC, and otherwise respond promptly when financial or technical changes to a project are necessary. The PFC amendment process is generally applicable after project use authority has been granted. However, air carrier class exclusion amendments and changes to the PFC level can be filed at any time after PFC collection has been authorized, and, in a few cases, amendments to the approved collection authority for "impose only" projects may be appropriate.

As is the case with projects in applications, the FAA retains the authority to disapprove an amendment even if the air carriers do not oppose it. This authority, which protects the interests of the passengers who ultimately pay the PFC's to fund the project, enables the FAA to ensure that project costs are reasonable and necessary and that the project otherwise conforms to the requirements of the PFC statute and regulation.

There are three amendment procedures:

(1) amendments that can be instituted without consultation by public agency notice;

(2) amendments that require public agency consultation with the aircarriers and formal submission to the FAA; and,

(3) administrative amendments instituted by the FAA at the time of use approval.

This chapter provides guidance on the applicability of and requirements for amendments that can be instituted by public agency notice without consultation. See chapter 12 for guidance for amendments requiring consultation and on administrative amendments.

11-2 to 11-5. RESERVED.

SECTION 2. AMENDMENTS THAT CAN BE INSTITUTED BY PUBLIC AGENCY NOTICE

11-6. TYPE AND TIMING OF AMENDMENTS. A public agency may, without prior notification to the FAA, institute an amendment that meets the criteria listed below with a written notice to the air carriers and the FAA Airports office. The timing under which the change becomes effective varies for each amendment action discussed below, in

order to afford air carriers adequate time to accommodate the change proposed. Because these amendments are authorized under 14 CFR §158.37(a), they are informally referred to as "Type A" amendments.

a. Decrease in PFC level. The public agency may choose to decrease the level of PFC to be collected from each passenger (e.g., from $3.00 to $2.00 or from $4.50 to $3.00). Any new charge level will be effective on the first day of a month which is at least 60 days from the time the public agency notifies the air carriers in order for the air carriers to accommodate the change.

b. Decrease in total approved PFC revenue. The public agency may, upon project financial review, determine that the current amount of PFC revenues approved for collection will exceed the allowable costs of the approved projects. In this event, the public agency should institute an amendment to decrease the total amount of PFC revenue to be collected and the duration of collection (if applicable) in order to prevent over-collection of PFC revenue. However, in the event that the decrease in the amount of total approved PFC revenue is associated with the material alteration in scope of one or more approved projects, the amendment must be processed in accordance with 14 CFR §158.37(b) and chapter 12. If a decrease in total collection will result in an earlier charge expiration date, the Type A written notice should be issued at least 60 days prior to the new earlier charge expiration date. Any excess collection that occurs due to untimely action to stop PFC collections must be addressed, as described in chapter 8, section 4 ("Use of Excess Revenue") of this order.

c. Increase total approved PFC revenue by 15 percent or less. If actual allowable project costs exceed the estimate contained in the PFC application in which the authority for the project was approved, the public agency may elect to increase the total approved PFC revenue in that application by 15 percent or less. This increase will likely result in an extension of the charge expiration date to allow for the additional collections. If an increase in total collection will result in a later charge expiration date, such notice should be issued at least 60 days prior to the original earlier charge expiration date. A new PFC application is required if a public agency's collection authority is allowed to lapse before an amendment can be completed in accordance with sections 11-7 and 11-8.

The 15 percent threshold is computed from the total amount approved for use within a given application. The amount "Approved for Use" may be found in the Record of Decision for a given application. The 15 percent threshold is cumulative. For example, an application is approved for impose and use of $1 ,OOO,OOO. An amendment is approved for $100,000 or 10 percent of the approved amount. A second amendment is required for an additional $100,000. With the second amendment, this application would be over the 15 percent threshold as the total increase in the use authority is $200,000 or 20 percent of the approved amount. The second amendment would thus be required to be processed in accordance with the provisions in chapter 12.

For a given application, if projects 1 through 5 are approved for impose only and projects 6 through 10 are approved for impose and use, then the 15 percent is calculated from the amount approved for projects 6 through 10. Cost adjustments for projects 1 through 5 should be made at the time the use application for projects 1 through 5 is submitted or after projects 1 through 5 receive use approval, when more refined estimates or actual costs are available.

There is one exception to this policy. On rare occasions, an amendment to "impose only" collection authority may be needed when the estimated charge expiration date occurs prior to the projected approval date of the use application, and the need for additional (or less) PFC revenue has already been identified. In such cases, an amendment to the approved collection authority for that project only may be processed. All guidance applying to amendments of use authority projects applies to "impose only" project amendments, except that the 15 percent threshold measure should be calculated based on the amount of collection approved for the "impose only" project and not the total approved collection authority in the application.

11-7. NOTICE-CONTENT AND DISTRIBUTION. It is strongly recommended that the public agency notice of amendment to a PFC application under §158.37(a) be submitted using FAA Form 5500-I. In addition, this amendment shall contain information identifying each project being amended, any changes in project cost, including financing and interest cost, and, if applicable, a date when the decreased charge level will become effective and/or a new estimated charge expiration date. Project changes must be described in sufficient detail to determine whether the correct amendment procedures are being utilized.

(1) The public agency should begin the amendment process early enough to ensure that the additional PFC collection can be continued without a cessation until the additional approved amount is collected (if applicable). The FAA airport office should assist the public agency in identifying timing problems before they develop.

(2) The earliest new charge expiration date should be on the first day of the month at least 60 days after the date of the notice.

(3) The notice shall be sent to all air carriers operating at the airport and the appropriate FAA Airports office.

11-8. FAA REVIEW. FAA review and action of this type of amendment notice is delegated to the Regional Airports Division Managers, and may be re-delegated.

a. Notice meets criteria. If the amendment notice meets the criteria stated above and the charge effective date or estimated charge expiration date, if applicable, is reasonable, the FAA Airports office will acknowledge the amendment by letter to the public agency and file the notice in the appropriate PFC application file. The PFC intranet document site contains a sample format for this letter to the public agency. The

FAA Airports office should ensure that the file contains documentation (if any) that may be necessary to support the decision.

The FAA Airports Office shall forward a copy of the FAA acknowledgement letter to APP-530 and to the ATA. APP-530 will publish information regarding the amendment in the Federal Register along with the monthly notice of PFC approvals/disapprovals. In addition both APP-530 and ATA will distribute this information to appropriate industry related organizations that require the information.

b. Notice does not meet criteria. The FAA has the authority to reject any amendment that does not meet the requirements of the regulation.

(1) Letter to public agency. If the amendment notice does not meet the criteria stated above, the FAA Airports office shall notify the public agency, by letter, of the deficiencies found in the amendment notice. The letter shall be in the format specified in the PFC intranet document site, to be signed by the Regional Airports Division Manager or designee.

(2) Washington coordination. The FAA Airports Office shall forward a copy of the FAA letter to APP-530 and to ATA. APP-530 does not publish information regarding the disapproval of an amendment in the Federal Register as part of the monthly notice of PFC approvals/disapprovals.

Typically, an amendment under §158.37(a) would be rejected either because it does not meet the conditions required by the regulation (thus requiring treatment under chapter 12), or because of a procedural problem (e.g., omission of required information) has occurred. In both cases, the FAA Airports office should work with the public agency to correct the problem so that the amendment can be reissued in the appropriate format.

II-9 to 11-15. RESERVED.

CHAPTER 12. AMENDMENTS REQUIRING CONSULTATION

SECTION 1. GENERAL

12-I. **OVERVIEW.** This chapter provides guidance on the applicability of and requirements for amendments which require consultation. This chapter also provides guidance on processing administrative amendments.

12-2 to 12-5. RESERVED.

SECTION 2. AMENDMENTS THAT REQUIRE CONSULTATION WITH AIR CARRIERS AND FORMAL SUBMISSION TO THE FAA

12-6. TYPE AND TIMING OF AMENDMENT. Prior to notifying the FAA of a proposal to institute an amendment meeting one or more of the criteria listed below, the public agency must have consulted with the air carriers serving the airport at which the PFC being amended is imposed. Because these amendments are authorized under §158.37(b), they are informally referred to as "Type B" amendments.

a. Increase in PFC level. The public agency must consult with the air carriers and submit a notice to the FAA if it is proposing to increase the level of PFC to be collected from each enplaned revenue passenger (e.g., from $2 to $3 or from $3 to $4 or $4.50). For an increase in PFC level above $3, see also chapter 10. Any new charge level will be effective on the first day of a month which is at least 60 days from the date the public agency notifies the air carrier(s) after approval of the amendment by the FAA. The notice should contain a revised charge expiration date, if necessary.

b. Increase total approved PFC revenue by more than 15 percent. The public agency must consult with air carriers and submit a notice to the FAA if it is proposing to increase total approved PFC revenue in an application by more than 15 percent. Once the total allowable project costs in an application have been amended by more than 15 percent, the public agency must continue to amend that application under §158.37(b). Any new authority will be effective on the first day of a month which is at least 60 days from the date the public agency notifies the air carrier(s) after approval of the amendment by the FAA. A new PFC application is required if a public agency's collection authority is allowed to lapse before an amendment can be completed.

c. Materially alter scope of an approved project. The public agency must submit a Type B amendment proposal to materially alter the scope of an approved project. The preamble to 14 CFR Part 158 defines the term "materially alter the scope of an approved project" to include a quantitative increase in the project scope, e.g., increasing the length of a PFC-financed taxiway. Also, deleting a previously approved project is considered a material change. In addition, changing the method of financing for the project, such as from pay-as-you-go to debt financing, is a material change in the

project. Any new authority will be effective on the first day of a month which is at least 60 days from the date the public agency notifies the air carrier(s) after approval of the amendment by the FAA.

The careful application of the material change in scope standard is critical to maintaining appropriate regulatory oversight of the PFC program. Experience with the program shows that some PFC applications may be approved with 60 or more projects. In such cases, a subsequent amendment to greatly increase the cost of a single project (compared to the original cost of the project as consulted in the original application) may result in a change of less than 15 percent in the total approved use authority in that application-particularly if the costs of other projects are simultaneously reduced in the same amendment. An automatic application of the 15 percent threshold would allow this change to be treated as an amendment under §158.37(a). This would, in effect, allow a public agency to fundamentally change the projects in an application without consultation. However, because large changes in project costs are typically associated with a material change in scope, the FAA can require that the amendment be treated under the provisions of §158.37(b) discussed in this section.

Description changes and amendments adding new work elements are considered new projects and must be submitted in a new application. For example, a public agency may wish to amend a previously approved project by adding a new component, e.g., a runway extension added to a taxiway project. The runway extension would be a new project which would have to be submitted for approval in a new impose or impose and use (concurrent) application.

d. Establish or amend a class of carriers not required to collect PFC's. The public agency may apply for a Type B amendment to an approved application to establish a new class of air carrier, or modify any previously approved class, in accordance with §158.11 of the regulation. The number of passengers collectively enplaned by the carriers in the class must constitute no more than 1 percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed, and/or the exclusion must conform to the isolated community exceptions added by AIR-21 (see paragraph 10-32). The public agency must delete or modify a previously excluded class if the class now exceeds the regulatory 1 percent limitation. Any change in excluded carrier classes will be effective on the first day of a month which is at least 60 days from the time the public agency notifies the air carriers following FAA approval.

12-7. NOTICE-CONTENT AND DISTRIBUTION. A public agency that wishes to amend an approved PFC application as described above must submit the notice to the FAA.

a. Form. The PFC application amendment form (FAA Form 5500-I) is shown in the PFC internet document site.

b. Evidence of consultation with carriers including certifications of agreement/disagreement. A public agency that proposes to amend a PFC application

as detailed in 12-6 must conduct further consultation with the air carriers and foreign air carriers operating at the airport. "Further consultation" is interpreted to require that the public agency send written notice to those air carriers currently operating at the airport offering the opportunity for a consultation meeting. This offer shall specify the date and location of a meeting at which the public agency will present project(s) and/or application being considered for amendment. The consultation meeting between the public agency and the air carriers shall be held no sooner than 30 days nor later than 45 days after issuance of the written notice.

The public agency may provide the amendment information either before or during the consultation meeting. This information shall include: the application to be amended with a description of the approved project(s) in that application; the project(s) to be amended; the original approved project amount(s) or the amount(s) approved during a subsequent amendment process; the proposed change(s); revised financial plan; and justification for the amendment. The air carriers must be given a minimum of 30 days to respond, following the meeting, with a certification of agreement or disagreement prior to submission of the amendment to the FAA. An example of appropriate notice may be: "Air carriers will have 30 days to present any objections to this amendment in writing from the date of this meeting. If no response is received within 30 days, it will be considered as a certification of agreement."

Under circumstances where time is critical and the proposed change is deemed to be minimal, a public agency, with the FAA's permission, may request that the air carriers, upon receipt of the notice, waive the consultation meeting. To accomplish this, a form may be sent with the notification letter regarding a waiver for the consultation meeting. The form should request that the air carriers approve or disapprove the waiver in a time period adequate for air carriers' response, such as 15-30 days. The form should also clearly state that a carrier's failure to reply by the date mentioned will be considered an agreement to the waiver of a consultation meeting. If any carrier does not waive their right to a consultation meeting, the public agency shall conduct an air carrier consultation meeting.

The notification letter in which the request for waiver of the consultation meeting is provided shall contain all information that would normally be presented at the consultation meeting, Even if the meeting is waived, the air carriers must still be given a minimum of 30 days from the issuance of the notification to submit comments. An example on an appropriate notice may be: "Should the air carriers elect to waive the consultation meeting, they will have 30 days from the issuance of this notice to present any objections to this amendment in writing. If no response is received within 30 days, it will be considered as a certification of agreement."

The notification letter, with or without a meeting waiver request, shall also identify the point of contact and address for returning the certifications of agreement/disagreement.

If one or more air carriers disagree with the proposed amendment, the public agency must submit to the FAA the reasons presented by the carrier(s) for disagreeing with the

proposal. The public agency shall then present its reasons for requesting the amendment in the face of such opposition.

c. Justification for the proposal. A public agency, which proposes to amend a PFC application as detailed in 12-6, must include the justification for the amendment in the proposal submitted to the air carriers and the FAA. The justification should detail the nature of the change(s), the reasons for the change, and how the change meets the objectives of §158.15 of the regulation.

d. Other information as required. The FAA reserves the right to request additional information that will assist in analyzing the proposal at any time during the approval/disapproval process.

12-8 to 12-10. RESERVED.

SECTION 3. NO CARRIER DISAGREEMENT

12-l 1. FAA REVIEW OF PROPOSAL AND APPROVAL/DISAPPROVAL. If no air carrier disagrees with a change proposed under section 12-6, the FAA Airports office has 30 days, from the date of the public agency's amendment proposal, to notify the public agency of the FAA's agreement or disagreement with the proposed amendment. The public agency may institute the proposed amendment subject to timing limitations described in section 12-6 after 30 days if the FAA has not notified otherwise. However, in the case of an amendment to increase the PFC to a level above $3, the FAA must make an affirmative finding that the conditions of $158.17 have been met before the higher level can instituted.

a. Amendment meets criteria. If the amendment meets the criteria stated in section 12-6 and there is no evidence of carrier disagreement, the FAA Airports office will notify the public agency of the FAA's decision within 30 days of the date the amendment proposal is received. This letter shall be in the format specified in the PFC intranet document site and shall be signed by the Regional Airports Division Manager or manager's designee. A copy of the FAA's letter to the public agency will be sent to APP-530 and ATA.

APP-530 and ATA cannot update their lists of PFC approved airports to reflect amendments unless they receive a copy of the FAA's letter to the public agency approving the amendment. Moreover, the ATA will not update its list of PFC approved airports for an amendment unless APP-530 has also updated its list. This process is to ensure that air carriers and others using the list will have verified dates and amounts recorded for each airport, thereby lessening the chance of a public agency collecting beyond the approved timeframe or not collecting long enough. It also prevents adoption of actions which have not been sanctioned by the FAA, such as a public agency adding a project by amendment or decreasing the approved amount, but not changing the charge expiration date to reflect this change. APP-530 will publish information

regarding the amendment in the Federal Register along with the monthly notice of PFC approvals/disapprovals.

b. Amendment does not meet criteria. If the amendment does not meet the criteria stated above and there is no evidence of carrier disagreement, the FAA Airports office will, within 30 days, prepare a letter to the public agency. The letter (format specified in the PFC intranet document site) will detail the deficiencies found in the amendment, explain the reason(s) for disapproving or withholding approval of the amendment. A public agency may only institute a proposed amendment under §158.37(b)(1) if, within 30 days after providing the notification to the FAA, it is not notified otherwise by the FAA. The FAA may utilize the full 120-day decision period available to it in the case of amendments not meeting criteria. A copy of the letter to the public agency, along with any back-up information, will be sent to APP-530.

12-12. PUBLIC AGENCY NOTICE TO CARRIERS. If the public agency receives written approval from the FAA, or if the public agency does not receive a written approval or disapproval or other notification (letter requesting information) from the FAA within the 30 days of submitting its amendment to the FAA (other than an increase in PFC level above $3), it shall notify the carriers and the appropriate FAA Airports office of any new charge effective and/or expiration date. The effective date of any new charge shall be no earlier than the first day of the month which is at least 60 days from the date of the public agency notice. Upon receipt of this notice, the FAA Airports office, if it previously had not issued a written determination concerning the amendment, shall write a letter to the public agency acknowledging this de facto approval of the amendment. A copy of the FAA's letter of acknowledgment to the public agency will be sent to APP-530 and ATA.

12-13 to 12-15. RESERVED.

SECTION 4. CARRIER DISAGREEMENT

12-16. FAA REVIEW AND APPROVAL/DISAPPROVAL. If any of the carriers operating at the airport disagree with a proposed amendment, the FAA is required to approve or disapprove the amendment. The FAA has 120 days from the date of receipt of the public agency's amendment application to render a decision.

a. Federal Register notice. The FAA Airports office will determine, in coordination with APP-530, whether further public review and comment on the proposed amendment is warranted. If so, the FAA Airports office will prepare a Federal Register notice inviting public comment on the amendment utilizing the instructions and format specified in the PFC intranet document site.

b. Approval/disapproval recommendation. The FAA Airports office should use the approval/disapproval criteria and processes in chapters 4 and 5 of this order to produce an approval/disapproval recommendation.

c. Washington coordination. No later than 75 days following receipt of the proposed amendment, the FAA Airports office will forward a memo recommending approval or disapproval and a copy of the public agency's amendment application to APP-530. If the carrier disagreement involved the same objections or issues addressed by the FAA in the original decision, the FAA Airports office will prepare and issue the decision document. If the carrier disagreement involved objections or issues not previously raised at the time of the original decision, APP-530 will prepare the decision document for the public agency for the Associate Administrator for Airports (ARP-1) signature. APP-530 will send a copy of the decision document to the FAA Airports office and the ATA. APP-530 will also publish the information regarding the amendment in the Federal Register along with the monthly notice of PFC approvals/disapprovals.

12-17. PUBLIC AGENCY NOTICE TO CARRIERS. If the proposed amendment is approved, the public agency will notify the carriers and the appropriate FAA Airports office of the effective and/or expiration date of any new charge. The effective date of any new charge shall be no earlier than the first day of the month which is at least 60 days from the date of the public agency notice.

12-I 8 to **12-20. RESERVED.**

SECTION 5. ADMINISTRATIVE AMENDMENTS

12-21. OVERVIEW. Administrative amendments allow the FAA to process changes in impose authority which are outside of the scope of the $158.37 amendment process. The two actions that may warrant an administrative amendment occur when (I) a use application is processed which includes a change in the original impose amount (note: the change in the impose amount may cause this type of administrative amendment to require consultation), or (2) one or more projects are deleted due to automatic expiration of impose authority for one or more projects (note: this type of administrative amendment does not require consultation).

12-22. ADMINISTRATIVE AMENDMENT DUE TO USE APPLICATION. Project costs frequently change due to the availability of better information between the time an impose only project is approved and the time the use authority for that project is requested. This change in costs frequently results in a need to change the PFC amount being collected for the project. When the need for a change in the collection amount occurs, the impose or collection authority must be adjusted and that adjustment must be documented in the ROD. The ROD for the use application must be modified to include the notation of the administrative amendment in the decision summary table. In addition, a section entitled "Revised Project Costs" must be added to the ROD immediately after the Decision Summary Table. If the change results in a modification of the approved duration of collection and/or estimated charge expiration date, those changes must be noted in the appropriate sections of the ROD. Finally, the

determination section for the project in the ROD must include the justification for the change in approved amount. Information on all three of these adjustments to the ROD may be found in the PFC intranet document site.

12-23. ADMINISTRATIVE AMENDMENT DUE TO AUTOMATIC EXPIRATION. If a project has automatically expired due to failure to obtain use authority in a timely manner (see paragraph 8-6(b)), the decision summary table must be adjusted to reflect the decrease in collection authority. As noted in 8-6(b), the notification of the automatic expiration should be issued under separate correspondence at the time of expiration. The FAA will note the expiration as an administrative amendment in the next ROD issued for the appropriate impose airport. The ROD must include the notation of the administrative amendment in the decision summary table. Information on these adjustments to the ROD may be found in the PFC intranet document site. In addition, the changes in the public agency's collection authority brought about by the administrative amendment must be taken into account when determining the earliest charge effective date and estimated charge expiration date for the new ROD.

12-24 to 12-25. RESERVED.

CHAPTER 13. TERMINATION PROCEDURES

SECTION 1. GENERAL

13-l. OVERVIEW. Subpart E of Part 158 provides for termination of a public agency's authority to impose a PFC if that public agency is found to be in violation of the terms and conditions of the PFC statute and the regulation. Actions by which the public agency will be found to be in violation of the regulation include, but are not limited to, the following: 1) the public agency uses PFC revenues on unapproved projects; 2) the public agency fails to comply with the PFC assurances in the conduct of a project; or, 3) the public agency does not make sufficient progress toward implementation of an approved project.

This chapter includes procedures for determining the extent of a violation, informally resolving any violation, and (in the event that informal resolution is unsuccessful) formally resolving any violation. This chapter also contains provisions for a reduction in a public agency's AIP entitlement funds to ensure compliance with the PFC regulation. The circumstances under which authority to impose a PFC may be terminated for violations of the ANCA (49 U.S.C. 47524 and 47526) are not addressed in this order, but rather must be dealt with on a case-by-case basis in coordination with APP-530, APP-600, and AGC-600.

The final section of this chapter covers special termination procedures developed by the FAA and offered under restricted conditions to facilitate the issuance of PFC stand-alone bonds. The procedures guarantee that on a case-by-case basis, the FAA will adhere to specified conditions and extended timeframes in terminating PFC collections in the event of violation, provided that the public agency agrees to certain conditions, including establishing specified covenants in its bond language that provide the FAA control over PFC proceeds during any termination actions.

13-2. IDENTIFICATION OF POTENTIAL VIOLATION. The FAA Airports office may identify a potential violation as a result of: 1) an FAA Airports office's review of a public agency's quarterly reports, annual reports, or audits; 2) a complaint filed with and investigated by the FAA; or 3) an audit initiated by the FAA.

The public agency should be consulted and given an opportunity to explain any identified irregularity. If the FAA Airports office is not satisfied with the public agency's explanation of the irregularity and/or the FAA Airports office believes that a potential violation exists, the FAA Airports office will inform APP-530, in writing, of the identified potential violation, the severity of the violation, and any proposed corrective actions, prior to beginning the informal resolution procedures in section 2. In the event of a violation with national implications, as determined by the Associate Administrator, APP-530 may opt to assume responsibility for resolving the violation at this point. Otherwise, the FAA Airports office will have this responsibility.

13-3. INVESTIGATION OF COMPLAINTS. The FAA Airports office must investigate complaints from the aviation community that a public agency is not in compliance with the PFC assurances. The complainant must be notified in writing of the outcome of the investigation. Complaints from more than one source alleging the same violation need not be investigated more than once unless new information is presented. However, each complaint should be acknowledged in writing and each complainant provided with a summary of the FAA's finding.

13-4 to 13-5. RESERVED.

SECTION 2. INFORMAL RESOLUTION

13-6. LETTER TO PUBLIC AGENCY. Following consultation with APP-530, the FAA Airports office will prepare a letter of notification defining the extent of the violation(s), any corrective actions the public agency may take to avoid further proceedings, milestones including a final due date for completion of those corrective actions after which time formal termination actions will be started, and the format to be used by the public agency to provide notice that the corrective actions have been taken. This letter shall also include an invitation for a meeting between the public agency and the FAA to discuss the violation(s) (see paragraph 13-7), proposed corrective actions, and the timetable for those corrections.

The specified timetable and due dates should conform, to the extent possible, with the regulatory timeframes. This is particularly important in the case of project implementation deadlines (see paragraph 4-18). The informal resolution process is not intended to function as a means of granting de facto extensions to regulatory deadlines, such as project implementation. Therefore, informal resolution should be undertaken only as a one-time opportunity leading to a cure, or if the cure cannot be realized, a voluntary withdrawal of the project(s) or application(s) by the public agency. Failing any of these actions by the public agency, the FAA would commence the formal termination process. In some cases, the FAA may permit a public agency to cure a missed implementation deadline by implementing the project after the deadline, but only for good cause and if such implementation can be accomplished in less time that it would take to complete the informal and formal termination processes specified in this chapter. In making this calculation, time allotted for the informal resolution process should not be excessive (typically no more than 3 months). Time assumed for completion of the formal termination proceedings (see section 3 of this chapter) should be assumed to be 6 months.

The letter of notification shall be in the format provided in the PFC intranet document site and shall be signed by the regional Airports Division Manager or designated official. A copy of the notice will be sent to APP-530.

13-7. MEETING BETWEEN FAA AND PUBLIC AGENCY. A meeting to discuss the violation and informal resolution of the violation, while not required by regulation, affords both the FAA and the public agency an opportunity to discuss a mutually agreeable solution. The meeting should be conducted as a working session rather than a public meeting or formal hearing.

If it appears the public agency will not be able to meet the proposed schedule and milestones or resolve non-compliance with a reasonable effort, the FAA Airports office should ask the public agency to voluntarily withdraw the project. If the public agency will not withdraw the project, the FAA Airports office will advise the public agency that it will proceed with the formal termination process. Finally, the FAA Airports office should make the public agency aware that it will not be given an opportunity for a second informal resolution.

13-8. INFORMAL RESOLUTION OF THE VIOLATION.

a. Public agency takes corrective actions. The public agency is required to submit a letter of completed corrective actions by the date specified in the FAA's letter of notification. The FAA Airports office will review the public agency's letter to confirm that all required actions have been completed.

If the review confirms that all required action(s) have been completed, the FAA Airports office will prepare a letter to the public agency notifying the public agency that the violation has been adequately resolved. The letter should be in the format provided in PFC intranet document site and is to be signed by the regional Airports Division Manager or designated official. A copy of this letter shall be sent to APP-530.

b. Public agency does not take adequate corrective actions. If the public agency does not adequately resolve the violation or if the public agency does not respond by the date specified in the FAA letter of violation (see paragraph 13-6), the FAA Airports office should proceed to the formal procedures identified in section 3 of this chapter.

13-9 to 13-15. RESERVED.

SECTION 3. FORMAL TERMINATION PROCEEDINGS

13-16. FAA DETERMINATION THAT INFORMAL RESOLUTION WAS NOT SUCCESSFUL. The FAA Airports office shall notify APP-530, by memo, once a determination has been made that informal resolution has not been successful in bringing the public agency into compliance with the regulation. APP-530 will have 15 days from its receipt of the memo to provide comments before the termination process continues.

13-17. FEDERAL REGISTER NOTICE OF PROPOSED TERMINATION. The FAA Airports office prepares a Federal Register notice of proposed termination utilizing the format and instructions provided in the PFC intranet document site. This notice will describe the violation, the scope of the proposed termination action, 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. After publication, the FAA Airports office furnishes a copy of the notice to the public agency. The due date for comments and corrective action shall be no less than 60 days after publication of the notice.

a. Public agency takes corrective actions. The FAA Airports office will review any public agency letter of completed correction actions submitted within the timeframe specified in the Federal Resister notice. If the public agency's actions comply with the requirements specified in the Federal Reaister, the FAA will issue a letter of completion in the format provided in the PFC intranet document site. The letter is to be signed by the regional Airports Division Manager and a copy is to be sent to APP-530.

b. Public agency does not take adequate corrective actions. If the public agency does not adequately resolve the violation or if the public agency does not respond by the date specified in the Federal Register notice, the FAA Airports office continues with the procedures specified in section 13-1 8.

13-18. PUBLIC HEARING. If the public agency is still in violation of the regulation after the steps specified in 13-l 7, the FAA Airports office will coordinate with APP-530 prior to preparation of the public hearing Federal Resister notice.

a. Public hearing Federal Reqister notice. The FAA Airports office will prepare a Federal Register notice, in the format and following the instructions provided in the PFC intranet document site, announcing a public hearing. The notice should be published at least 30 days prior to the hearing. The FAA Airports office will provide a copy of the published notice to the public agency.

b. Hearing. The public hearing will be held in a form determined by the FAA to be appropriate to the circumstances and to the matters in dispute.

13-19. FINAL DECISION.

a. Federal Register notice-finding of no violation. If after completion of the hearing the FAA determines that there is no violation, the FAA Airports office will prepare a Federal Register notice of final decision in the format and following the instructions provided in the PFC intranet document site. This notice, along with any supporting documents, will be forwarded to APP-530 for the Administrator's signature. The FAA Airports office will provide a copy of the published notice to the public agency.

b. Federal Register notice-finding of violation. If after completion of the hearing the FAA concludes that a violation does exist and the public agency has not taken acceptable corrective actions, the FAA Airports office will prepare a Federal Register notice of final decision in the format and following the instructions provided in the PFC intranet document site. Where appropriate, the FAA may prescribe corrective action, including any corrective action the public agency may yet take. This notice, along with any supporting documents, will be forwarded to APP-530 for the Administrator's signature. The FAA Airports office will provide a copy of the published notice to the public agency.

(1) Public agency written notice of action. Within 10 days of the date of publication of the final decision, the public agency must advise the FAA in writing of its intention to complete any prescribed corrective actions. The actions must occur within 30 days of the published notice.

(A) Public agency takes *corrective actions.* The FAA Airports office will review any public agency letter of completed correction actions submitted within the timeframe specified in the Federal Register notice and, if applicable, issue a "letter of completion" in the format provided in the PFC intranet document site. The letter is to be signed by the regional Airports Division Manager and a copy is to be sent to APP-530.

(B) Public agency does nof fake adequafe corrective actions. If the public agency does not adequately resolve the violation by responding in writing within 10 days of the publication of the Federal Register notice that it will complete the prescribed corrective actions, or does not take corrective actions within the timeframe specified, the public agency's authority to impose a PFC will be terminated in accordance with the procedures identified in subparagraph 2 below.

(2) Termination procedures.

(A) In the event that it chooses not to take the corrective action prescribed in 13-19(a), the public agency must provide the FAA, within 10 days of the date of publication of the notice of the Administrator's decision, 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. If the public agency does not provide a list of affected carriers, the FAA Airports office will use the most recent quarterly report to determine a list of affected carriers.

(B) The FAA Airports office prepares a termination cover letter to the public agency and the affected carriers using the format provided in PFC intranet document site. The letter will include a specific date (the first day of the month no later than 30 days after date of the letter) for termination of collections. A copy of the letter, signed by the regional Airports Division Manager, and a copy of the Federal Register termination notice is sent to the public agency, ATA, and each carrier on the public agency's list. The carriers are responsible for terminating or modifying PFC collection by the date specified. In addition, a copy of the letter must be sent to APP-530.

13-20 to 13-25. RESERVED.

SECTION 4. IMPACT ON AIP

13-26. LOSS OF FEDERAL GRANT FUNDS. If the FAA determines, after completing the procedures in sections 2 and/or 3 of this chapter, that revenue derived from a PFC is excessive or is not being used as approved, the FAA may reduce the passenger entitlement funds due the public agency under the AIP. This action may be taken with or without a formal termination of PFC collection authority. The FAA Airports office will coordinate with APP-530 for procedures to process reductions in passenger entitlements. APP-530 will coordinate with APP-520 so a reduction can be initiated of a like amount of AIP passenger entitlement funds.

13-27. AMOUNT OF REDUCTION. The amount of the reduction under section 13-26 shall equal the excess collected, or the amount not used in accordance with the regulation.

13-28. IMPACT ON EXISTING GRANTS. A reduction under section 13-26 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. The PFC statute and regulation do not require a public hearing in accordance with 49 U.S.C. 4711 l(d) before an AIP offset for PFC reasons. Furthermore, the public agency is likely to have had a hearing through the termination process as set forth in §158.85.

13-29 to 13-30. RESERVED.

SECTION 5. SPECIAL INFORMAL RESOLUTION AND TERMINATION PROTECTION TO FACILITATE PFC STAND-ALONE FINANCING

13-31. OVERVIEW. The FAA has developed a process that, when requested by a public agency utilizing PFC stand-alone debt financing in its application, provides a highly structured process for the resolution of apparent PFC violations. On a case-by-case basis, the FAA will review the financial plans in the application to see if they qualify for this resolution process. Frequently, APP-530 will contact the public agency for further clarifying information and may require the public agency to adjust its financial plan to meet FAA requirements. If approved, the protracted informal resolution and termination protection language described below will be included in the Record of Decision. These applications are not delegated to the FAA Airport office (see paragraph 5-6(b)).

13-32. PROTRACTED INFORMAL RESOLUTION. The protracted informal resolution prescribes fixed timeframes and requirements that must be complied with by the FAA

and the public agency in addition to the procedures noted in section 2 above. The FAA has taken these steps which reduce the uncertainty about timing of resolution actions, to improve the ability of public agencies to issue PFC stand-alone bonds. The process includes the appointment of a bond trustee and the identification of affected parties to the financing. Key to the process is the appointment of a bond trustee so that the FAA can assure that it is directing the payment of funds through the trustee. These requirements and an outline of the procedure are contained in appendix 4 of this order.

13-33. TERMINATION PROTECTION. Termination protection supplements the protracted informal resolution process that provides for limited protection from FAA termination for covered bond issues. The process, which builds on the requirements for protracted informal resolution, provides for, upon the completion of a project or usable unit thereof and the expenditure of bond proceeds for that project, a 5-year or less period over which the FAA would not terminate PFC collections for those covered projects pending resolution of the suspected violation. The requirements and an outline of the termination protection language are contained in appendix 4.

13-34 to 1335. RESERVED.

CHAPTER 14. PROJECT COMPLETION AND PFC DECISION CLOSEOUT

SECTION 1. GENERAL

14-I. OVERVIEW. PFC project completion occurs when an approved PFC project is physically and financially completed (including the retirement of any associated debt instruments used to finance the project). Each of these completion conditions is described below. In many cases, these completion dates will not coincide; in which case the project is completed as of the latest of these dates. A ROD is complete once all the projects approved are completed and the approved PFC collection period for the ROD has been completed. PFC decision closeout is undertaken once all the projects approved in a ROD have been completed and consists of an FAA administrative review to ensure that completion has occurred and that the terms and conditions of the PFC regulation have been met.

14-2. RECORDKEEPING AND AUDIT. Public agencies are required to maintain an accounting record for audit purposes for a period of 3 years after physical or financial completion of a project, whichever is later. All records will satisfy the requirements of Part 158 and will contain documentary evidence for all items of project costs. Chapter 7 of this handbook contains additional guidance on record keeping and audit requirements. In the case where a project is completed more than 3 years in advance of the closeout of the decision, the public agency must retain a summary record of project information needed to closeout the decision (see paragraph 14-18 and the PFC intranet document site).

14-3 to 14-5. RESERVED.

SECTION 2. PFC PROJECT COMPLETION

14-6. PHYSICAL COMPLETION REQUIREMENTS, NO AIP FUNDS. The conditions for determining project completeness are listed below, according to project type. If any disputes are identified between a contractor and the public agency, the project should not be considered complete until the dispute has been resolved. The following requirements to establish physical completion specifically apply for projects with no AIP funding:

a. Planning. A planning project is physically completed when a final report/planning document is accepted by the local governing body. A copy of the report/planning document should be sent to the FAA Airports office to update their planning records.

b. Land acquisition. A land acquisition project is completed when the FAA Airports office receives the public agency's notification that satisfactory property interest in the designated parcels has been acquired or upon receipt of an airport property map which reflects project completion.

c. Acquisition or rehabilitation of equipment. An equipment acquisition or rehabilitation project is complete when the FAA Airports office receives the public agency's notification that the equipment has been delivered and accepted. The notification must indicate the acceptance was in accordance with any applicable specification requirements.

d. Construction. A construction project is complete when the FAA Airports office receives the public agency's notification of completion in accordance with the plans, specifications, and application assurances.

e. Environmental mitigation. The public agency should certify that environmental mitigation measures have been completed in accordance with any applicable environmental approvals.

14-7. JOINT PFC/AIP FUNDED PROJECTS. The physical completion of a project funded with a combination of PFC revenues and AIP funding must incorporate the grant closeout procedures identified within chapter 13 of FAA Order 5100.38.

14-8. FINANCIAL COMPLETION REQUIREMENTS. The conditions for determining financial project completeness are listed below according to the type of project financing:

a. Pay-as-you-go projects. A pay-as-you-go project is financially complete when the public agency has notified the FAA in writing that it has collected and expended PFC revenue for the allowable cost of the approved project.

b. Debt-financed projects. The debt-financed project may not be considered complete until the authorized funds have been collected and expended, and the PFC portion of the debt obligation is paid in full. Typically, the PFC portion of the debt obligation will not be paid in full until the debt instrument is paid off. The project may not be considered complete until the debt is paid, as the public agency may choose to refinance the project and amend the amount of debt financing, which may occur many years after the physical completion of the project.

c. Notification of financial completion. This notification can be made in conjunction with the quarterly report, provided that completion is specifically noted.

14-9. FAA ACTIONS ASSOCIATED WITH PROJECT PHYSICAL COMPLETION.

a. Planning. The public agency may request that the FAA Airports office review the conclusions and/or recommendations presented in the public agency's final report/planning document. At its discretion, the FAA may review and provide comments to the public agency. The public agency is generally responsible for completing any modifications recommended by the FAA to conform to applicable standards or statutory

requirements. The FAA Airports office notifies the public agency of its acceptance of the planning document. Acceptance does not require that the FAA agree with the conclusions or recommendations in the plan, nor does FAA acceptance of a plan imply such agreement.

b. Land acquisition. Public agency land acquisition certifications are to be filed in the appropriate PFC file at the FAA Airports office. Revised property maps, if submitted, are to be verified and filed in accordance with the FAA Airports office's policy.

c. Equipment acquisition or acquisition. Public agency equipment acquisition or rehabilitation certifications are to be filed in the appropriate PFC file at the FAA Airports office.

d. Construction and environmental mitigation. Public agency construction certifications and environmental certifications are to be filed in the appropriate PFC file at the FAA Airports office. The FAA Airports office may wish to participate in the project final inspection, especially on projects involving airfield construction.

14-10. FAA ACTIONS ASSOCIATED WITH PROJECT FINANCIAL COMPLETION. Following notification of the FAA Airports office by the public agency of project financial completion, the FAA Airports office will review the submitted statement and verify that the PFC amount collected and spent on the project conforms to the approved amount. Where amounts vary, the FAA should instruct the public agency to reconcile the funding record through appropriate amendment procedures.

In the case of PFC termination protection language that the FAA may offer for certain projects financed by PFC stand-alone bonds, the FAA Airports office must receive certifications of physical completion before the termination protection language becomes effective (see paragraph 13-33 and appendix 4). This ensures that the public receives the benefit of a usable unit of infrastructure in exchange for its continued payment of PFC's in the event of a violation of the PFC regulation. In addition, the public agency must also certify that all bond proceeds have been expended on the projects subject to the protected financing. In this latter case, the certificate of expenditure of bond funds meets the requirement of the termination protection language but does not constitute financial completion of the project. Financial completion, as defined in this section, only occurs when the bond has been retired.

14-11. PROJECT COMPLETION NOTIFICATION AND RECORD REQUIREMENTS. The FAA Airports office will notify APP-530, either by written notice or by entry into a national database, of physical and financial project completion. Notice of physical project completion should include the date of physical completion and verification that the public agency submitted appropriate certifications. Notice of financial completion should include information on the total cost of the project and the amount of PFC's approved and expended, broken out by capital and interest expenses (if any). Because

physical and financial completion will often be accomplished at different dates, these notifications of physical and financial completion will generally be made separately.

Records of each project's physical and financial completion should be kept in the decision file until such time as the decision can be closed out. Instructions on maintaining decision closeout files are provided in 14-l 9.

14-12 to **14-15. RESERVED**

SECTION 3. PFC DECISION CLOSEOUT

14-16. OVERVIEW. The PFC decision closeout process refers to the final administrative and financial reviews necessary to ensure PFC collection, handling, and use for a specific ROD have been conducted in accordance with the provisions of the PFC statute and regulation. PFC decision closeout occurs after all projects in the approved ROD have been completed, physically and financially, and the authorized PFC collection period for the ROD has been completed. Closeout will also occur when the FAA terminates a public agency's entire authority to impose and use a PFC. The FAA's role in PFC closeout centers on the following elements:

a. Confirming that all projects approved in the decision, as amended, have been physically and financially completed;

b. Confirming that all PFC revenue collected under the authority granted in the decision has been used on approved PFC projects; and,

c. Initiating actions to approve the use of any excess PFC revenue identified at closeout. If excess revenue cannot be used on approved projects, the FAA may be required to reduce AIP entitlement funds (see paragraph 14-22).

14-17. QUARTERLY REPORTS. The FAA Airports office should consult the public agency's quarterly reports and/or other public agency notices to the FAA to obtain final costs for each project and associated decision. In addition, the FAA Airports office may request additional information from the public agency to verify final cost amounts.

14-18. PFC DECISION CLOSEOUT REPORT. At the completion of all projects approved in the PFC decision, the FAA Airports office will prepare a final report for the appropriate PFC file (PFC intranet document site). The FAA Airports office may request that the public agency submit project summary information to assist it in preparing the final report. The report shall include the following:

a. Application number and date approved;

b. Name and address of the public agency and airport(s);

c. Approved collection and use authority;

d. The PFC charge effective and charge expiration dates;

e. A summary of amendments to the ROD, if any;

f. The total PFC revenue remitted by air carriers during the authorized collection period;

g. The total interest earned on PFC revenues during the authorized collection period;

h. A final list of projects completed using PFC revenue authorized in the ROD;

i. The final total PFC approved costs by project;

j. The final total project cost;

k. Each projects physical completion date and financial completion date; and

l. A copy of public agency certifications to demonstrate that the projects were completed in accordance with FAA standards.

The responsible official in the FAA Airports Office will review the information and issue a determination that the three elements in section 14-16 have been met.

14-19. DECISION CLOSEOUT NOTIFICATION AND RECORD REQUIREMENTS. The FAA Airports office will notify APP-530, either by written notice or by entry into a national database, of a decision closeout and the date of closeout. As part of the notification, the FAA Airports office will confirm that the project completion information recorded in FAA records and databases conforms to summary project completion data recorded in the PFC Decision Closeout Report. Once the closeout report is completed, project-specific records may be archived. However, the decision report, along with the ROD and any amendment decisions, should be retained in FAA Airports office records for at least 3 years, along with any project-specific information that the FAA Airports office deems necessary for the case history of the projects.

14-20. USE OF EXCESS PFC REVENUE. Due to charge expiration dates occurring on the first of a month following the attainment of the authorized collection amount (see paragraph 4-9), the amount of PFC revenue remitted to the public agency, plus interest earned, may exceed the allowable costs of the project(s).

Part 158.39 requires that a public agency must identify excess revenue within 30 days after the authority to impose a PFC has expired or has been terminated by the FAA (see section 4 of chapter 8). This date will typically not coincide with PFC decision closeout. The public agency is required, within this 30-day period, to submit a plan to the FAA

Airports office indicating the intended use of the PFC revenue. The plan shall include a timetable for submission of any necessary application to use the PFC revenue.

14-21. LOSS OF FEDERAL AIRPORT GRANT FUNDS. At PFC decision closeout, if the FAA Airports office determines the public agency has unliquidated PFC revenue, and the public agency has not submitted an acceptable excess revenue plan, the FAA Airports office must advise APP-530 of the amount of excess PFC funding. APP-530 will advise APP-520 so that a reduction can be initiated of a like amount of AIP passenger entitlement funds (see section 4 of chapter 13).

A reduction of passenger entitlement funding described herein, shall not constitute a withholding of a grant application or payment of funds under an approved grant, as provided by 49 USC 47106(e) and 47111 (d).

14-22 to 14-25. RESERVED.

CHAPTER 15. ASSURANCES

SECTION I. GENERAL

15-1. OVERVIEW. This chapter describes the assurances public agencies must make as a condition for approval of a PFC application. The public agency certifies its compliance with all the PFC assurances by signing the FAA Form 5500-1, which is submitted as part of the PFC application and is incorporated into the approval letter and ROD by direct reference. Each assurance is discussed separately below. The summary list of the PFC assurances is also provided in appendix 2.

When the PFC regulation was promulgated in 1991, participation in the PFC program was limited to public agencies. Since 1996, under the Pilot Program for Private Ownership of Airports (49 U.S.C. 47134), the sponsor of an airport participating in the privatization program is eligible to apply for PFC authority. In such cases, the sponsor, although not a public agency, must assert that it is a recognized participant in the privatization program and certify that it will comply with the PFC regulation and assurances, including those pertaining to any preexisting PFC projects.

15-2 to 15-5. RESERVED.

SECTION 2. DISCUSSION OF ASSURANCES

15-6. RESPONSIBILITY AND AUTHORITY OF THE PUBLIC AGENCY.

> Assurance 1: It has legal authority to impose a PFC and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the public agency's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public agency to act in connection with the application.

This assurance satisfies the requirement of 49 U.S.C. 40117(b) regarding the authority for the imposition of PFC's. The public agency certifies it has the legal authority to impose a PFC and to finance and carry out the proposed project. In certifying that it has this authority, the public agency establishes that it is the responsible party for compliance with the PFC regulation and its assurances.

Failure of the public agency to make this assurance in its application would lead to a finding that the application is not substantially complete. The application could only be found complete and be approved if the legally authorized public agency agreed to comply with the regulation and its assurances.

If requested by the FAA Airports office, the public agency must produce evidence that appropriate resolution, motion, or similar action granting its authority to impose PFC's has been enacted.

In a small number of cases, there may be uncertainty concerning the authority of the public agency over the airport in the future. For instance, the FAA may be aware of plans to abolish an airport authority at some point in the future, after which control of the airport will reside with another municipal, county, or state authority. In such cases, the FAA should confirm that an agreement exists whereby the potential replacement public agency agrees to complete the project(s) as described in the PFC application and will comply with the PFC regulation and assurances in the event that the existing public agency is abolished. When a proposal to abolish an existing public agency is learned of after the approval of a PFC application, the FAA should secure a written assurance, similar to assurance #1 from the new public agency that it will complete the approved project(s) and will comply with the PFC regulation and assurances governing the existing PFC approval.

15-7. COMPLIANCE WITH REGULATION.

Assurance 2: It will comply with all provisions of 14 CFR Part 158.

This assurance satisfies the requirement of 49 U.S.C. 40117(i) regarding the terms and conditions imposed on the public agency by Part 158. The public agency certifies that it will comply with all provisions, including the assurances, of Part 158.

If the FAA Airports office becomes aware that the public agency will not or cannot comply with any provision of the PFC regulation, it should pursue corrective actions as prescribed in chapter 13 of this order.

15-8. COMPLIANCE WITH STATE AND LOCAL LAWS AND REGULATIONS.

Assurance 3: It has complied, or will comply, with all applicable State and local laws and regulations.

The State or local government is responsible for identifying violations by the public agency of State or local laws. The FAA must concern itself with this assurance in the event that an actual or potential violation of State or local law is identified which would jeopardize implementation of the project. Failure to comply with such State or local law will trigger the termination procedures described in chapter 13 of this order.

In some cases, a project may not be able to proceed unless the public agency is able to obtain State or local permits or approvals, such as with rights-of-way or building permits. There is no regulatory or policy requirement that the public agency obtain such approvals prior to the FAA's approval of authority to use PFC revenues on a project that will require such permits. However, there should be a reasonable expectation that these permits can be obtained in time to implement the project and/or to enable

completion of the project. Where such approvals are problematic, such as when a local government opposes a project, the FAA Airports office should evaluate the likelihood that the local government's laws or regulations can be satisfied. Where it appears unlikely that permits will be granted, the FAA should discourage submission of the project for PFC funding, and in no case should the FAA approve more than impose authority for the project. Where local or State permits or approvals are uncertain, approval of impose only authority is recommended (provided other approval criteria are met). However, if use authority is granted, the FAA Airports office should specify a course of action that the public agency must pursue in the event that permits are not obtained in a timely manner. Such a course of action may entail the withdrawal of a project and use of collected funds for alternative projects. Such recommendations should be coordinated with regional legal personnel and APP-530.

Finally, if the FAA determines that a State or local law is preempted by Federal law, including 49 U.S.C. 40117(b)(2), conformance with the State or local law in question is not required. In such cases, actions by the FAA Airports office must be coordinated with APP-530.

15-9. ENVIRONMENTAL, AIRSPACE, AND ALP REQUIREMENTS.

Assurance 4: It will not use PFC revenue on a project until the FAA has notified the public agency that:

(a) Any actions required under the NEPA have been completed;

(b) The appropriate airspace finding has been made; and

(c) The ALP with respect to the project has been approved.

This assurance satisfies the requirement of 49 U.S.C. 40117(i) regarding the terms and conditions imposed on the public agency by Part 158. The assurance also satisfies FAA obligations under NEPA and public agency and FAA obligations under Title 49. An application for use authority cannot be found substantially complete, and a project cannot be approved for use authority, unless these actions and findings are verified by the FAA Airports office (see paragraph 3-18). The ROD must include a determination for all projects approved for use that these items have been completed.

15-10. NONEXCLUSIVITY OF CONTRACTUAL AGREEMENTS.

Assurance 5: It will not enter into any 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.

This assurance satisfies the requirement of 49 U.S.C. 40117(f) regarding nonexclusivity of contractual agreements by the public agency for projects carried out under these provisions.

The public agency certifies that 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. Long-term is defined in the PFC regulation as 5 years or longer. The term "exclusive" is not specifically defined but has been determined to describe the common industry practice of assigning absolute rights to the use of certain facilities by a particular carrier. Under exclusive use leases, the terms of the lease provide no right to the airport manager to reassign leased airport facilities (except in emergency or other limited and temporary situations) from one carrier to another, even if the facilities are not fully utilized.

Exclusive use contracts generally apply to terminal facilities, especially gates, ticket counters, and baggage claim areas. Airfield facilities, such as aprons, even if adjacent to exclusive use facilities, are typically not leased to specific carriers under exclusive use arrangements. Certain landholdings may also be leased and are subject to this assurance as well as Assurance 6.

In some terminal lease contracts, a carrier is offered preferential, but not exclusive, use of facility space. A preferential use leased facility may be reassigned by the airport manager to another carrier if it is not being fully utilized by the leasing carrier, subject to certain reasonable restrictions on the airport manager's actions. A long-term preferential lease of PFC-funded facility space to an air carrier is permitted under the PFC statute and regulation. However, the terms of a "preferential" lease must avoid offering de facto exclusive terms to air carriers. In particular, the FAA has found leases called "preferential" for PFC purposes to be de facto when such leases provide exclusive rights to an air carrier if the air carrier uses the facility above certain specified use thresholds. Such use thresholds may be set in terms of a minimum number of flights per gate per day or total operations per day. The FAA has advised that numeric use thresholds, even if set at a level reflecting full use of a gate in the first year of a lease, are de facto exclusive use leases because they provide the airline lessee with legally enforceable rights to prevent reassignment, regardless of changes in circumstances that may occur over the life of the lease. Furthermore, these levels may not reflect full use of a gate in future years, especially as space at an airport becomes constrained and an air carrier and airport management find means to utilize gates more effectively. Rather, the FAA maintains that full use of a gate should be determined by the airport manager based on the physical environment of the airport and its air service requirements at any given time.

In the case of any proposed PFC project subject to a lease between the public agency and an air carrier, the FAA Airports office should review any actual or proposed lease documents to verify that there are no exclusive use provisions, either explicit or de facto, in the lease (APP-530 is available to assist in the review should the FAA Airports office request this assistance). Where exclusive use provisions are identified, the FAA

Airports office should verify that these terms are for less than 5 years, paying special attention to any explicit or implicit carryover provisions in the lease that would render the lease a de facto long term lease (see paragraph 15-11). In the case of identified long-term exclusive use terms, the FAA Airports office should not approve the project for use of PFC funding until the public agency modifies the lease to remove such terms. If a lease has not yet been developed, the ROD should specifically require that the future lease be submitted to the FAA Airports office for review when the lease becomes available, preferably before it is executed.

Failure to comply with Assurance 5 may be revealed after a PFC-funded facility has been constructed. This may occur due to the issuance of a new lease, or execution of an initial lease after the submission of a PFC application to use PFC revenues to build a facility. Similarly, a review of a lease by an FAA Airports office may have failed to reveal special provisions that render the lease a de facto exclusive use lease. This latter outcome may result with very complex lease arrangements or a lease that is modified by some other written contract not known to the reviewer. In such cases, the FAA Airports office must begin steps to ensure compliance with the assurance, following the guidance in chapter 13 of this order.

Finally, the prohibition on long-term exclusive use lease or use agreements applies to agreements between a public agency and an air carrier or foreign air carrier. It does not directly apply to agreements between a public agency and a non-air carrier, such as a fixed based operator or airport manager under contract to the public agency. In such cases, however, the prohibition on long-term exclusive use leases would apply to any lease or use agreement between the fixed based operator (or other entity) and any air carrier or foreign air carrier served by that entity with the PFC-funded facility:

15-11. CARRYOVER PROVISIONS.

> Assurance 6: It will not enter into any lease or use agreement with any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a PFC if such agreement for such facility contains a carryover provision regarding a renewal option which, upon expiration of the original lease, would operate to automatically extend the term of such agreement with such carrier in preference to any potentially competing air carrier or foreign air carrier seeking to negotiate a lease or use agreement for such facilities.

This assurance principally protects against the use of an automatic rollover or carryover provision in a “short term” exclusive use lease that would make the lease a de facto long term exclusive use lease, which is not permitted by the statute or by Assurance 5 of Part 158. Carryover provisions would include any criterion or condition that would give the lessee the automatic right, or a marked advantage over another carrier, to renew a lease for the facility.

Although the primary intent of Assurance 6 is to protect against de facto long-term exclusive use leases, the assurance is worded more broadly to prohibit carryover

provision for any lease arrangement, including preferential leases. Accordingly, the public agency should be advised against the use of any carryover language for a leased PFC facility, regardless of any other terms in the lease, and be encouraged to remove such language when it is revealed through complaints or inspections. The FAA notes, however, that there is no statutory or regulatory limit to the term length of a single term non-exclusive lease.

15-12. COMPETITIVE ACCESS.

Assurance 7: It agrees that any lease or use agreements between the public agency and any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a PFC will contain a provision that permits the public agency to terminate the lease or use agreement if:

(a) The air carrier or foreign air carrier has an exclusive lease or use agreement for existing facilities at such airport; and

(b) Any portion of its existing exclusive use facilities is not fully utilized and is not made available for use by potentially competing air carriers or foreign air carriers.

This assurance was developed to prevent an air carrier from leasing PFC-funded facilities when it is not fully utilizing non-PFC-funded facilities available to it at the same location. As such, this assurance precludes an air carrier from tying up PFC facilities, which are intended to promote competition at an airport, while under-utilizing exclusive use facilities. In effect, this assurance gives the airport managers who use PFC revenues to fund facilities substantially greater control over the use of non-PFC facilities as well.

In the case of any proposed. PFC project subject to a lease between the public agency and an air carrier, the FAA Airports office should review any actual or proposed lease documents to verify that the lease contains the appropriate provisions to allow the public agency to terminate a lease of a PFC-funded facility if the leasing air carrier does not fully utilize, or make reasonably available for use by others, its non-PFC, exclusive use lease facilities (APP-530 is available to assist in the review should the FAA Airports office request this assistance). Moreover, the FAA Airports office should verify that the public agency has a procedure in place to monitor gate use by the air carrier so that it may ensure that Assurance 7 is being met. Without such a procedure, the public agency must otherwise explain how it will ensure compliance with Assurance 7. This procedure is also discussed as part of the best practices in the FAA/OST Task Force's "Airport Business Practices and Their Impact on Airline Competition" (October 1999).

The FAA Airports office should be especially aggressive in monitoring compliance with Assurances 5 and 7 in the case of gate-constrained airports. Where a public agency has leased PFC-funded terminal gates under preferential terms to an air carrier that also controls non-PFC, exclusive use gates, the FAA Airports office should verify, by

checking records of air carrier complaints, that other air carriers seeking access to the airport are accommodated in any available space at the preferentially leased PFC gates, subject to the terms of the lease contract. If carriers seeking access have not been accommodated and no available space exists, the FAA Airports office should verify that no space is available at the leasing carrier's non-PFC-funded, exclusive use gates. If space is available there, the public agency should be contacted and informed of the need to enforce the lease terms that pertain to Assurance 7, which could involve either the accommodation of the new entrant at gates controlled or leased by the air carrier, or in a case where accommodation cannot be reached, cancellation of the lease for the PFC-funded gates.

15-13. RATES, FEES, AND CHARGES.

Assurance 8:

(a) It will not treat PFC revenue as airport revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier or foreign air carrier.

(b) It will not include in its rate base by means of depreciation, amortization, or any other method, that portion of the capital costs of a project paid for by PFC revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier or foreign air carrier.

(c) Notwithstanding the limitation provided in subparagraph (b), with respect to a project for terminal development, gates, and related areas, or a faoility occupied or used by one or more air carriers or foreign air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid by such carriers using similar facilities at the airport that were not financed by PFC revenue.

This assurance satisfies the requirement of 49 U.S.C. 40117(g) regarding air carrier fees and charges for PFC-financed facilities developed under these provisions.

This group of three requirements pertaining to Assurance 8 are among the most difficult provisions of the PFC program to administer and monitor for compliance. Assurance 8(a) specifically states that PFC revenues cannot be included in the calculation of net airport revenues for the purpose of calculating charges, rates, or fees to air carriers or foreign air carriers. For instance, in the case of a residual use or lease arrangement between a public agency and an air carrier, PFC receipts could not be included in airport revenues for the purpose of determining the residual cost that must be paid by the air carrier in the form of charges and fees. This assurance protects public agencies from the automatic offset of PFC receipts by lower airport rates and charges, thus negating much of the benefit of the PFC program to such airports as a source of added revenue.

The Passenger Facility Charge Airport Audit Guide requires that, in the course of the public agency's annual PFC audit (see paragraph 7-18), the independent auditor review rates and charges calculations as they pertain to all three components of Assurance 8. Should the auditor identify a potential problem with regard to Assurance 8, the FAA Airports office should initiate an investigation in accordance with the procedures described in chapter 13 (especially see 13-Z). Similarly, the FAA Airports office should investigate if an air carrier or other party should notify the FAA Airports office of a potential violation of Assurance 8. Finally, the FAA Airports office should generally be familiar with the rates and charges policy of the public agency, and should, when an opportunity arises, verify that PFC revenues are specifically excluded from rates and charges calculations. However, the public agency will generally have no incentive to violate this assurance.

Assurance 8(b) is intended to prevent public agencies from charging twice for the same infrastructure. Specifically, 49 U.S.C. 40117(g)(2) reads that "an eligible agency may not include in its price base the part of the capital costs of a project paid for by using passenger facility revenue to establish a price under a contract between the agency and an air carrier or foreign air carrier." Were a PFC collected from an air carrier passenger to finance an item of infrastructure, and the same item were included in the airport's rate base and indirectly charged to the passenger through higher ticket costs, the passenger would be charged twice for the same benefit.

Compliance with Assurance 8(b) may be difficult to monitor. However, air carriers are generally aware of the prohibition against inclusion of PFC-funded items in the airport's rate base, and would complain to the FAA if a public agency persisted in attempting to rate base the item in question.

One area of particular difficulty pertaining to compliance with Assurance 8(b) pertains to PFC reimbursements of local matching shares to already completed AIP infrastructure projects or projects wholly funded with local funds. Due to Assurance 8(b), PFC reimbursement is only practical for local matches provided from funds not received from air carrier rates and charges, such as concession revenues or fuel flowage fees. Reimbursement of funds derived from air carrier rates and charges may occur, but would entail the direct reimbursement of air carriers for the amounts originally remitted for the reimbursed project (including interest). This reimbursement could take the form of a near-term reduction in rates and charges for the air carriers using the airport.

Another area of difficulty in monitoring compliance with Assurance 8(b) is Assurance 8(c), which substantially modifies Assurance 8(b) in terms of appropriate rates and charges for terminal facilities. Assurance 8(c) was intended to prevent the use of PFC funds to construct a terminal facility that would be leased exclusively or preferentially to an air carrier at a greatly reduced rate (due to Assurance 8(b)) from comparable facilities used by other carriers. This could provide the carrier leasing the PFC facility with an unfair competitive advantage over other carriers. Thus, the carrier using the PFC-built facility would be required by Assurance 8(c) to pay a rent equivalent to the

one paid for a comparable non-PFC facility, even if this is inconsistent with Assurance 8(b). This inconsistency was acknowledged in the regulation by the use of the term "Notwithstanding the limitation provided in subparagraph (b)...."

Actual application of 8(c) has been problematic for several reasons. One area of difficulty is how to equate rates for comparable facilities. The FAA has advised public agencies in these circumstances to calculate the rate as they would a rate for a non-PFC financed facility of identical characteristics at the same airport. in other words, any rate differential between two terminal facilities at an airport should not be attributable to use of PFC funds at one and not the other. The FAA recognizes legitimate non-PFC reasons may exist for two non-PFC funded facilities to command different rents, such as age of the facilities or amenities available (e.g., concourses with jet bridges versus those without jet bridges).

Another area of difficulty in monitoring compliance with Assurance 8(c) is the use of "surplus" revenues generated when a rate for a PFC-funded terminal facility is raised above the facility's actual non-PFC costs due to the need to equalize user rates under Assurance 8(c). There is no specific provision in the PFC statute or regulation for how such revenues are to be used. However, the FAA has generally recommended that a public agency use the surplus revenues to fund PFC-eligible airport infrastructure that would otherwise be funded from the general rate base of the airport. in this way, ail air passengers share in the benefit of the PFC based revenues. Public agencies are especially encouraged to get the consensus of the air carriers serving the airport in the use of the surplus revenue.

Even though use of this "surplus" revenue is not subject to explicit statutory or regulatory requirements, the FAA Airports office should strongly discourage the use of surplus revenues for development which is ineligible under the PFC program or development that would disproportionately benefit one carrier over another. Such actions by a public agency would indirectly violate the intent of PFC statute and regulation. in such an instance, the FAA Airports office should coordinate with APP-530.

15-14. STANDARDS AND SPECIFICATIONS.

> Assurance 9: it will carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications contained in advisory circulars current on the date of project approval.

Building of airport infrastructure in conformance with FAA standards and specifications is important to the development of a safe and efficient airport system. A list of current Advisory Circulars that contain these standards is attached to the PFC application approval letter sent to the public agency.

Appendix 3 of this order provides detailed guidance on what constitutes compliance with Assurance 9. In general, the FAA Airports office will rely on the public agency to certify its compliance with Assurance 9. However, while on site visits, the FAA Airports office may, at its option, avail itself of opportunities to review compliance on selected projects.

15-15. RECORDKEEPING AND AUDIT.

> Assurance IO: It will maintain an accounting record for audit purposes for a period of 3 years after completion of the project. All records will satisfy the requirements of 14 CFR Part 158 and will contain documentary evidence for all items of project costs.

This assurance satisfies the requirement of 49 U.S.C. 40117(h) regarding recordkeeping and audit requirements. The public agency certifies that it will maintain accounting records for auditing purposes for a period of 3 years after the completion of the project. More detailed instructions on recordkeeping requirements are provided in chapters 7 and 14 of this order. While on site visits, the FAA Airports office may, at its option, review records on PFC projects kept by the public agency. In addition, to facilitate closeout of PFC projects and applications, the FAA may ask to review PFC project records kept by the public agency.

15-16. REPORTS.

> Assurance 11: It will submit reports in accordance with the requirements of 14 CFR Part 158, Subpart D, and as the Administrator may reasonably request.

The public agency is charged with filing all reports required of it by Subpart D of Part 158, as well as exercising due diligence in obtaining required reports to it from air carriers (see chapter 7). Failure to meet reporting requirements, either as revealed by FAA oversight or by complaints from air carriers or other parties, should trigger a broader review of the public agency's recordkeeping and administration of the other PFC assurances.

15-17. ANCA.

> Assurance 12: It understands 49 U.S.C. 47524 and 47526 require the authority to impose a PFC be terminated if the Administrator determines the public agency has failed to comply with that act or with the implementing regulations promulgated thereunder.

Compliance with Assurance 12 is fundamental to the public agency's authority to impose a PFC. Once a violation of the ANCA is established by the Administrator, formal termination of the PFC authority should proceed as quickly as permitted by the regulation implementing ANCA, 14 CFR Part 161 (see chapter 13 of this order). It

should be noted that the protection afforded under the termination protection and/or protracted informal resolution language (see chapter 13) do not apply to a violation of the ANCA.

15-18 to 15-25. RESERVED.

APPENDIX 1. PFC PROCESS FLOWCHARTS

Chart 1 - Flowchart for review and approval/disapproval of an application for authority to impose a PFC.

Chart 2 - Flowchart for review and approval/disapproval of a concurrent application for authority to impose a PFC and use PFC revenue.

Chart 3 - Flowchart for review and approval/disapproval of an application to use PFC revenue.

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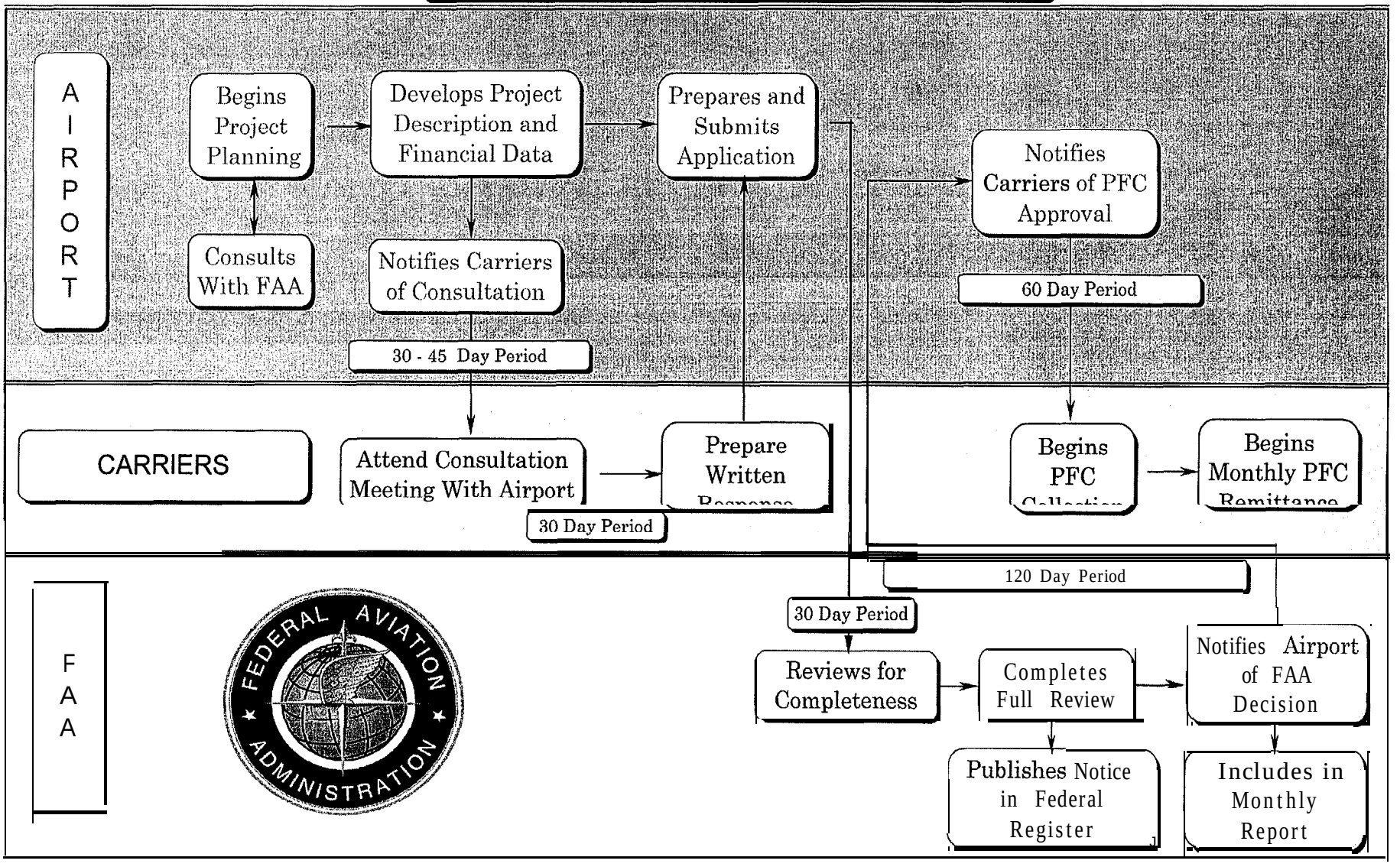
"Impose Only" PFC Process Overview



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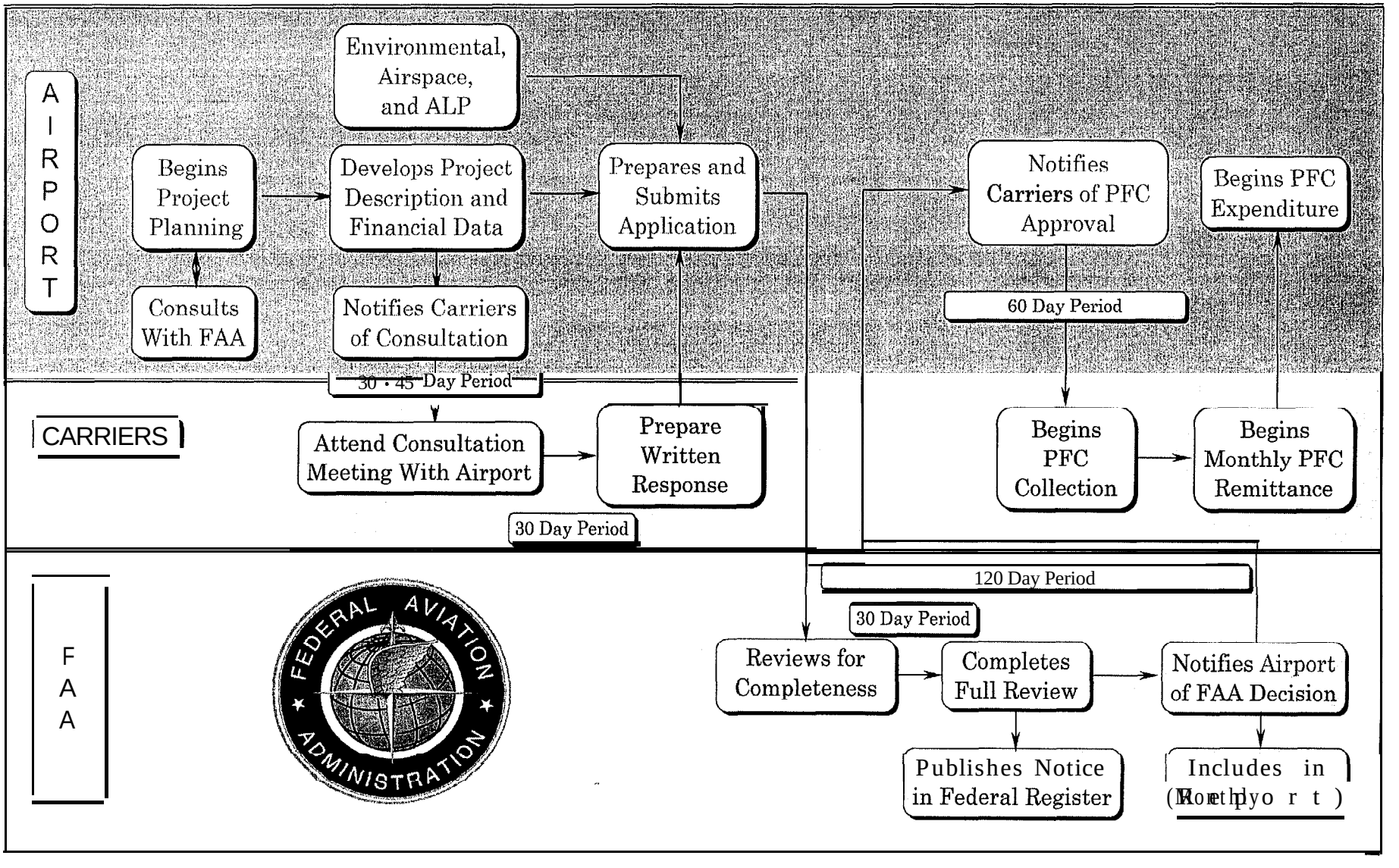
"Impose And Use" PFC Process Overview



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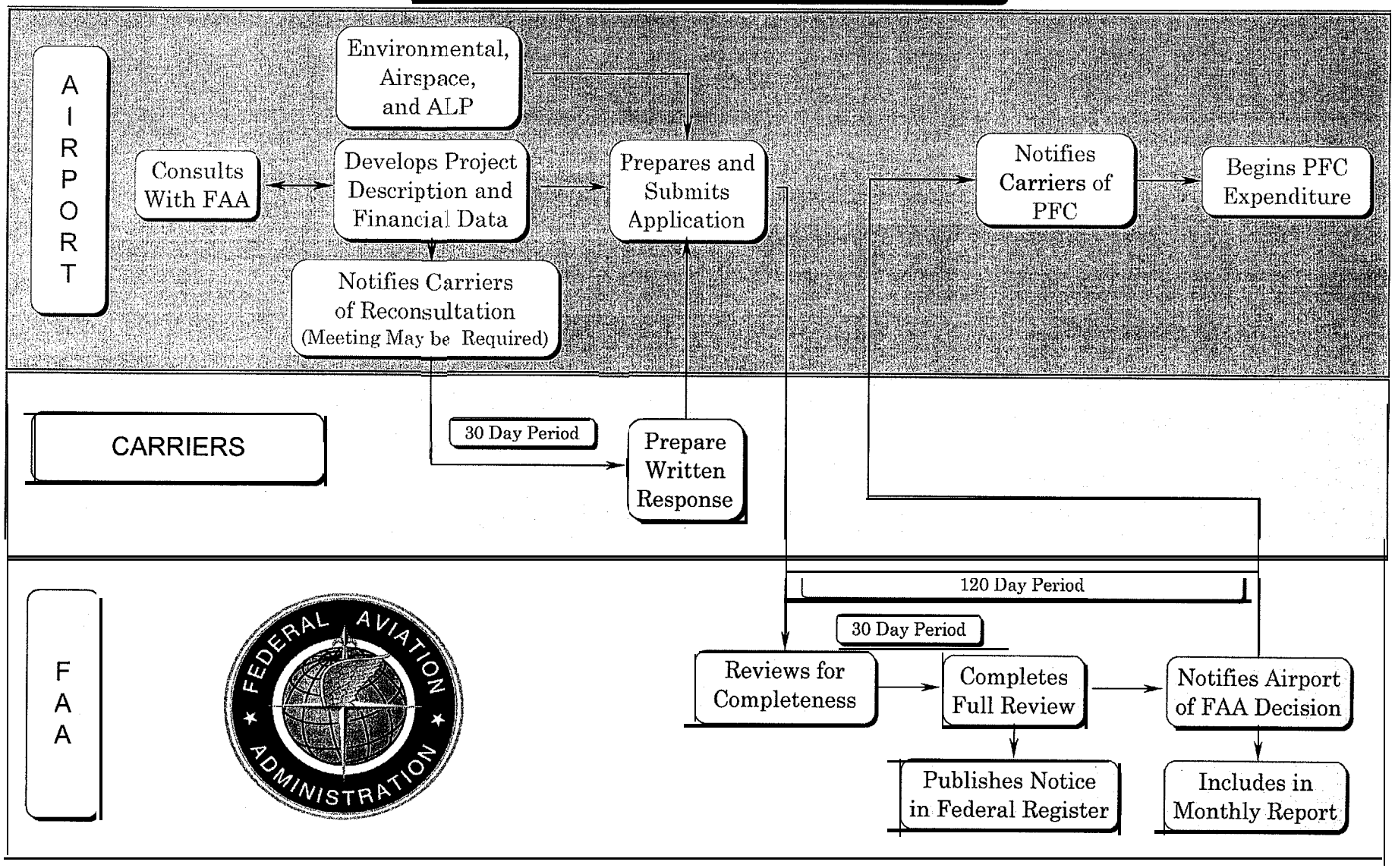
"Use Only" PFC Process Overview



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APPENDIX 2. PFC ASSURANCES

The public agency hereby assures and certifies, with respect to this project that:

1. Responsibility and authority of the public agency. It has legal authority to impose a PFC and to finance and carry out the proposed project; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the public agency's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public agency to act in connection with the application.

2. Compliance with regulation. It will comply with all provisions of 14 CFR Part 158.

3. Compliance with state and local laws and regulations. It has complied, or will comply, with all applicable State and local laws and regulations.

4. Environmental, airspace and airport layout plan requirements. It will not use PFC revenue on a project until the FAA has notified the public agency that:

(a) Any actions required under the National Environmental Policy Act of 1969 have been completed;

(b) The appropriate airspace finding has been made; and

(c) The Airport Layout Plan with respect to the project has been approved.

5. Nonexclusivity of contractual agreements. It will not enter into any 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.

6. Carryover provisions. It will not enter into any lease or use agreement with any air carrier or foreign air carrier for a facility financed in whole or in part with revenue derived from a PFC if such agreement for such facility contains a carryover provision regarding a renewal option which, upon expiration of the original lease, would operate to automatically extend the term of such agreement with such carrier in preference to any potentially competing air carrier or foreign air carrier seeking to negotiate a lease or use agreement for such facilities.

7. Competitive access. It agrees that any lease or use agreement between the public agency and any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a PFC will contain a provision that permits the public agency to terminate the lease or use agreement if:

(a) The air carrier or foreign air carrier has an exclusive lease or use agreement for existing facilities at such airport; and

(b) Any portion of its existing exclusive use facilities is not fully utilized and is not made available for use by potentially competing air carriers or foreign air carriers.

8. Rates, fees and charges.

(a) It will not treat PFC revenue as airport revenue for the purpose of establishing a rate, fee or charge pursuant to a contract with an air carrier or foreign air carrier.

(b) It will not include in its rate base by means of depreciation, amortization, or any other method, that portion of the capital costs of a project paid for by PFC revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier or foreign air carrier.

(c) Notwithstanding the limitation provided in subparagraph (b), with respect to a project for terminal development, gates and related areas, or a facility occupied or used by one or more air carriers or foreign air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid by such carriers using similar facilities at the airport that were not financed by PFC revenue.

9. Standards and specifications. It will carry out the project in accordance with FAA airport design, construction and equipment standards, and specifications contained in advisory circulars current on the date of project approval.

10. Recordkeeping and audit. It will maintain an accounting record for audit purposes for a period of 3 years after completion of the project. All records will satisfy the requirements of 14 CFR Part 158 and will contain documentary evidence for all items of project costs.

11. Reports. It will submit reports in accordance with the requirements of 14 CFR Part 158, Subpart D, and as the Administrator may reasonably request.

12. Airport Noise and Capacity Act of 1990. It understands 49 U.S.C. 47524 and 47526, require the authority to impose a PFC be terminated if the Administrator determines the public agency has failed to comply with that act or with the implementing regulations promulgated thereunder.

APPENDIX 3. PROJECT CONSTRUCTION OVERSIGHT

SECTION 1. GENERAL

3-l. OVERVIEW. This appendix addresses the FAA's project construction oversight responsibilities to insure that the public agency complies with the PFC standards and specifications (Assurance #9) which is applicable to project implementation. The FAA's oversight responsibilities focus on the public agency's plan to provide for operational safety on airports during construction. In general, PFC funded projects are not monitored as closely as AIP projects. However, for projects involving both PFC and Federal funds, unless work items are clearly separable by funding source, Federal project oversight guidance applies. At the FAA's discretion, with the exception of construction safety plans, certification of compliance with Assurance #9 may be accepted from a public agency for PFC funded projects.

3-2. COORDINATION OF PROJECTS. If no Federal funds are involved, following approval to use PFC revenues, the FAA Airports office will process, review and/or coordinate with other FAA offices, the public agency's construction safety plans, and any additional airspace review required for PFC projects as it would for any non-Federally funded project. The public agency is responsible for arranging any subsequent project coordination meetings, and any notification of other FAA divisions regarding meetings, facilities shutdowns, construction schedules, and cable staking.

SECTION 2. PFC/AIP FUNDED PROJECTS

33. OVERSIGHT OF PFC/AIP FUNDED PROJECTS. The oversight requirements of the AIP apply to any project that utilizes a combination of PFC and existing and/or proposed AIP funding, as when PFC funding is used as the "matching share" or supplemental funds for an AIP project.

3-4 to A3-6. RESERVED.

SECTION 3. PFC FUNDED PROJECTS-NO AIP FUNDS

3-7. PRECONSTRUCTION CONFERENCE. A preconstruction conference held prior to the start of PFC projects is at the discretion of the public agency. Attendance is not mandatory for FAA Airports office personnel.

The guidance set forth in AC 150/5300-9, "Predesign, Prebid, and Preconstruction Conferences for Airport Grant Projects," may be utilized by the public agency to assist in preparing a preconstruction meeting agenda and in determining parties to be notified of the meeting.

3-8. LABOR/DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS. Projects funded totally with PFC revenue or with financing other than Federal funds are not subject to Federal labor and DBE requirements; however, the public agency may be subject to state and local labor and DBE laws.

3-9. DESIGN, CONSTRUCTION, AND EQUIPMENT STANDARDS. Assurance #9 of the PFC application assurances requires the public agency to adhere to FAA airport design, construction, and equipment standards and specifications contained in AC's current as of the date of project approval to use PFC revenue. The FAA concluded in the 1991 rulemaking process that this assurance is appropriate to further the objective of system-wide uniformity. Portions of projects exceeding applicable FAA design, construction, and equipment standards are not generally AIP or PFC eligible.

3-10. NOTICE TO PROCEED. The public agency should furnish the FAA Airports office with a copy of the Notice to Proceed issued to project contractors. This notice provides confirmation of the "implementation date" of each approved project. If a copy of the Notice to Proceed is not furnished to the FAA, the public agency may submit a copy of the quarterly report project schedule or other proof that construction has commenced. The schedule should show that the physical construction of the project has begun, confirming the "implementation date." To be eligible for PFC funding the project implementation date must have occurred on or after November 5, 1990, or as described in 10-27(d). The notice to proceed or start date for the design or other engineering services is not considered to be a start date for a construction project.

3-I 1. CONSTRUCTION RECORDS. The public agency should maintain the necessary construction records which are consistent with recognized construction engineering practices. These records should provide, at a minimum, sufficient documentation that construction was accomplished in accordance with appropriate FAA design, construction, and equipment criteria. However, the public agency is not required to complete any FAA construction-related forms.

3-12. SAFETY. AC 150/5370-2C, or latest edition, Operational Safety on Airports During Construction, shall be utilized by the public agency to ensure operational safety is maintained during periods of construction. FAA review, coordination with other FAA offices, and subsequent approval of construction safety plans for PFC projects will be accomplished using the same procedures as those for other non-Federally funded projects.

3-13. PARTS 107 AND 139 REQUIREMENTS. The public agency is responsible for ensuring compliance with 14 CFR Parts 107 and139 requirements. The public agency should consult with the appropriate Civil Aviation Security office and FAA Airports office regarding these requirements. These requirements include actions necessary to control airport operational areas in accordance with the approved Airport Security Plan and the Airport Certification Manual or Airport Certification Specifications.

3-14. ENVIRONMENTAL COMPLIANCE. The FAA Airports office must provide sufficient project oversight to assure compliance with any requirements or conditions of FAA environmental approval.

3-15 to 3-20. Reserved

APPENDIX 4 -AIRPORT DEBT FINANCING

4-l. OVERVIEW. This appendix provides information useful for the analysis of airport bond and other similar types of debt financing associated with PFC applications. This information includes a short overview of financing terms, a discussion of financing scenarios, and a look at PFC financing implications.

4-2. DEBT FINANCING ASSOCIATED WITH PFC APPLICATIONS. PFC applications are required to include a financing plan for each project in accordance with section 158.25(b)(13). The plan must be presented to the air carriers either at or prior to the consultation meeting as noted in chapter 2 of this order. During its deliberative process, the FAA determines the amount and duration of the PFC collection, making sure that the amount will not result in excess revenue. Since the definition of allowable costs in section 158.3 include debt service and financing costs of bonds and other indebtedness, the FAA must carefully analyze bond and other indebtedness proposals to determine that the proposed financing will not result in excess PFC collection.

4-3. DEFINITIONS OF FINANCING TERMS. Municipal bond financing is replete with its own terminology that can be confusing to those not familiar with industry practices. Accordingly, this section will identify and define common municipal financing terms.

There are three primary types of municipal financing instruments. All three are used to finance airport development. These include general obligation bonds, revenue bonds, and hybrid bonds. **General obligation bonds** are backed by the full faith and credit of the issuer and, more importantly, are supported by the ability of the issuer to levy taxes. This type of bond is not often used for airport development since many commercial service airports can generate airport revenue. In addition, a public agency is not likely to tie-up valuable bonding capacity which it could use for other public purposes that may be minimally or not supported by outside revenue sources. More commonly, airports rely on **revenue bonds** and especially **general airport revenue bonds** (GARB). These bonds are supported solely by the revenues produced by the airport. These revenues may be general in nature (relying on a mix of airport rates and charges, and/or concession fees and other revenue) or from a specific pledged source (such as from PFC revenue or from single tenant sources such as with **special facility bonds). Hybrid bonds** are a combination of general and revenue bonds. The full faith and credit of the issuer back these bonds, but the revenues generated by the facility are expected to cover all debt service requirements without tapping the taxing power of the issuer.

In addition to the primary types of bond financing listed above, other types of debt financing have become increasingly utilized as airports have become more financially sophisticated. These debt instruments include variable rate bonds, commercial paper, private placement bonds, bank lines of credit, and other similar instruments. Although these resemble bonds in effect, the terms and nature of the mechanics of these instruments vary widely. **Variable rate bonds** carry market-based interest rates that may vary periodically over the term of the bond. **Commercial paper** resembles a

corporate bond instrument and is issued on a short-term basis. **Private placement bonds,** while similar to revenue bonds (actually a subset of revenue bonds), are sold only to one corporate, institutional, or individual buyer in a negotiated transaction. Finally, **bank lines of credit** are similar to consumer bank lines of credit and are generally used for interim or other short-term financing.

Underwriters (the investment bankers or other consortium aiding the airport in issuing the debt), **bond rating agencies,** and **bond insurers** carefully examine use agreements between the airport and air carriers, feasibility reports from consultants, revenue sources and reliability, and airport management practices. Typically, airports with significant origin and destination traffic, well-established airline use agreements, a history of strong management, substantial revenues, and well-documented information to provide in support of its debt proposal will earn higher bond ratings, often among the highest in municipal financing. The financial community has established confidence in airports as a reliable source of debt repayment. As of the date of this order, there has not been a default on a major airport bond issue with higher bond ratings.

Certain provisions of revenue bonds increase security to bond holders, underwriters, bond raters, and insurers. **Bond covenants** and other bond documents contain agreements that govern the establishment of various types of funds, the flow of bond proceeds, rate covenants, and often limits the amount of debt the public agency issues. These agreements ensure that the issuer has sufficient funds to pay debt service (principal and interest), both through its regular collection of pledged revenue and as established in reserves, as well as establishing that the issuer does not over-borrow. In addition, the issuer typically seeks a debt **rating** from the rating agencies and often pays to **insure** the bond or purchase a **letter of credit** to ensure prospective bond purchasers that their investment is secure.

44. TYPES OF FINANCING SCENARIOS. Public agencies issue different types of bonds to meet the development needs at an airport. Most common are long-term fixed-rate bonds. Other types include double barrel bonds, variable rate debt, and special facility bonds. Special facility bonds are revenue bonds issued primarily to benefit one commercial tenant and are repaid through fees and charges paid by that tenant. In return, the tenant typically receives a long-term, exclusive use lease. As such, these bonds are not used to fund PFC facilities.

Several types of bonds are used to fund PFC facilities at airports. To date, public agencies have utilized double barrel bonds (usually long-term fixed-rate) backed by both a pledge of PFC revenue and by a secondary pledge of airport revenue such as air carrier rates and charges as the mechanism to leverage PFC revenue. Recently, however, public agencies have issued long-term fixed-rate debt backed solely by PFC revenue. In each case, public agencies have utilized long-term fixed-rate debt to pay for large airport infrastructure projects that have required substantial funding. Traditionally, public agencies have been able to get the best interest rates and other favorable terms when issuing debt on a long-term fixed-rate basis.

Public agencies have also issued variable rate debt and other short-term debt in order to facilitate the development of certain types of PFC projects. Often, a public agency can utilize such financing to "bridge" between pay-as-you-go financing and long-term debt. Although the public agency faces higher interest rates, the total interest cost of the debt issue is less due to the shorter duration. In addition, these types of financing offer greater flexibility for repayment than long-term debt.

Another consideration for public agencies issuing debt concerns the purchase of insurance or a letter of credit to improve investor confidence, improve the bond rating, and, in the case of a letter of credit, provide expeditious repayment to bond holders. When such instruments are used, they provide the debt issues with the rating equivalent of the debt insurer's (or letter of credit provider) own credit rating. Although the public agency incurs additional costs for the insurance/letter of credit, often this is offset by lower interest rate costs.

4-5. THE FAA's ROLE IN PFC-BACKED FINANCING. Since the initial development of the PFC statute and regulation, it was expected that PFC revenue would be used to back debt issued for airport construction. However, when PFC collections were first initiated, the financial community expressed concern about the security of PFC funds due to the FAA's ability to terminate PFC collections at airports approved to collect PFCs. Specifically, the financial community was concerned that the FAA may act precipitously to rescind a public agency's PFC collection authority. This concern was focused to a great extent on a lack of definition in the informal resolution phase of the termination process (§158.83). The following sections discuss initiatives to address these concerns.

4-6. PROTRACTED INFORMAL RESOLUTION. The FAA has taken steps to improve the ability of public agencies to issue investment grade PFC stand-alone bonds by use of special terms in PFC Records of Decisions on a case-by-case basis. The FAA, in agreeing to implement these special terms, requires that the public agency appoint a bond trustee and identify interested parties to the financing.

These special terms for protracted informal resolution consist of the following steps:

1. The FAA notifies the public agency and all other parties to the PFC-secured financing via certified mail of the suspected violation, and specifies corrective steps that could be taken to resolve the violation. The public agency is allowed 90 days from the receipt of the letter to respond to the FAA and the affected parties. From this point forward, all parties to the financing will receive copies of all correspondence relating to the suspected violation.

2. Concurrent with the letter issued in 1. above, the FAA instructs the air carriers, via certified mail, to remit PFC's directly to the airport's bond trustee.

3. Also concurrent with the letter issued in 1. above, the FAA instructs the airports bond trustee, by certified mail, to make debt service payments to PFC-secured

bondholders using the revenues remitted by the air carriers. All other payments from PFC revenues are made by the trustee only at the direction of the FAA as the protracted informal resolution proceeds. In order to implement these terms, the trustee's agreement with the public agency creates third party beneficiary rights for the FAA.

4. If the public agency's response to the FAA does not satisfactorily address the FAA's concerns, the FAA provides one additional opportunity for corrective action. The FAA again notifies the public agency and all affected parties, as described above, that the matter is still unresolved, describes the reasons that the response received was unsatisfactory, and again identifies corrective actions which may yet be taken to resolve the suspected violation. In addition, the public agency is informed that the FAA's next step, lacking a satisfactory response, is withholding AIP entitlement funding. The public agency is given 90 days to respond to this letter.

5. If the public agency's response to the FAA is again unsatisfactory, the FAA notifies the public agency and all parties to the financing, via certified mail, of the FAA's intent to withhold annual AIP entitlement grants in an amount equal to the amount of PFC revenues collected by the airport on an annual basis, pending resolution of the violation. AIP entitlement funds so withheld will be available for the public agency's use if the suspected PFC violation is resolved satisfactorily prior to formal PFC termination.

In total, these special terms provide a substantial amount of time (approximately 210 days or more) for the FAA, the public agency, and other parties to a PFC-secured financing to work together to cure a violation of the PFC Act before the formal PFC termination process begins. Only after the entire process outlined above is concluded and failed to resolve a suspected violation would the FAA begin the termination of authority process described in section 158.85 of the regulation.

The addition of these special terms to the FAA's Record of Decision as needed to facilitate financing has facilitated the issuance of stand-alone, investment grade PFC-backed debt on a case by case basis. However, bond rating agencies and bond insurers generally request further structure to the FAA's termination actions when a public agency commits a suspected violation of the PFC Act. The next section outlines development of limited termination protection terms to enhance the ability of a public agency to issue investment grade stand-alone PFC-backed debt and the additional steps necessary to provide such assurance.

4-7. TERMINATION PROTECTION. The FAA has taken additional steps to improve the ability of public agencies to issue PFC stand-alone bonds. Specifically, the financial community has remained concerned that the FAA may act to rescind a public agency's PFC collection authority even after the development of the protracted informal resolution language discussed above. Accordingly, the FAA has developed further language providing limited protection from termination of PFC collection authority for PFC-backed bonds to be included in Records of Decisions, on a case-by-case basis. The public agency must first agree to the inclusion of the protracted informal resolution special

terms (see appendix 4-6) since that process is integral to the termination protection procedure. Upon agreement to the protracted informal resolution terms, the additional protection only takes effect after the project or projects funded by the bonds are completed and have been fully paid for with the bond proceeds. In addition, the public agency must provide information indicating that its future PFC revenue stream is not fully leveraged into PFC-secured debt (e.g., PFC funds are used for either additional pay-as-you-go projects or for adequate PFC bond coverage rates). This allows for expeditious retirement of PFC-secured debt should the FAA later act to reduce the public agency's PFC collection authority due to a violation. Additionally, the public agency must ensure that the projects covered by the limited protection are discrete and readily discernible.

The additional procedures that form the termination protection terms for suspected violations of the PFC Act are as follows:

1. The FAA agrees that, upon its receipt of a certificate from the public agency pursuant to the bond agreements certifying that the project(s) (or useable unit thereof) is complete and that the proceeds from the bonds have been used in accordance with the bond agreements and the regulation, and that all remaining proceeds, if any have been transferred to the trustee account to be used to pay debt service, then the FAA will not terminate the public agency's authority to impose a PFC until after the fifth anniversary of the completion of formal termination proceedings pursuant to section 158.85 or, if earlier, the first date on which all debt service on the PFC-secured debt has been paid in full. Other terms apply and will be provided by APP-530 upon request.

2. The FAA further agrees that if the FAA issues a final notice to terminate or reduce the public agency's PFC authority, the FAA will prescribe in any such notice corrective actions that the public agency could still take to avoid such termination. If, after such notice, the public agency completes the corrective actions prescribed in the notice or otherwise cures the alleged violation to the satisfaction of the FAA, the FAA will give notice to the public agency and the affected parties that the FAA will rescind the termination or reduction of the public agency's PFC authority.

This process provides additional assurance that the FAA will not act "precipitously" to terminate a public agency's PFC collection authority. However, the process maintains a credible and effective enforcement mechanism in that the FAA can still influence AIP grants, non-leveraged PFC funds, and all future PFC collections. In addition, protection will not exceed five years of PFC collections in any case. The addition of these terms to the FAA's Record of Decision has facilitated financing and allowed an increasing number of public agencies to issue stand-alone PFC-backed debt.