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APPENDIX A TO PART 158—ASSURANCES

AUTHORITY: 49 U.S.C. 106(g), 40116–40117, 47106, 47111, 47114–47116, 47524, 47526.

SOURCE: Docket No. 26385, 56 FR 24278, May 29, 1991, unless otherwise noted.

Subpart A—General

§ 158.1 Applicability.

This part applies to passenger facility charges (PFC's) as may be approved by the Administrator of the Federal Aviation Administration (FAA) and imposed by a public agency that controls a commercial service airport. This part also describes the procedures for reducing funds to a large or medium hub airport that imposes a PFC.

[Doc. No. FAA–2000–7402, 65 FR 34540, May 30, 2000]

§ 158.3 Definitions.

The following definitions apply in this part:

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.

Airport capital plan means a capital improvement program that lists airport-related planning, development or noise compatibility projects expected to be accomplished with anticipated available funds.

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

Airport revenue means revenue generated by a public airport (1) through any lease, rent, fee, PFC 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 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.

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

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 incurred to carry out such projects. Allowable costs include only those costs incurred on or after November 5, 1990. Costs of 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 U.S. in the most recent calendar year for which data is available and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997 are allowable.

Approved project means a project for which use of PFC revenue has been approved under this part. Specific projects contained in a single or multiphased project or development described in an airport capital plan may also be approved separately.

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

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

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

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

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

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

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

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.

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.

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

Frequent flier award coupon 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.

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

significant portion of the property to be acquired.

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.

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 U.S. for the prior calendar year, as determined by the Administrator.

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

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 as defined under Department of Transportation 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.

One-way trip means any trip that is not a round trip.

Passenger enplaned means a domestic, territorial or international revenue passenger enplaned in the States in scheduled or nonscheduled service on aircraft in intrastate, interstate, or foreign commerce.

PFC means a passenger facility charge covered by this part imposed by a public agency on passengers enplaned at a commercial service airport it controls.

Project means airport planning, airport land acquisition or development of a single project, 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 under this part.

Public agency means a State or any agency of one or more States; a municipality or other political subdivision

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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 this part, a private sponsor of an airport approved to participate in the Pilot Program on Private Ownership of Airports.

Round trip means a trip on a complete air travel itinerary which terminates at the origin point.

Significant business interest means an air carrier or foreign air carrier that:

(1) Had no less than 1.0 percent of passenger boardings at that airport in the prior calendar year,

(2) Had at least 25,000 passenger boardings at the airport in that prior calendar year, or

(3) Provides scheduled service at that airport.

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.

Unliquidated PFC revenue means revenue received by a public agency from collecting carriers but not yet used on approved projects.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34540, May 30, 2000; Amdt. 158-3, 70 FR 14934, Mar. 23, 2005]

§ 158.5 Authority to impose PFC's.

Subject to the provisions of this part, the Administrator may grant authority to a public agency that controls a commercial service airport to impose a PFC of \$1, \$2, \$3, \$4, or \$4.50 on passengers enplaned at such an airport. No public agency may impose a PFC under this part unless authorized by the Administrator. No State or political subdivision or agency thereof that is not a public agency may impose a PFC covered by this part.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34541, May 30, 2000]

§ 158.7 Exclusivity of authority.

(a) A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible public agency may not tax, regulate,

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prohibit, or otherwise attempt to control in any manner the imposition or collection of a PFC or the use of PFC revenue.

(b) No contract or agreement between an air carrier or foreign air carrier and a public agency may impair the authority of such public agency to impose a PFC or use the PFC revenue in accordance with this part.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34541, May 30, 2000]

§ 158.9 Limitations.

(a) No public agency may impose a PFC on any passenger—

(1) For more than 2 boardings on a one-way trip or in each direction of a round trip;

(2) On any flight to an eligible point on an air carrier that receives essential air service compensation on that route. The Administrator makes available a list of carriers and eligible routes determined by the Department of Transportation for which PFC's may not be imposed under this section;

(3) Who is a nonrevenue passenger or obtained the ticket for air transportation with a frequent flier award coupon;

(4) On flights, including flight segments, between 2 or more points in Hawaii; or

(5) In Alaska aboard an aircraft having a certificated seating capacity of less than 60 passengers.

(b) No public agency may require a foreign airline that does not serve a point or points in the U.S. to collect a PFC from a passenger.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34541, May 30, 2000]

§ 158.11 Public agency request not to require collection of PFC's by a class of air carriers or foreign air carriers or for service to isolated communities.

(a) Subject to the requirements of this part, a public agency may request that collection of PFC's not be required for—

(1) 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