

FEDERAL AVIATION ADMINISTRATION  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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Passenger Facility Charge Program,	:	
	:	
Non-Hub Pilot Program and	:	Docket No. FAA-2004-17999
	:	
Related Changes	:	
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**COMMENTS OF THE MASSACHUSETTS PORT AUTHORITY**

On June 9, 2004, the Department of Transportation (“DOT”) and the Federal Aviation Administration (“FAA”) published a notice of proposed rulemaking (“NPRM”) and requested public comment on the FAA’s proposed pilot program to test new application and approval procedures to be used by non-hub airports for the passenger facility charge (“PFC”) program.<sup>1</sup> Besides the pilot program, the NPRM also contains several other proposed changes to the PFC application and amendment process in response to provision set forth in the Vision 100 – Century of Aviation Reauthorization Act. The Massachusetts Port Authority (“Massport”) respectfully submits these comments in response to the NPRM.

**Background and Statement of Interest**

Massport was created in 1956 as a multi-modal transportation authority. It owns and operates Boston-Logan International Airport (“Logan Airport” or the “Airport”), the 19th busiest primary airport in the country; Hanscom Field, a reliever airport located approximately 16 miles from Logan Airport; the Port of Boston, with a container port, a cruise passenger terminal, an automobile port and break bulk terminals and various other

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<sup>1</sup> See 69 Fed. Reg. 32298, “Passenger Facility Charge Program, Non-Hub Pilot Program and Related Changes,” Docket No. FAA-2004-17999 (the “NPRM”).

maritime and development facilities within the Boston seaport; and the Tobin Bridge, a toll bridge facility. Massport also operates the Worcester Regional Airport under an agreement with the City of Worcester, Massachusetts. Massport was established by the Massachusetts legislature as an independent authority with the power to issue revenue bonds and develop and operate transportation projects and facilities. Massport receives no state or city tax support, and cannot impose taxes of its own.

Massport initially was granted the authority to impose and use a \$3.00 PFC commencing November 1993. Pursuant to subsequent FAA approvals, Massport currently has the authority to collect \$927.4 million of PFCs at the \$3.00 level. Massport has issued two series of PFC-backed bonds pursuant to a separate PFC Revenue Bond Trust Agreement dated as of May 6, 1999. Massport has commenced the process to amend its existing records of decision and to file a new PFC application to impose and use PFCs at the \$4.50 level to fund seven new PFC projects on an impose and use basis and one new project on an impose-only basis. These new projects are expected to include the local match of federal airport improvement program (“AIP”) grants for residential sound-proofing and airfield improvements, as well as for security improvements at Logan Airport.

Approximately 24.6 million passengers used Logan Airport in the fiscal year ended June 30, 2004. Based upon information provided by DOT, the Authority estimates that approximately 88% of total domestic and international passengers are “origin – destination passengers” – meaning that they begin or end their air travel at Logan Airport. As an origin – destination airport, Logan Airport is served today, as it has been in the past, by a wide variety of carriers. The relative share of various carriers at Logan Airport

has fluctuated with no individual carrier having a market share of over 25% in any of the past ten years.

### **Comments**

In general, Massport supports and applauds the proposed amendments to the PFC regulations. The proposed changes would streamline the application and approval process for smaller airports, and clarify the process necessary for amending existing PFC approvals. We are also mindful that the majority of the proposed changes are in response to the Congressional mandate set forth in the Vision 100 - Century of Aviation Reauthorization Act (“Vision 100”). However, we believe that the FAA can build upon its successful approach to obtaining Congressional approval to streamline the PFC application and approval process and use the non-hub pilot program to develop an approach that will permit further streamlining of the process on a permanent basis for both non-hub and larger airports. In addition, we would suggest that the FAA consider permitting the public comment on PFC applications to be consolidated with the public comment on the projects themselves in connection with the environmental review process. Finally, we suggest a few technical corrections to the proposed regulations.

#### **1. Streamlining Applications**

The provisions of Vision 100 that authorize a pilot program which will streamline the PFC application and approval process for non-hub airports were the result of several years of hard work by the FAA, airports and other stakeholders to review the PFC application and approval process and propose means and methods to simplify and shorten the process. That these provisions are initially applicable to smaller airports is appropriate; as the FAA has noted in the NPRM, non-hub airports account for

approximately 60 percent of all PFC applications processed over the past five years, but only two percent of total PFC revenue. Furthermore, non-hub airports are the least likely to have the staff and financial resources available to undertake the lengthy and intensive PFC application process. Thus, Massport supports the FAA's proposed pilot program.

We urge the FAA to closely track the results of the pilot program and use these results to work with the Administration and Congress to obtain authority to improve and extend the streamlining program on a permanent basis not only for non-hub airports but also for larger airports. While we acknowledge that it is important to maintain the air carrier consultation process, in many cases, proposed PFC projects generate few or no comments by air carriers. Where there is little or no comment following the consultation process, we believe that an expedited approval of the PFC application by FAA is appropriate for both non-hub and larger airports. We encourage the FAA to use the pilot program not only to enhance the application and approval process for non-hub airports, but also to gather data for extension of the streamlined process to larger airports for non-controversial projects.

## **2. Public Notice Requirements**

Massport notes that Vision 100 expressly provides for the opportunity for public notice and comment on PFC applications, and the NPRM clearly provides for such a public process in a straight-forward manner in the proposed new section 158.24. In connection with our current effort to receive authority to impose and use a \$4.50 PFC for certain new projects, as well as amend Massport's existing PFC authority, Massport has chosen to comply with the notice provisions of proposed section 158.24 by posting a

notice of intent to impose and use a \$4.50 PFC, as well as to amend Massport's existing PFC authority, on our website, [www.massport.com](http://www.massport.com), and requesting public comment. If a separate public notice and comment process is required, Massport supports the use of technology, such as the option to post a notice of intent and request for comment on the airport operator's website contained in proposed section 158.24 of the NPRM.

However, we also note that the majority of projects that will be funded with PFCs have already undergone significant public scrutiny through the federal and state environmental processes. In order to file an application to use PFCs, a project must have received all necessary federal environmental approvals (*see* 14 CFR §158.25(c)(1)(ii)(B)). Environmental review under the National Environmental Policy Act requires an analysis of the alternatives to and need for the project that is likely to be repeated in any public comment on a subsequent PFC application. The environmental review process requires close and lengthy public scrutiny of the majority of airport projects and makes an additional public review in connection with the PFC approval process redundant.

Massport would propose that for projects that have already undergone significant environmental review, the public notice process on PFC applications be waived. In the alternative, we suggest that the proposed regulations be amended to provide that the public notice and comment process for PFCs may be combined with the public notice and comment process with respect to federal or state environmental review.

As a public entity, we support and carefully consider the issues raised in connection with the public review of our environmental filings. We believe that the close scrutiny given to these projects by diverse groups of governmental agencies and citizen

groups can identify and refine issues that enhance the projects as well as minimize their impact on the environment and our neighbors. But we also believe that the public review process can also be used by opponents of airport projects not to minimize environmental impacts, but to delay or, ultimately, derail necessary public projects. Adding another opportunity for such delay is not necessary where there has been ample opportunity for public review and comment on a project, and we urge that the proposed regulations be revised to eliminate redundant public review.

**3. Clarification of Amendment Requirements**

As an airport operator that has already undertaken the PFC amendment process on several occasions and is in the process of another amendment process, Massport supports and applauds the proposed amendments to the Part 158 regulations regarding the amendment of approved PFC programs. The proposed amendments will clarify certain aspects of the amendment process and should also simplify and shorten the process. Set forth below are several suggested minor changes that we believe will further clarify the proposed regulations.

Paragraphs (1) and (2) of Section 158.37(a) of the proposed regulations currently state that a public agency may or may not, respectively, “amend an approved PFC” under certain circumstances. An “approved PFC” refers simply to the charge being collected, and not to all of the other provisions of the record of decision that affect an airport’s PFC program, such as amendments to the scope of approved projects, that are addressed in Section 158.37. Thus, we believe that the proposed language regarding amendments should be broader and address the process for amending any aspect of an approved PFC program. Rather than amending “an approved PFC,” we believe that the regulations

should refer to amending the authority to impose or use a PFC or, in the alternative, to amending the FAA's record of decision with respect an approved PFC.

Paragraph (5) of Section 158.37(b) provides, in part, that an application to amend an approved PFC program must include justification for such an amendment "... if the amendment includes a change in the PFC amount for a project by more than 25 percent of the original approved amount ... or an increase in total approved PFC revenue for the project." We believe that the last clause is redundant and likely incorrect, and should instead refer either to an increase in the PFC level or, in the alternative, refer to an increase in the total approved PFC revenue for the program in general, not for a specific project.

Finally, we have noted what appears to be a typographical error in line 10 of proposed section 158.25(b)(7)(i), where we believe that the word "excepted" should be deleted and the word "expected" substituted.

### **Conclusion**

Massport supports the NPRM and appreciates the opportunity to provide comments to the DOT and FAA on certain aspects of the proposed amendments to the PFC regulations. While we believe that the proposed changes are, in general, beneficial, we believe that the FAA can and should build upon its successful approach to obtaining Congressional approval to streamline the PFC application and approval process to make the non-hub program permanent and to use the non-hub pilot program to develop a permanent approach that will permit further streamlining of the process for larger airports. In addition, we would suggest that the FAA consider permitting the public

comment on PFC applications to be consolidated with the public comment on the environmental process with respect to the projects themselves. Finally, we believe that several of the proposed revisions to the amendment process require clarification. We would be pleased to provide further information upon request.

Respectfully submitted,

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