

of a combination of a per-operation charge and a weight-based charge provided that (1) the two-part fee reasonably allocates costs to users on a rational and economically justified basis; and (2) the total revenues from the two-part landing fee do not exceed the allowable costs of the airfield.

(a) The proportionately higher costs per passenger for aircraft with fewer seats that will result from the per-operation component of a two-part fee may be justified by the effect of the fee on congestion and operating delays and the total number of passengers accommodated during congested hours.

(b) An airport proprietor may exempt flights subsidized under the Essential Air Service Program from the general application of a 2-part landing fee, and instead charge those flights a landing fee that would have been charged if a conventional weight-based fee was in effect. To the extent an exemption reduces total airfield fees recovered, the difference may not be recovered by increasing charges to other operators currently operating at the airport.

3. Revise paragraph 2.2 to read:

Revenues from fees imposed for use of the airfield ("airfield revenues") may not exceed the costs to the airport proprietor of providing airfield services and airfield assets currently in aeronautical use unless:

(a) Otherwise agreed to by the affected aeronautical users; or

(b) The fee includes charges in accordance with paragraph 2.5.3 or paragraph 2.5.4(a), and there is a corresponding reduction in fees for users that would otherwise have paid those charges.

4. Amend paragraph 2.4.4 by revising the parenthetical phrase to read:

" \* \* \* (for facilities in use or in accordance with paragraph 2.5.3) \* \* \* "

5. Add a new paragraph 2.5.3 to read as:

2.5.3. The proprietor of a congested airport may include in the rate-base used to determine airfield charges during congested hours a portion of the costs of an airfield project under construction so long as (1) all planning and environmental approvals have been obtained for the project; (2) the proprietor has obtained financing for the project; (3) construction has commenced on the project; and (4) the added costs for current operators would have the effect of reducing or preventing congestion and operating delays at that airport.

(a) The airport proprietor must deduct from the total costs of the projects any principal and interest collected during the period of construction in

determining the amount of project costs to be capitalized and amortized once the project is commissioned and put in service.

(b) The amount of project costs included in current charges may not exceed an amount corresponding to costs actually incurred during the construction period, calculated in accordance with a commercially reasonable amortization period based on the expected term for the permanent financing of the project.

6. Amend paragraph 2.5.4(a) to read as follows:

(a) Element no. 3 above will be presumed to be satisfied if:

(1) The other airport is designated as a reliever airport for the first airport in the FAA's National Plan of Integrated Airport Systems ("NPIAS"); or

(2) The first airport is a congested airport; the other airport has been designated by the FAA as a secondary airport serving the community, metropolitan area or region served by the first airport; and adding airfield costs of the second airport to the rate base of the first airport during congested hours would have the effect of reducing or preventing congestion and operating delays at that airport in those hours.

7. Add a new subparagraph 2.5.4(e) to read as follows:

(e) Costs of the second airport that may be included in the rate base of the first airport are limited to customary airfield cost center charges. The total airfield revenue recovered from the users of both airports cannot exceed the total allowable costs of the two airports combined.

8. Add a new Section 6, Congested Airports to read as follows:

*Congested Airports*

6. Congested Airports

(a) The Department considers a currently congested airport to be—

(1) An airport at which the number of operating delays is one per cent or more of the total operating delays at the 55 airports with the highest number of operating delays; or

(2) An airport identified as congested by the Federal Aviation Administration listed in table 1 of the FAA's Airport Capacity Benchmark Report 2004, or the most recent version of the Airport Capacity Benchmark Report.

(b) The Department considers an airport to be a future congested airport if an airport is forecasted to meet a defined threshold level of congestion reported in the Future Airport Capacity Task 2 study entitled *Capacity Needs in the National Airspace System 2007–2025: An analysis of Airports and*

*Metropolitan Area Demand and Operational Capacity in the Future* (FACT 2 Report), or any update to that report that the FAA may publish from time-to-time.

(c) A congested hour is an hour during which demand exceeds average runway capacity resulting in volume-related delays, or is anticipated to do so.

6.1. Because charges provided in paragraphs 2.1.4, 2.5.3 and 2.5.4 to address congestion can result in higher fees for some or all operators, it is especially important for airport operators proposing such charges to provide carriers in advance the information listed in Appendix 1, with special emphasis on data, analysis and forecasts used to justify the charges.

6.2. The proprietor of a future congested airport may adopt measures to address congestion in accordance with paragraphs 2.1.4, 2.5.3 and 2.5.4 of this policy, if the measures will not take effect or have any effect on airfield charges until a time when the airport meets the definition of a congested airport in paragraph 6 (a) or is anticipated to do so. This kind of measure would typically identify the specific condition, e.g., operating delays that regularly exceed a certain level at the airport that would trigger the implementation of the special charges to address congestion.

6.3 An airport proprietor may exempt flights subsidized under the Essential Air Service Program from charges imposed under paragraphs 2.5.3 and 2.5.4 of this policy.

Issued in Washington, DC on July 8, 2008.

**Mary E. Peters,**

*Secretary of Transportation.*

**Robert A. Sturgell,**

*Acting Administrator, Federal Aviation Administration.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Burlington International Airport, South Burlington VT; FAA Approval of Noise Compatibility Program**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Burlington VT under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193)

and 14 CFR Part 150. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96-52 (1980). On June 23, 2008, the Airports Division Manager approved the Burlington International Airport noise compatibility program. All of the proposed program elements were approved.

**DATES:** *Effective Date:* The effective date of the FAA's approval of the Burlington International Airport noise compatibility program is June 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (781) 238-7613.

Documents reflecting this FAA action may be obtained from the same individual.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the Burlington International Airport noise compatibility program, effective June 23, 2008.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Burlington International Airport study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2011. The Burlington International Airport, Burlington VT requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on April 23, 2008, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a

program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 1 proposed action for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The Airports Division Manager therefore approved the program effective June 23, 2008.

One new administrative program measure was under consideration and it was approved. Residences within the 70dB DNL noise contour were eligible for land acquisition under the prior Plan, and that eligibility will now be extended to residences within the 65dB DNL contour. Various noise abatement and land use measures from the 1989 Noise Compatibility Plan were restated in this Record of Approval, so that all measures now in effect would be documented in the most recent Record of Approval.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Airports Division Manager on June 23, 2008. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Burlington International Airport, South Burlington VT.

Issued in Burlington, Massachusetts on June 23, 2008.

**LaVerne F. Reid,**

*Manager, Airports Division, FAA New England Region.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Proposed Modification of the Cleveland, OH Class B Airspace Area; Public Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces two fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to revise the Class B airspace area at Cleveland, OH. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal. All comments received during these meetings will be considered prior