



Federal Aviation Administration

Memorandum

Date: July 30, 2009

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

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

Prepared by: Jane Johnson and Sheryl Scarborough, Management and Program Analysts, APP-510

Subject: PFC Update, PFC 59-09

PFC 09-59.1. Completion of "For FAA Use" portions of Attachment B's. APP-510 is concerned that field offices may not be completing the "For FAA Use" portions of Attachment B's to a sufficient level of detail. This is of concern because, for those decisions which are at significant risk of litigation, the FAA's Final Agency Decision (FAD) is required to cite other projects and other decisions where they FAA has made findings similar to the ones being made in that particular FAD. For example, if the decision's total approval is over \$1 billion, we must cite other FAD's for over \$1 billion. Similarly, we have had to cite other new runway projects or new terminal projects when approving a new runway or new terminal to demonstrate the FAA's expertise in these types of projects. Citing a decision in a FAD makes that decision also subject to review by the Court, which means that those Attachment B's that are cited need to be as legally sufficient as the Attachment B's relating to the FAD. Since we cannot predict which projects or decisions will need to be cited in the future, all Attachment B's must meet the "legally sufficient" standard.

Specifically, it is not sufficient to simply "check boxes" where boxes on the "For FAA use" sections of the Attachment B are available. Rather, the FAA must use these sections to demonstrate its analysis of the various aspects of each project. To do this, the "comments" section in each "For FAA use" section must be filled in with written evidence of the FAA's analysis.

Because each project is unique, there is no way for APP-510 to provide boilerplate language for field offices to use for each item number of the Attachment B. However, in order to assist the field in completing these sections, APP-510 is providing the following guidance and examples. Please note that these examples are in no way all inclusive,

nor should they be copied verbatim. It should also be noted that some sections below might not apply to each project. Finally, the examples and guidance below only addresses projects that the FAA is recommending for full approval. If the FAA is recommending partial approval, the FAA's comments in the appropriate sections should address the reasons for partial approval in addition to the other analysis described below for the fully approvable portions of the project. Finally, if the FAA is recommending disapproval of the project, the appropriate FAA comments sections should address the reasons for the disapproval.

Item 4: Description. The comments area should be used to discuss disagreements with the public agency's description and/or provide clarification to the description. For example, the runway being rehabilitated is the main air carrier departure runway (which the public agency neglected to mention) or the runway is 100 feet by 5,000 feet rather than the 100 feet by 6,000 feet indicated by the public agency. Another type of clarification that could be put in here would be that the concourse where the proposed gates are to be added is currently occupied by airlines XX, YY, and ZZ.

Item 5: Justification. The PFC Order, in section 4-8 states:

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, this 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 FAA's comments must specifically demonstrate the FAA's analysis with respect to these three points. Even though item 8 also addresses PFC Objective and item 14 addresses project financing, the FAA's comments under Justification must briefly discuss the PFC objective and must also discuss the reasonableness of the cost of the project with respect to the objective being met.

In addition, the justification comments should include a citation of the mandate, inspection letter, or other requirement if the project is the result of an FAA inspection, advisory circular, or other mandate. For example, if the project involves the acquisition of a new ARFF vehicle or the replacement of an existing vehicle, the FAA should cite the airport's ARFF Index and that the vehicle is needed to meet the requirements of that Index. Similarly, the fact that a vehicle is included in the airport's Snow Removal Plan should be cited when commenting on the justification for snow removal equipment. If a Part 139 inspection determines that a pavement rehabilitation project is necessary, the Part 139 inspection report/letter should be cited. For new facilities, the FAA's comments should specifically address the public agency's rationale for the new facility and should state the FAA's analysis of the public agency's need of that new facility.

Item 7: Significant contribution.

An FAA finding that the project improves air safety or air security indicates that there is a significant safety or security deficiency that this project addresses. The FAA's analysis needs to discuss the current situation, from the FAA's viewpoint. The "For FAA Use" section also needs to discuss how this project will address the deficiency. (Note that statute and regulation limit what can be said about security requirements in a public document such as an Attachment B.)

An FAA finding that a project increases competition among air carriers must include the FAA's analysis of how this project will affect the barriers to air carrier competition at the airport. In addition, if the project is included in a competition plan, the FAA's analysis should include the appropriate citation.

An FAA finding that a project reduces current or anticipated congestion must include a discussion of the FAA's analysis of the congestion problem. This analysis may have previously been made in an environmental or other FAA document and, if so, that document should be cited (including page, section, and or paragraph numbers if possible). If the public agency states that the project is intended to reduce anticipated congestion, the FAA's analysis should discuss the likelihood of that future congestion and the documentation provided by the public agency to substantiate that future congestion.

An FAA finding that the project will reduce the impact of aviation noise on people living near the airport must cite the documentation used to make this finding. If the project is not located in the 65 DNL or higher noise contour, the FAA's discussion must include the specific information that resulted in the FAA's conclusion that the project is significant.

Item 8: PFC Objective.

An FAA finding that the project preserves safety, security, or capacity indicates that the project maintains the status quo at the airport, i.e. it is a rehabilitation or replacement project. Thus, the FAA's analysis needs to discuss, from the FAA's viewpoint, the current situation, for example the age and condition of the pavement being rehabilitated or the equipment being replaced.

An FAA finding that the project enhances safety or security indicates that there is a safety or security deficiency that this project addresses. Again, the FAA's analysis needs to discuss, from the FAA's viewpoint, the current situation. However, it also needs to discuss how this project will address the deficiency. (Note that statute and regulation limit what can be said about security requirements in a public document such as an Attachment B.)

An FAA finding that a project enhances capacity must include a discussion of the FAA's analysis of the capacity problem. This analysis may have previously been made in an environmental or other FAA document and, if so, that document should be cited (including page, section, and or paragraph numbers if possible). The FAA's comments on projects to enhance capacity to meet current demand should discuss if the FAA concurs that the current demand does exist. If the public agency states that the capacity improvement is intended to accommodate future demand, the FAA's analysis should discuss the likelihood of that future demand and the documentation provided by the public agency to substantiate that future demand.

An FAA finding that a project furnishes opportunities for enhanced competition between or among air carriers must include the FAA's analysis of how this project will affect the barriers to air carrier competition at the airport.

An FAA finding that the project will mitigate noise impacts resulting from aircraft operations at the airport must cite the documentation used to make this finding.

Item 9: Project eligibility. See section 4-6 of FAA Order 5500.1 for more information regarding PFC eligibility. In addition -

For snow removal equipment, the snow removal plan must be cited.

For security projects, the TSA letter must be cited.

For ARFF vehicles, the airport's ARFF Index must be cited.

For ARFF buildings or SRE storage buildings, the number of eligible pieces of equipment (thus corresponding to the eligible space needs) must be cited.

For noise mitigation projects where there is no approved Part 150 plan, the local document/plan where eligibility is established must be cited along with some statement to the effect that the FAA has reviewed this document/plan and that the plan is consistent with Part 150 type analysis.

For other projects where the AIP Handbook indicates that eligibility is established in a particular way, the FAA's comments must address how this project meets those requirements.

For terminal facilities such as baggage facilities (both incoming and outgoing), gates/loading bridges, hold rooms, and ticket counters, the leasing arrangements for the facility must be addressed. If the terminal facility is eligible under 49 U.S.C. 40117(a)(3)(F), the market share at the airport of the air carrier or carriers benefitting from the facility must be included.

For ground access projects, the FAA's comments must address whether the project is for exclusive airport access and whether the project will be located entirely on airport property or airport-owned rights-of-way.

Item 10: Estimated project implementation and completion dates.

In general, the FAA's comments should discuss any reasons that the FAA is aware of for the timing of the start or completion of the project. For example, if the public agency must wait for another action to occur before starting and/or completing the project, the FAA should note what that action is and the estimated timing of the action. For land acquisition, if the public agency intends to acquire the projects from willing sellers or as a result of eminent domain proceedings, those intentions should be noted here.

If the project includes multiple types of work, i.e. planning or design and construction or land acquisition and construction, the FAA's comments must address which element of the project the implementation date provided by the public agency applies to. Section 4-18c of Order 5500.1 should be reviewed for more information regarding project implementation requirements.

Item 11: Estimated Use application submission date.

In general, the FAA's comments should discuss any actions and, if known, the estimated schedule for those actions, needed before the use application can be submitted such as NEPA, ALP or airspace actions, feasibility studies, etc.

Items 12 and 13: Air carrier and public notice comments.

A statement that the FAA concurs in the public agency's responses is not adequate. Rather, the FAA's comments in this section should provide an analysis of the issues raised by the air carriers and/or the public.

Item 14: Financing plan. This item potentially involves several findings and each is addressed below:

- a. Reasonableness of total cost: The FAA needs to demonstrate analysis of the total project cost and its reasonableness. This can be done in part by referencing the cost of similar, specifically identified, projects, whether PFC or AIP funded.
- b. Reasonableness of PFC share of total cost: The FAA needs to demonstrate that the PFC share of the total cost is commensurate with the project eligibility. For example, if the FAA has earlier determined that the project is 75 percent PFC eligible, the FAA's analysis should discuss that the PFC share is no more than 75 percent of the total project cost.
- c. Adequacy of detailed cost information: The public agency is required to provide detailed cost information for projects with a PFC request of over \$10 million and the FAA's analysis of those detailed costs is discussed in this section. The discussion should include the identification of any line items identified as partially eligible or ineligible and the reasons for those findings (for example cost escalation or contingency amounts).
- d. AIP funding test: In addition to actually making the required finding here, the FAA comments must reference what data was used to make the finding, such as the ACIP dated 7/1/09, the SOAR AIP grant history report dated 6/2/09, etc.
- e. Airspace needs test: Similarly to the AIP funding test, in addition to actually making the required finding, the FAA comments must reference the data used to make the finding such as the master plan, Attachment A (i.e. CIP), Part 139 inspection findings, other FAA findings, etc.

Item 15: Back-up financing plan.

Many back up financing plans state that the public agency will collect additional PFCs to cover any shortfalls in proposed AIP funding. In those cases, the FAA's comments should discuss the potential additional duration of collection this would require.

If the back up financing plan involves using financing other than or in addition to additional PFCs, the FAA's comments should indicate if the public agency will need to obtain additional approvals, for example from the signatory carriers, in order to obtain that alternate source of financing.

ADO/RO recommendation section. Repeat or paraphrase your analysis contained in items 14 a and b. Also, if you are recommending partial approval of the project, you must repeat or paraphrase your analysis from earlier in the Attachment B where the partial approval decision was made.

Please ensure that your Attachment B mark-up of any pending applications as well as any applications received after this date comply with this guidance.

PFC 09-59.2. Consultation and Public Notice Validation. As is stated in the Preamble to the Final Rule associated with the Non-Hub Pilot Program, published in the Federal Register on March 23, 2005 (70 F.R. 14928-14938), the air carrier consultation and public notice are valid for a period of 6 months. If the public agency does not submit its application or amendment request within 6 months of the air carrier notice or meeting date (whichever is later) and public notice publication date, the public agency must undertake a new round of consultation and/or public notice. (See “Section-by-Section Comments”, specifically for Section 158.24.) Careful attention to this as part of a draft application review or pre-submittal meeting will help to prevent issues such as those outlined below from occurring.

Recently a medium hub airport submitted a draft application and review of this draft application revealed that the consultation and public notice dates were over 6 months old. The public agency was advised to re-do their consultation and public notice before formally submitting the application.

A different medium hub airport did not submit a draft application and review of the application concluded that the public notice and consultation dates were 8 months prior to formal submission of the application. This application was found not substantially complete and the public agency was advised to re-do their consultation and public notice.

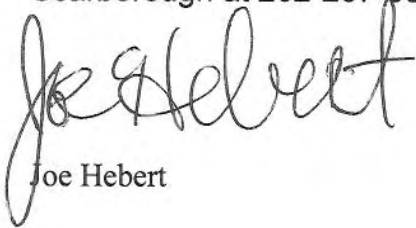
The final example is of a large hub airport who had submitted a draft application. The FAA determined that the consultation and public notice dates would expire in the near future and the public agency chose to formally submit the application immediately, even though they had not had time to fix all of the other issues and knew that the FAA would find the application not substantially complete, in order to avoid having to re-do their consultation and public notice.

PFC 09-59.3. Common Use Terminal Equipment Eligibility. Common use terminal equipment (regardless of acronym used or generation) is a hardware and software system whereby multiple airlines can use the same equipment for passenger check-in, airline gate functions, and other actions on a single kiosk or terminal. This kiosk has allowed the check-in process to be conducted at the ticket counter area as well as in areas away from traditional check-in counters. Many of these kiosks allow passengers to check in for flights, print boarding passes, and pay for services and upgrades for flights at ticket counters and in areas that were not previously available such as parking garages and hotels.

Terminal projects may not be revenue producing in order to be eligible for PFC funding. Most airlines charge fees for upgrades and services which are collected at any time during the check-in process. If the kiosk permits airlines to collect a fee for a ticket, any service, upgrade, or any other collection of money from the passenger, the device is revenue producing and, therefore, not eligible. The device may not be revenue producing for the airport either. Kiosks where an airport collects any compensation (such as parking fees) are also not eligible for PFC funding.

When a public agency applies for a common use terminal equipment project (regardless of the acronym used), the FAA will need to review the intended function of the devices to determine which, if any devices may be used for charging passengers. Any equipment which will be used in collecting revenue is not PFC eligible. In addition to examining any current or future PFC applications for these common use terminal equipment projects, the FAA field office should review any previously approved common use terminal equipment projects which may contain such ineligible devices. If the public agency included such devices in the project, the public agency must immediately request an amendment to the project to remove the ineligible portion of the project.

If you have questions, please contact Jane Johnson at 202-267-5878 or Sheryl Scarborough at 202-267-8825.

A handwritten signature in black ink, appearing to read "Joe Hebert". The signature is written in a cursive, flowing style.

Joe Hebert