

§ 158.17

with less than 50 percent of the annual passenger boardings at an airport, 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.

(c) An eligible project must be adequately justified to qualify for PFC funding.

[Doc. No. 26385, 56 FR 24278, May 29, 1991; 56 FR 37127, Aug. 2, 1991; Amdt. 158-2, 65 FR 34541, May 30, 2000]

§ 158.17 Project eligibility at PFC levels of \$4 or \$4.50.

(a) A project for any airport is eligible for PFC funding at levels of \$4 or \$4.50 if—

(1) The project meets the eligibility requirements of § 158.15;

(2) The project costs requested for collection at \$4 or \$4.50 cannot be paid for from funds reasonably expected to be available for the programs referred to in 49 U.S.C. 48103; and

(3) In the case of a 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.

(b) In addition, a project for a medium or large airport is only eligible for PFC funding at levels of \$4 or \$4.50 if 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.

[Doc. No. FAA-2000-7402, 65 FR 34541, May 30, 2000]

§ 158.19 Requirement for competition plans.

(a) Beginning in fiscal year 2001, no public agency may impose a PFC with respect to a covered airport unless the public agency has submitted a written competition plan. This requirement does not apply to PFC authority approved prior to April 5, 2000.

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(b) The Administrator will review any plan submitted under paragraph (a) of this section to ensure that it meets the requirements of 49 U.S.C. 47106(f) and periodically will review its implementation to ensure that each covered airport successfully implements its plan.

[Doc. No. FAA-2000-7402, 65 FR 34541, May 30, 2000]

Subpart B—Application and Approval

§ 158.21 General.

This subpart specifies the consultation and application requirements under which a public agency may obtain approval to impose a PFC and use PFC revenue on a project. This subpart also establishes the procedure for the Administrator's review and approval of applications and amendments and establishes requirements for use of excess PFC revenue.

§ 158.23 Consultation with air carriers and foreign air carriers.

(a) *Notice by public agency.* A public agency must provide written notice to air carriers and foreign air carriers having a significant business interest at the airport where the PFC is proposed. A public agency must provide this notice before the public agency files an application with the FAA for authority to impose a PFC under § 158.25(b). In addition, public agencies must provide this notice before filing an application with the FAA for authority to use PFC revenue under § 158.25(c). Public agencies must also provide this notice before filing a notice of intent to impose and/or use a PFC under § 158.30. Finally, a public agency must provide this notice before filing a request to amend the FAA's decision with respect to an approved PFC as discussed in § 158.37(b)(1). The notice shall include:

(1) Descriptions of projects being considered for funding by PFC's;

(2) The PFC level for each project, the proposed charge effective date, the estimated charge expiration date, and the estimated total PFC revenue;

(3) For a request by a public agency that any class or classes of carriers not be required to collect the PFC—

(i) The designation of each such class,

(ii) The names of the carriers belonging to each such class, to the extent the names are known.

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

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

(4) Except as provided in § 158.25(c)(2), 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.

(b) *Meeting.* The meeting required by paragraph (a)(4) of this section shall be held no sooner than 30 days nor later than 45 days after issuance of the written notice required by paragraph (a) of this section. At or before the meeting, the public agency shall provide air carriers and foreign air carriers with—

(1) A description of projects;

(2) An explanation of the need for the projects; and

(3) A detailed financial plan for the projects, including—

(i) The estimated allowable project costs allocated to major project elements;

(ii) The anticipated total amount of PFC revenue that will be used to finance the projects; and

(iii) The source and amount of other funds, if any, needed to finance the projects.

(c) *Requirements of air carriers and foreign air carriers.* (1) Within 30 days following issuance of the notice required by paragraph (a) of this section, each carrier must provide the public agency with a written acknowledgement that it received the notice.

(2) Within 30 days following the meeting, each carrier must provide the public agency with a written certification of its agreement or disagreement with the proposed project. A certification of disagreement shall contain the reasons for such disagreement. The absence of such reasons shall void a certification of disagreement.

(3) If a carrier fails to provide the public agency with timely acknowledgement of the notice or timely certification of agreement or disagreement with the proposed project, the carrier is considered to have certified its agreement.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34541, May 30, 2000; Amdt. 158-3, 70 FR 14934, Mar. 23, 2005]

§ 158.24 Notice and opportunity for public comment.

(a)(1) *Notice by public agency.* A public agency must provide written notice and an opportunity for public comment before:

(i) Filing an application with the FAA for authority to impose a PFC under § 158.25(b);

(ii) Filing an application with the FAA for authority to use PFC revenue under § 158.25(c);

(iii) Filing a notice of intent to impose and/or use a PFC under § 158.30; and

(iv) Filing a request to amend a previously approved PFC as discussed in § 158.37(b)(1).

(2) The notice must allow the public to file comments for at least 30 days, but no more than 45 days, after the date of publication of the notice or posting on the public agency's Web site, as applicable.

(b)(1) *Notice contents.* The notice required by § 158.24(a) must include:

(i) A description of the project(s) the public agency is considering for funding by PFC's;

(ii) A brief justification for each project the public agency is considering for funding by PFC's;

(iii) The PFC level for each project;

(iv) The estimated total PFC revenue the public agency will use for each project;

(v) The proposed charge effective date for the application or notice of intent;

(vi) The estimated charge expiration date for the application or notice of intent;

(vii) The estimated total PFC revenue the public agency will collect for the application or notice of intent; and

(viii) The name of and contact information for the person within the public