

**§ 157.7 FAA determinations.**

(a) The FAA will conduct an aeronautical study of an airport proposal and, after consultations with interested persons, as appropriate, issue a determination to the proponent and advise those concerned of the FAA determination. The FAA will consider matters such as the effects the proposed action would have on existing or contemplated traffic patterns of neighboring airports; the effects the proposed action would have on the existing airspace structure and projected programs of the FAA; and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal. While determinations consider the effects of the proposed action on the safe and efficient use of airspace by aircraft and the safety of persons and property on the ground, the determinations are only advisory. Except for an objectionable determination, each determination will contain a determination-void date to facilitate efficient planning of the use of the navigable airspace. A determination does not relieve the proponent of responsibility for compliance with any local law, ordinance or regulation, or state or other Federal regulation. Aeronautical studies and determinations will not consider environmental or land use compatibility impacts.

(b) An airport determination issued under this part will be one of the following:

(1) *No objection.*

(2) *Conditional.* A conditional determination will identify the objectionable aspects of a project or action and specify the conditions which must be met and sustained to preclude an objectionable determination.

(3) *Objectionable.* An objectionable determination will specify the FAA's reasons for issuing such a determination.

(c) *Determination void date.* All work or action for which notice is required by this sub-part must be completed by the determination void date. Unless otherwise extended, revised, or terminated, an FAA determination becomes invalid on the day specified as the determination void date. Interested persons may, at least 15 days in advance of

the determination void date, petition the FAA official who issued the determination to:

(1) Revise the determination based on new facts that change the basis on which it was made; or

(2) Extend the determination void date. Determinations will be furnished to the proponent, aviation officials of the state concerned, and, when appropriate, local political bodies and other interested persons.

**§ 157.9 Notice of completion.**

Within 15 days after completion of any airport project covered by this part, the proponent of such project shall notify the FAA Airport District Office or Regional Office by submission of FAA Form 5010-5 or by letter. A copy of FAA Form 5010-5 will be provided with the FAA determination.

**PART 158—PASSENGER FACILITY CHARGES (PFC'S)****Subpart A—General**

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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 multi-phased 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.

*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

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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 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.

*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]

## § 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

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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, 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 more than one percent of the total number of passengers enplaned annually at the airport at which the fee is imposed; or

(2) Passengers enplaned on a flight to an airport—

(i) That has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or

(ii) In a community that has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

(b) The public agency may request this exclusion authority under paragraph (a)(1) or (a)(2) of this section or both.

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

**§ 158.13 Use of PFC revenue.**

PFC revenue, including any interest earned after such revenue has been remitted to a public agency, may be used only to finance the allowable costs of approved projects at any airport the public agency controls.

(a) *Total cost.* PFC revenue may be used to pay all or part of the allowable cost of an approved project.

(b) *Bond-associated debt service and financing costs.* (1) PFC revenue may be used to pay debt service and financing costs incurred on that portion of a bond issued to carry out approved projects.

(2) If bond documents require that PFC revenue be commingled in the general revenue stream of the airport controlled by the public agency and pledged generally for the benefit of holders of obligations issued thereunder, PFC revenue is deemed to have been used to pay the costs covered in § 158.13 (b)(1) if—

(i) An amount equal to that portion of the proceeds of the bond issued to carry out approved projects is used to pay allowable costs of such projects; and

(ii) To the extent that the amount of PFC revenue collected in any year exceeds the amount of debt service and financing costs on such bonds during that year, an amount equal to the excess is applied as required by § 158.39.

(c) *Combination of PFC revenue and Federal grant funds.* A public agency may use a combination of PFC revenue and airport grant funds to accomplish an approved project. Such projects shall be subject to the recordkeeping and auditing requirements set forth in subpart D of this part, in addition to the reporting, recordkeeping and auditing requirements imposed pursuant to the Airport and Airway Improvement Act of 1982 (AAIA).

(d) *Non-Federal share.* PFC revenue may be used to meet the non-Federal share of the cost of projects funded under the Federal airport grant program.

(e) *Approval of project following approval to impose a PFC.* The public agency shall not use PFC revenue or interest earned thereon except on an approved project.

**§ 158.15 Project eligibility at PFC levels of \$1, \$2, or \$3.**

(a) To be eligible, a project must—

(1) Preserve or enhance safety, security, or capacity of the national air transportation system;

(2) Reduce noise or mitigate noise impacts resulting from an airport; or

(3) Furnish opportunities for enhanced competition between or among air carriers.

(b) Eligible projects are any of the following projects—

(1) Airport development eligible under subchapter I of chapter 471 of 49 U.S.C.;

(2) Airport planning eligible under subchapter I of chapter 471 of 49 U.S.C.;

(3) Terminal development as described in 49 U.S.C. 47110(d);

(4) Airport noise compatibility planning as described in 49 U.S.C. 47505;

(5) Noise compatibility measures eligible for Federal assistance under 49 U.S.C. 47504, without regard to whether

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the measures have been approved pursuant to 49 U.S.C. 47504; or

(6) Construction of gates and related areas at which passengers are enplaned or deplaned and other areas directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport. These areas do not include restaurants, car rental facilities, automobile parking facilities, or other concessions. In the case of a project required to enable additional air service by an air carrier 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

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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.

(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.* Prior to submitting an application to the FAA for authority to impose a PFC under § 158.25(b) and for project approval under § 158.25(c), a public agency shall provide written notice to all air carriers and foreign air carriers operating at the airport except those air carriers that the public agency may choose to request not to collect PFC's as provided by § 158.11. 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]

#### § 158.25 Applications.

(a) *General.* This section specifies the information to be submitted by a public agency when applying for the authority to impose a PFC and for the authority to use PFC revenue on a project. A public agency may apply for the authority to impose a PFC at any commercial service airport it controls to finance airport-related projects to be carried out at that airport or at any existing or proposed airport which the public agency controls. A public agency may apply for the authority to impose a PFC in advance of or concurrent with an application to use PFC revenue. Applications shall be submitted in a manner and form prescribed by the Administrator and shall include the information required under paragraphs (b) or (c), or both, of this section.

(b) *Application for authority to impose a PFC.* This paragraph sets forth the information to be submitted by all public agencies seeking authority to impose a PFC. A separate application shall be submitted for each airport at which a PFC is to be imposed. The application shall be signed by an authorized official of the public agency, and, unless otherwise authorized by the Administrator, must include the following:

(1) The name and address of the public agency.

(2) The name and telephone number of the official submitting the application on behalf of the public agency.

(3) The official name of the airport at which the PFC is to be imposed.

(4) The official name of the airport at which a project is proposed.

(5) A copy of the airport capital plan or other documentation of planned improvements for each airport at which a PFC financed project is proposed.

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(6) A description of each project proposed.

(7) The project justification, including the extent to which the project achieves one or more of the objectives set forth in §158.15(a) and (if a PFC level above \$3 is requested) the requirements of §158.17. In addition—

(i) For any project for terminal development, including gates and related areas, the public agency shall discuss any existing conditions that limit competition between and among air carriers and foreign air carriers at the airport, any initiatives it proposes to foster opportunities for enhanced competition between and among such carriers, and the expected results of such initiatives; or

(ii) For any terminal development project at a covered airport, the public agency shall submit a competition plan in accordance with §158.19.

(8) The charge to be imposed for each project.

(9) The proposed charge effective date.

(10) The estimated charge expiration date.

(11) A summary of consultation with air carriers and foreign air carriers operating at the airport, including—

(i) A list of such carriers and those notified;

(ii) A list of carriers that acknowledged receipt of the notice provided §158.23(a);

(iii) Lists of carriers that certified agreement and that certified disagreement with the project; and

(iv) A summary of substantive comments by carriers contained in any certifications of disagreement with the project, and the public agency's reasons for proceeding.

(12) If the public agency is also filing a request under §158.11—

(i) The request;

(ii) A copy of the information provided to the carriers under §158.23(a)(3);

(iii) A copy of the carriers' comments with respect to such information;

(iv) A list of any class or classes of carriers that would not be required to collect a PFC if the request is approved; and

(v) The public agency's reasons for submitting the request in the face of any opposing comments.

(13) A copy of information regarding the financing of the project presented to the carriers and foreign air carriers under §158.23 of this part and as revised during consultation.

(14) For an application not accompanied by a concurrent application for authority to use PFC revenue:

(i) A description of any alternative methods being considered by the public agency to accomplish the objectives of the project;

(ii) A description of alternative uses of the PFC revenue to ensure such revenue will be used only on eligible projects in the event the proposed project is not approved;

(iii) A timetable with projected dates for completion of project formulation activities and submission of an application to use PFC revenue; and

(iv) A projected date of project implementation and completion.

(15) A signed statement certifying that the public agency will comply with the assurances set forth in Appendix A to this part.

(16) Such additional information as the Administrator may require.

(c) *Application for authority to use PFC revenue.* A public agency may use PFC revenue only for projects approved under this paragraph. This paragraph sets forth the information that a public agency shall submit, unless otherwise authorized by the Administrator, when applying for the authority to use PFC revenue to finance specific projects.

(1) An application submitted concurrently with an application for the authority to impose a PFC, must include:

(i) The information required under paragraphs (b) (1) through (13) of this section;

(ii) A signed certification that—

(A) For projects required to be shown on an ALP, the ALP depicting the project has been approved by the FAA and the date of such approval;

(B) All environmental reviews required by the National Environmental Policy Act (NEPA) of 1969 have been completed and a copy of the final FAA environmental determination with respect to the project has been approved, and the date of such approval, if such determination is required; and

(C) The final FAA airspace determination with respect to the project

has been completed, and the date of such determination, if an airspace study is required.

(iii) The estimated project implementation date, schedule and completion date; and

(iv) The information required by § 158.25(b)(15) and (16).

(2) An application where the authority to impose a PFC has previously been approved—

(i) Shall be preceded by further consultation with air carriers and foreign air carriers as set forth under § 158.23 of this part, except that the meeting required under § 158.23(a)(4) is optional; and

(ii) Shall include, in addition to a summary of further consultation conducted under paragraph (c)(2)(i) of this section, the following, updated and revised where appropriate—

(A) The information required by paragraphs (b) (1), (2), (4), (5), (6), (7), (10) and (13) of this section;

(B) The information required by paragraph (c)(1)(ii) of this section; and

(C) The information required by paragraphs (b) (15) and (16) of this section.

[Doc. No. 26385, 56 FR 24278, May 29, 1991; 56 FR 37127, Aug. 2, 1991; Amdt. 158-2, 65 FR 34542, May 30, 2000]

#### § 158.27 Review of applications.

(a) *General.* This section describes the process for review of all applications filed under § 158.25 of this part.

(b) *Determination of completeness.* Within 30 days after receipt of an application by the FAA Airports office, the Administrator determines whether the application substantially complies with the requirements of § 158.25.

(c) *Process for substantially complete application.* If the Administrator determines the application is substantially complete, the following procedures apply:

(1) The Administrator advises the public agency by letter that its application is substantially complete.

(2) The Administrator publishes a notice in the FEDERAL REGISTER advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (e) of this section. A copy of the notice is also provided to the public agency.

(3) The public agency—

(i) Shall make available for inspection, upon request, a copy of the application, notice, and other documents germane to the application, and

(ii) May publish the notice in a newspaper of general circulation in the area where the airport covered by the application is located.

(4) Following review of the application and public comments, the Administrator issues a final decision approving or disapproving the application, in whole or in part, no later than 120 days after the application was received by the FAA Airports office.

(d) *Process for applications not substantially complete.* If the Administrator determines an application is not substantially complete, the following procedures apply:

(1) The Administrator notifies the public agency in writing that its application is not substantially complete. The notification will list the information required to complete the application.

(2) Within 15 days after the Administrator sends such notification, the public agency shall advise the Administrator in writing whether it intends to supplement its application.

(3) If the public agency declines to supplement the application, the Administrator follows the procedures for review of an application set forth in paragraph (c) of this section and issues a final decision approving or disapproving the application, in whole or in part, no later than 120 days after the application was received by the FAA Airports office.

(4) If the public agency supplements its application, the original application is deemed to be withdrawn for purposes of applying the statutory deadline for the Administrator's decision. Upon receipt of the supplement, the Administrator issues a final decision approving or disapproving the supplemented application, in whole or in part, no later than 120 days after the supplement was received by the FAA Airports office.

(e) *The Federal Register notice.* The FEDERAL REGISTER notice includes the following information:

(1) The name of the public agency and the airport at which the PFC is to be imposed;

(2) A brief description of the PFC project, the level of the proposed PFC, the proposed charge effective date, the proposed charge expiration date and the total estimated PFC revenue;

(3) The address and telephone number of the FAA Airports office at which the application may be inspected;

(4) The Administrator's determination on whether the application is substantially complete and any information required to complete the application; and

(5) The due dates for any public comments.

(f) *Public comments.* (1) Interested persons may file comments on the application within 30 days after publication of the Administrator's notice in the FEDERAL REGISTER.

(2) Three copies of these comments shall be submitted to the FAA Airports office identified in the FEDERAL REGISTER notice.

(3) Commenters shall also provide one copy of their comments to the public agency.

(4) Comments from air carriers and foreign air carriers may be in the same form as provided to the public agency under § 158.23.

[Doc. No. 26385, 56 FR 24278, May 29, 1991; 56 FR 30867, July 8, 1991]

**§ 158.29 The Administrator's decision.**

(a) *Authority to impose a PFC.* (1) An application to impose a PFC will be approved in whole or in part only after a determination that—

(i) The amount and duration of the PFC will not result in revenue that exceeds amounts necessary to finance the project;

(ii) The project will achieve the objectives and criteria set forth in § 158.15;

(iii) If a PFC level above \$3 is being approved, the project meets the criteria set forth in § 158.17;

(iv) The collection process, including any request by the public agency not to require a class of carriers to collect PFC's, is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law;

(v) The public agency has not been found to be in violation of 49 U.S.C. 47524 and 47526;

(vi) The public agency has not been found to be in violation of 49 U.S.C. 47107(b) governing the use of airport revenue;

(vii) If the public agency has not applied for authority to use PFC revenue, a finding that there are alternative uses of the PFC revenue to ensure that such revenue will be used on approved projects; and

(viii) If applicable, the public agency has submitted a competition plan in accordance with § 158.19.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the projects and alternative uses that may qualify for PFC financing under § 158.15, and (if a PFC level above \$3 is being approved) § 158.17, PFC level, total approved PFC revenue including the amounts approved at \$3 and less, \$4, and/or \$4.50, duration of authority to impose and earliest permissible charge effective date.

(b) *Authority to use PFC revenue on an approved project.* (1) An application for authority to use PFC revenue will be approved in whole or in part only after a determination that—

(i) The amount and duration of the PFC will not result in revenue that exceeds amounts necessary to finance the project;

(ii) The project will achieve the objectives and criteria set forth in § 158.15;

(iii) If a PFC level above \$3 is being approved, the project meets the criteria set forth in § 158.17; and

(iv) All applicable requirements pertaining to the ALP for the airport, airspace studies for the project, and the National Environmental Policy Act of 1969 (NEPA), have been satisfied.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the approved projects, PFC level, total approved PFC revenue, total approved for collection, including the amounts approved at \$3 and less, \$4, and/or \$4.50, and any limit on the duration of authority to impose a PFC as prescribed under § 158.33.

(3) Approval to use PFC revenue to finance a project shall be construed as approval of that project.

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(c) *Disapproval of application.* (1) If an application is disapproved, the Administrator notifies the public agency in writing of the decision and the reasons for the disapproval.

(2) A public agency reapplying for approval to impose or use a PFC shall comply with §§158.23 and 158.25 of this part.

(d) The Administrator publishes a monthly notice of PFC approvals and disapprovals in the FEDERAL REGISTER.

[Doc. No. 26385, 56 FR 24278, May 29, 1991; 56 FR 30867, July 8, 1991; Amdt. 158-2, 65 FR 34542, May 30, 2000]

### § 158.31 Duration of authority to impose a PFC after project implementation.

A public agency that has begun implementation of a project approved under §158.29 is authorized to impose a PFC until—

(a) The charge expiration date is reached;

(b) The total PFC revenue collected plus interest thereon will equal the allowable cost of the approved project;

(c) The authority to collect the PFC is terminated by the Administrator under subpart E of this part; or

(d) The public agency is determined by the Administrator to be in violation of 49 U.S.C. 47524 and 47526, and the authority to collect the PFC is terminated under that statute's implementing regulations under this title.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34542, May 30, 2000]

### § 158.33 Duration of authority to impose a PFC before project implementation.

(a) A public agency shall not impose a PFC beyond the lesser of the following—

(1) 2 years after approval to use PFC revenue on an approved project if the project has not been implemented, or

(2) 5 years after the charge effective date if an approved project is not implemented.

(b) If, in the Administrator's judgment, the public agency has not made sufficient progress toward implementation of an approved project within the times specified in paragraph (a) of this section, the Administrator begins ter-

mination proceedings under subpart E of this part.

(c) The authority to impose a PFC following approval shall automatically expire without further action by the Administrator on the following dates:

(1) 3 years after the charge effective date unless—

(i) The public agency has filed an application for approval to use PFC revenue for an eligible project that is pending before the FAA;

(ii) An application to use PFC revenue has been approved; or

(iii) A request for extension (not to exceed 2 years) to submit an application for project approval, under §158.35, has been granted; or

(2) 5 years after the charge effective date unless the public agency has obtained project approval.

(d) If the authority to impose a PFC expires under paragraph (c) of this section, the public agency must provide the FAA with a list of the air carriers and foreign air carriers operating at the airport and all other collecting carriers that have remitted PFC revenue to the public agency in the preceding 12 months. The FAA notifies each of the listed carriers to terminate PFC collection no later than 30 days after the date of notification by the FAA.

(e) Restriction on reauthorization to impose a PFC. Whenever the authority to impose a PFC has expired or been terminated under this section, the Administrator will not grant new approval to impose a PFC in advance of implementation of an approved project.

[Doc. No. 26385, 56 FR 24278, May 29, 1991; 56 FR 37127, Aug. 2, 1991]

### § 158.35 Extension of time to submit application to use PFC revenue.

(a) A public agency may request an extension of time to submit an application to use PFC revenue after approval of an application to impose PFC's. At least 30 days prior to submitting such request, the public agency shall publish notice of its intention to request an extension in a local newspaper of general circulation and shall request comments. The notice shall include progress on the project, a revised schedule for obtaining project approval and reasons for the delay in submitting the application.

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(b) The request shall be submitted at least 120 days prior to the charge expiration date and, unless otherwise authorized by the Administrator, shall be accompanied by the following:

(1) A description of progress on the project application to date.

(2) A revised schedule for submitting the application.

(3) An explanation of the reasons for delay in submitting the application.

(4) A summary financial report depicting the total amount of PFC revenue collected plus interest, the projected amount to be collected during the period of the requested extension, and any public agency funds used on the project for which reimbursement may be sought.

(5) A summary of any further consultation with air carriers and foreign air carriers operating at the airport.

(6) A summary of comments received in response to the local notice.

(c) The Administrator reviews the request for extension and accompanying information, to determine whether—

(1) The public agency has shown good cause for the delay in applying for project approval;

(2) The revised schedule is satisfactory; and

(3) Further collection will not result in excessive accumulation of PFC revenue.

(d) The Administrator, upon determining that the agency has shown good cause for the delay and that other elements of the request are satisfactory, grants the request for extension to the public agency. The Administrator advises the public agency in writing not more than 90 days after receipt of the request. The duration of the extension shall be as specified in §158.33 of this part.

**§ 158.37 Amendment of approved PFC.**

(a) A public agency may, without consultation or approval by the Administrator, institute a decrease in the level of PFC to be collected from each passenger, institute a decrease in the total PFC revenue, or an increase in the total approved PFC revenue of 15 percent or less. The public agency shall notify the collecting carriers and the FAA in writing of these changes. Any new charge will be effective on the first

day of a month which is at least 60 days from the time the public agency notifies the carriers.

(b) Subject to paragraph (b)(1) or (b)(2) of this section, an approved PFC may be amended to increase the level of PFC to be collected from each passenger, increase the total approved PFC revenue by more than 15 percent, materially alter the scope of an approved project, establish a new class of carriers under §158.11 or amend any such class previously approved. The public agency must submit to the Administrator a notification of any proposal to institute such an amendment. Such notification shall include written evidence of further consultation with and agreement or disagreement by the air carriers and foreign air carriers operating at the airport, justification for the amendment, and such other information as may be requested by the Administrator.

(1) With the exception of a change in PFC level to more than \$3 or an amendment of a PFC that is subject to a competition plan under §158.19, in the event of no carrier disagreement with a change proposed under this paragraph (b), the public agency may institute the proposed amendment unless, within 30 days after providing the notification required under this paragraph (b), it is notified otherwise by the Administrator.

(i) If a PFC level of more than \$3 is requested, the Administrator notifies the public agency that the conditions of §158.17 have been met before the higher level can be instituted.

(ii) If a PFC amendment that is subject to the competition plan requirement is submitted, the Administrator notifies the public agency that the plan satisfies the requirements of §158.19.

(iii) The public agency shall notify the carriers of the effective date of any change to the approved PFC resulting from the amendment, subject to the limitation that the effective date of any new charge shall be no earlier than the first day of a month which is at least 60 days from the time the public agency notifies the carriers.

(2) In the event of any carrier disagreement with a change proposed under paragraph (b) of this section, the public agency shall submit a request to

the Administrator that the proposed amendment be approved. In addition to the notification and written evidence required under that paragraph, the public agency shall submit the reasons presented by the carriers for disagreeing with the proposed amendment, its reasons for requesting the amendment in the face of such disagreement, and such other information as may be requested by the Administrator. The Administrator reviews and approves or disapproves the amendment within 120 days of receipt of the request following such consultation, public notice and opportunity for comment as the Administrator may deem appropriate. If the amendment is approved, the Administrator advises the public agency and notification to the carriers will be as provided under paragraph (b)(1) of this section. If a PFC level of more than \$3 is requested, the Administrator must find that the conditions of § 158.17, and § 158.19 if applicable, have been met before that PFC level can be instituted. If the amendment is approved, the Administrator advises the public agency and notification to the carriers will be as provided under paragraph (b)(1) of this section. The notification to the carrier includes any findings required by § 158.17 or § 158.19.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34542, May 30, 2000]

**§ 158.39 Use of excess PFC revenue.**

(a) If the amount of PFC revenue remitted to the public agency, plus interest, exceeds allowable costs of the project, excess funds shall be used for approved projects or retirement of outstanding PFC-financed bonds.

(b) For bond-financed projects, any excess PFC revenue collected under debt servicing requirements shall be retained by the public agency and used for approved projects or retirement of outstanding PFC-financed bonds.

(c) When the authority to impose a PFC has expired or has been terminated, accumulated PFC revenue shall be used for approved projects or retirement of outstanding PFC-financed bonds.

(d) Within 30 days after the authority to impose a PFC has expired or has

been terminated, the public agency shall present a plan to the appropriate FAA Airports office to begin using accumulated PFC revenue. The plan shall include a timetable for the submission of any necessary application under § 158.25(c) of this part. If the public agency fails to submit such a plan or if the plan is not acceptable to the Administrator, the Administrator offsets Federal airport grant program apportioned funds.

**Subpart C—Collection, Handling, and Remittance of PFC's**

**§ 158.41 General.**

This subpart contains the requirements for notification, collection, handling and remittance of PFC's.

**§ 158.43 Public agency notification to collect PFC's.**

(a) Following approval of an application to impose a PFC under subpart B of this part, the public agency shall notify the air carriers and foreign air carriers required to collect PFC's at its airport of the Administrator's approval. Each notified carrier shall notify its agents, including other issuing carriers, of the collection requirement.

(b) The notification shall be in writing and contain at a minimum the following information:

(1) The level of PFC to be imposed.

(2) The total revenue to be collected.

(3) The charge effective date which will be the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC.

(4) The proposed charge expiration date.

(5) A copy of the Administrator's notice of approval.

(6) The address where remittances and reports are to be filed by carriers.

(c) The public agency shall notify carriers required to collect PFC's at its airport of changes in the charge expiration date. Each notified carrier shall notify its agents, including other issuing carriers, of such changes.

(d) The public agency shall provide a copy of the notification to the appropriate FAA Airports office.

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**§ 158.45 Collection of PFC's on tickets issued in the U.S.**

(a) On and after the charge effective date, tickets issued in the U.S. shall include the required PFC except as provided in paragraphs (c) and (d) of this section.

(1) Issuing carriers shall be responsible for all funds from time of collection to remittance.

(2) The appropriate charge is the PFC in effect at the time the ticket is issued.

(3) Issuing carriers and their agents shall collect the PFC's based upon the itinerary at the time of issuance. Any changes in itinerary that are initiated by a passenger that require an adjustment to the amount paid by the passenger are subject to collection or refund of the PFC as appropriate.

(b) Issuing carriers and their agents shall note as a separate item on each air travel ticket upon which a PFC is shown, the total amount of PFC's paid by the passenger and the airports for which the PFC's are collected.

(c) For each one-way trip shown on the complete itinerary of an air travel ticket, issuing air carriers and their agents shall collect a PFC from a passenger only for the first two airports where PFC's are imposed. For each round trip, a PFC shall be collected only for enplanements at the first two enplaning airports and the last two enplaning airports where PFC's are imposed.

(d) In addition to the restriction in paragraph (c) of this section, issuing carriers and their agents shall not collect PFC's from a passenger covered by any of the other limitations described in §158.9(a).

(e) Collected PFC's shall be distributed as noted on the air travel ticket.

(f) Issuing carriers and their agents shall stop collecting the PFC's on the charge expiration date stated in a notice from the public agency, or as required by the Administrator.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34542, May 30, 2000]

**§ 158.47 Collection of PFC's on tickets issued outside the U.S.**

(a) With respect to tickets issued outside the U.S., an air carrier or for-

eign air carrier may follow the requirements of either §158.45 of this part or this section.

(b) Notwithstanding any other provisions of this part, no foreign airline is required to collect a PFC on air travel tickets issued on its own ticket stock unless it serves a point or points in the U.S.

(c) If an air carrier or foreign air carrier elects not to comply with §158.45 for tickets issued outside the U.S.—

(1) The carrier is required to collect PFC's on such tickets only for the public agency controlling the last airport at which the passenger is enplaned prior to departure from the U.S.

(2) The carrier may collect the PFC either at the time the ticket is issued or at the time the passenger is last enplaned prior to departure from the U.S. The carrier may vary the method of collection among its flights.

(3) The carrier shall provide a written record to the passenger that a PFC has been collected. Such a record shall appear on or with the air travel ticket and shall include the same information as required by §158.45(b), but need not be preprinted on the ticket stock.

(4) The carrier shall collect the PFC based upon the itinerary at the time of issuance. Any changes in itinerary that are initiated by a passenger and that require an adjustment of the amount paid by the passenger are subject to collection or refund of the PFC as appropriate.

(d) With respect to a flight on which the air carrier or foreign air carrier chooses to collect the PFC at the time the air travel ticket is issued—

(1) The carrier and its agents shall collect the required PFC on tickets issued on or after the charge effective date.

(2) The carrier is not required to collect PFC's at the time of enplanement for tickets sold by other air carriers or foreign air carriers or their agents.

(e) With respect to a flight on which the air carrier or foreign air carrier chooses to collect the PFC at the time of enplanement, the carrier shall examine the air travel ticket of each passenger enplaning at the airport on and after the charge effective date and shall collect the PFC from any passenger whose air travel ticket does not

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include a written record indicating that the PFC was collected at the time of issuance.

(f) Collected PFC's shall be distributed as noted on the written record provided to the passenger.

(g) Collecting carriers shall be responsible for all funds from time of collection to remittance.

(h) Collecting carriers and their agents shall stop collecting the PFC on the charge expiration date stated in a notice from the public agency, or as required by the Administrator.

[Doc. No. 26385, 56 FR 24278, May 29, 1991; 56 FR 37127, Aug. 2, 1991]

### § 158.49 Handling of PFC's.

(a) Collecting carriers shall establish and maintain a financial management system to account for PFC's in accordance with the Department of Transportation's Uniform System of Accounts and Reports (14 CFR part 241). For carriers not subject to 14 CFR part 241, such carriers shall establish and maintain an accounts payable system to handle PFC revenue with subaccounts for each public agency to which such carrier remits PFC revenue.

(b) PFC revenue must be accounted for separately by collecting carriers, but the revenue may be commingled with the carrier's other sources of revenue. The PFC revenues that are held by an air carrier or an agent of the carrier after collection of a PFC constitute a trust fund that is held by the air carrier or agent for the beneficial interest of the public agency imposing the PFC. Such carrier or agent holds neither legal nor equitable interest in the PFC revenues except for any handling fee or retention of interest collected on unremitted proceeds as authorized in §158.53.

(c) Each collecting carrier shall be required to disclose the existence and amount of funds regarded as trust funds in financial statements.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34542, May 30, 2000]

### § 158.51 Remittance of PFC's.

Passenger facility charges collected by carriers shall be remitted to the public agency on a monthly basis. PFC

revenue recorded in the accounting system of the carrier, as set forth in §158.49 of this part, shall be remitted to the public agency no later than the last day of the following calendar month (or if that date falls on a weekend or holiday, the first business day thereafter).

### § 158.53 Collection compensation.

As compensation for collecting, handling and remitting the PFC revenue, the collecting air carrier shall be entitled to:

(a) Retain \$0.12 of each PFC remitted on or before June 28, 1994. Thereafter, air carriers shall be entitled to \$0.08 of each PFC remitted; and

(b) Any interest or other investment return earned on PFC revenue between the time of collection and remittance to the public agency.

[Doc. No. 26385, 56 FR 24278, May 29, 1991; 56 FR 37127, Aug. 2, 1991]

## Subpart D—Reporting, Recordkeeping and Audits

### § 158.61 General.

This subpart contains the requirements for reporting, recordkeeping and auditing of accounts maintained by collecting carriers and by public agencies.

### § 158.63 Reporting requirements: Public agency.

(a) The public agency shall provide quarterly reports to carriers collecting PFC's for the public agency with a copy to the appropriate FAA Airports office. The quarterly report shall include PFC revenue received from collecting carriers, interest earned, and expenditures for the quarter; cumulative PFC revenue received, interest earned, expenditures, and the amount committed for use on currently approved projects, including the quarter; the PFC level for each project; and the current project schedule.

(b) The report shall be provided on or before the last day of the calendar month following the calendar quarter or other period agreed by the public agency and collecting carrier.

(c) For medium or large hub airports, the public agency must provide the

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FAA, by August 1 of each year, an estimate of PFC revenue to be collected for each such airport in the ensuing fiscal year.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34542, May 30, 2000]

**§ 158.65 Reporting requirement: Collecting carrier.**

Each carrier collecting PFC's for a public agency shall file quarterly reports to the public agency unless otherwise agreed by the collecting carrier and public agency, providing an accounting of funds collected and funds remitted.

(a) Unless otherwise agreed by the collecting carrier and public agency, reports shall state the collecting carrier and airport involved, the total PFC revenue collected, the total amount of PFC revenue refunded to passengers, and the amount of collected revenue withheld by the collecting carrier for reimbursement of expenses in accordance with §158.53 of this part. The report shall include the dates and amounts of each remittance for the quarter.

(b) The report shall be filed on or before the last day of the calendar month following the calendar quarter or other period agreed by the collecting carrier and public agency for which funds were collected.

**§ 158.67 Recordkeeping and auditing: Public agency.**

(a) Each public agency shall keep any unliquidated PFC revenue remitted to it by collecting carriers on deposit in an interest bearing account or in other interest bearing instruments used by the public agency's airport capital fund. Interest earned on such PFC revenue shall be used, in addition to the principal, to pay the allowable costs of PFC-funded projects. PFC revenue may only be commingled with other public agency airport capital funds in deposits or interest bearing instruments.

(b) Each public agency shall establish and maintain for each approved application a separate accounting record. The accounting record shall identify the PFC revenue received from the collecting carriers, interest earned on such revenue, the amounts used on

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each project, and the amount reserved for currently approved projects.

(c) At least annually during the period the PFC is collected, held or used, each public agency shall provide for an audit of its PFC account. The audit shall be performed by an accredited independent public accountant and may be of limited scope. The accountant shall express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding, and using PFC revenue. The accountant shall also express an opinion on whether the quarterly report required under §158.63 fairly represents the net transactions within the PFC account. The audit may be—

(1) Performed specifically for the PFC account; or

(2) Conducted as part of an audit under the Single Agency Audit Act of 1983 (31 U.S.C. 7501-7) provided that the PFC is specifically addressed by the auditor.

(3) Upon request, a copy of the audit shall be provided to each collecting carrier that remitted PFC revenue to the public agency in the period covered by the audit and to the Administrator.

**§ 158.69 Recordkeeping and auditing: Collecting carriers.**

(a) Collecting carriers shall establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted, refunded and compensation retained under §158.53(a) of this part. The accounting record shall identify the airport at which the passengers were enplaned.

(b) Each collecting carrier that collects more than 50,000 PFC's annually shall provide for an audit at least annually of its PFC account.

(1) The audit shall be performed by an accredited independent public accountant and may be of limited scope. The accountant shall express an opinion on the fairness and reasonableness of the carrier's procedures for collecting, holding, and dispersing PFC revenue. The opinion shall also address whether the quarterly reports required under §158.65 fairly represent the net transactions in the PFC account.

(2) For the purposes of an audit under this section, collection is defined as

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the point when agents or other intermediaries remit PFC revenue to the carrier.

(3) Upon request, a copy of the audit shall be provided to each public agency for which a PFC is collected.

### § 158.71 Federal oversight.

(a) The Administrator may periodically audit and/or review the use of PFC revenue by a public agency. The purpose of the audit or review is to ensure that the public agency is in compliance with the requirements of this part and 49 U.S.C. 40117.

(b) The Administrator may periodically audit and/or review the collection and remittance by the collecting carriers of PFC revenue. The purpose of the audit or review is to ensure collecting carriers are in compliance with the requirements of this part and 49 U.S.C. 40117.

(c) Public agencies and carriers shall allow any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller General of the U.S., access to any of its books, documents, papers, and records pertinent to PFC's

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34543, May 30, 2000]

## Subpart E—Termination

### § 158.81 General.

This subpart contains the procedures for termination of PFC's or loss of Federal airport grant funds for violations of this part or 49 U.S.C. 40117. This subpart does not address the circumstances under which authority to collect PFC's may be terminated for violations of the Airport Noise and Capacity Act of 1990.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34543, May 30, 2000]

### § 158.83 Informal resolution.

The Administrator shall undertake informal resolution with the public agency or any other affected party if, after review under § 158.71, the Administrator cannot determine that PFC revenue is being used for the approved projects in accordance with the terms

of the Administrator's approval to impose a PFC for those projects or with 49 U.S.C. 40117.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34543, May 30, 2000]

### § 158.85 Termination of authority to impose PFC's.

(a) The FAA begins proceedings to terminate the public agency's authority to impose a PFC only if the Administrator determines that informal resolution is not successful.

(b) The Administrator publishes a notice of proposed termination in the FEDERAL REGISTER and supplies a copy to the public agency. This notice will state the scope of the proposed termination, the basis for the proposed action and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective actions the public agency can take to avoid further proceedings. The due date for comments and corrective action shall be no less than 60 days after publication of the notice.

(c) If corrective action has not been taken as prescribed by the Administrator, the FAA holds a public hearing, and notice is given to the public agency and published in the FEDERAL REGISTER at least 30 days prior to the hearing. The hearing will be in a form determined by the Administrator to be appropriate to the circumstances and to the matters in dispute.

(d) The Administrator publishes the final decision in the FEDERAL REGISTER. Where appropriate, the Administrator may prescribe corrective action, including any corrective action the public agency may yet take. A copy of the notice is also provided to the public agency.

(e) Within 10 days of the date of publication of the notice of the Administrator's decision, the public agency shall—

(1) Advise the FAA in writing that it will complete any corrective action prescribed in the decision within 30 days; or

(2) Provide the FAA with a listing of the air carriers and foreign air carriers operating at the airport and all other issuing carriers that have remitted

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PFC revenue to the public agency in the preceding 12 months.

(f) When the Administrator's decision does not provide for corrective action or the public agency fails to complete such action, the FAA provides a copy of the FEDERAL REGISTER notice to each air carrier and foreign air carrier identified in paragraph (e) of this section. Such carriers are responsible for terminating or modifying PFC collection no later than 30 days after the date of notification by the FAA.

**§ 158.87 Loss of Federal airport grant funds.**

(a) If the Administrator determines that revenue derived from a PFC is excessive or is not being used as approved, the Administrator may reduce the amount of funds otherwise payable to the public agency under 49 U.S.C. 47114. Such a reduction may be made as a corrective action under § 158.83 or § 158.85 of this part.

(b) The amount of the reduction under paragraph (a) of this section shall equal the excess collected, or the amount not used in accordance with this part.

(c) A reduction under paragraph (a) of this section shall not constitute a withholding of approval of a grant application or the payment of funds under an approved grant within the meaning of 49 U.S.C. 47111(d).

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34543, May 30, 2000]

**Subpart F—Reduction in Airport Improvement Program Apportionment**

**§ 158.91 General.**

This subpart describes the required reduction in funds apportioned to a large or medium hub airport that imposes a PFC.

**§ 158.93 Public agencies subject to reduction.**

The funds apportioned under 49 U.S.C. 47114 to a public agency for a specific primary commercial service airport that it controls are reduced if—

(a) Such airport enplanes 0.25 percent or more of the total annual enplanements in the U.S., and

(b) The public agency imposes a PFC at such airport.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34543, May 30, 2000]

**§ 158.95 Implementation of reduction.**

(a) A reduction in apportioned funds will not take effect until the first fiscal year following the year in which the collection of the PFC is begun and will be applied in each succeeding fiscal year in which the public agency imposes the PFC.

(b) The reduction in apportioned funds is calculated at the beginning of each fiscal year and shall be an amount equal to—

(1) In the case of a fee of \$3 or less, 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section; and

(2) In the case of a fee of more than \$3, 75 percent of the projected revenues from the fee in the fiscal year but not by more than 75 percent of the amount that otherwise would be apportioned under this section.

(c) If the projection of PFC revenue in a fiscal year is inaccurate, the reduction in apportioned funds may be increased or decreased in the following fiscal year, except that any further reduction shall not cause the total reduction to exceed 50 percent of such apportioned amount as would otherwise be apportioned in any fiscal year.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34543, May 30, 2000]

**§ 158.97 Special rule for transitioning airports.**

(a) Beginning with the fiscal year following the first calendar year in which an airport has more than .25 percent of the total number of boardings in the U.S., the sum of the amount that would be apportioned under 49 U.S.C. 47114 to the public agency controlling that airport in a fiscal year, after application of § 158.95, and the projected PFC revenues to be collected in such fiscal year, shall not be less than the sum of the

apportionment to such airport for the preceding fiscal year and the PFC revenues collected in the preceding fiscal year.

(b) Paragraph (a) of this section shall apply for fiscal years 2000 through 2003.

[Doc. No. FAA-2000-7402, 65 FR 34543, May 30, 2000]

#### APPENDIX A TO PART 158—ASSURANCES

##### A. General.

1. These assurances shall be complied with in the conduct of a project funded with passenger facility charge (PFC) revenue.

2. These assurances are required to be submitted as part of the application for approval of authority to impose a PFC under the provisions of 49 U.S.C. 40117.

3. Upon approval by the Administrator of an application, the public agency is responsible for compliance with these assurances.

B. *Public agency certification.* The public agency hereby assures and certifies, with respect to this project that:

1. Responsibility and authority of the public agency. It has legal authority to impose a PFC and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the public agency's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public agency to act in connection with the application.

2. Compliance with regulation. It will comply with all provisions of 14 CFR part 158.

3. Compliance with state and local laws and regulations. It has complied, or will comply, with all applicable State and local laws and regulations.

4. Environmental, airspace and airport layout plan requirements. It will not use PFC revenue on a project until the FAA has notified the public agency that—

(a) Any actions required under the National Environmental Policy Act of 1969 have been completed;

(b) The appropriate airspace finding has been made; and

(c) The FAA Airport Layout Plan with respect to the project has been approved.

5. Nonexclusivity of contractual agreements. It will not enter into an exclusive long-term lease or use agreement with an air carrier or foreign air carrier for projects funded by PFC revenue. Such leases or use agreements will not preclude the public agency from funding, developing, or assigning new capacity at the airport with PFC revenue.

6. Carryover provisions. It will not enter into any lease or use agreement with any air

carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a passenger facility charge if such agreement for such facility contains a carry-over provision regarding a renewal option which, upon expiration of the original lease, would operate to automatically extend the term of such agreement with such carrier in preference to any potentially competing air carrier or foreign air carrier seeking to negotiate a lease or use agreement for such facilities.

7. Competitive access. It agrees that any lease or use agreements between the public agency and any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a passenger facility charge will contain a provision that permits the public agency to terminate the lease or use agreement if—

(a) The air carrier or foreign air carrier has an exclusive lease or use agreement for existing facilities at such airport; and

(b) Any portion of its existing exclusive use facilities is not fully utilized and is not made available for use by potentially competing air carriers or foreign air carriers.

8. Rates, fees and charges.

(a) It will not treat PFC revenue as airport revenue for the purpose of establishing a rate, fee or charge pursuant to a contract with an air carrier or foreign air carrier.

(b) It will not include in its rate base by means of depreciation, amortization, or any other method, that portion of the capital costs of a project paid for by PFC revenue for the purpose of establishing a rate, fee or charge pursuant to a contract with an air carrier or foreign air carrier.

(c) Notwithstanding the limitation provided in subparagraph (b), with respect to a project for terminal development, gates and related areas, or a facility occupied or used by one or more air carriers or foreign air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid by such carriers using similar facilities at the airport that were not financed by PFC revenue.

9. Standards and specifications. It will carry out the project in accordance with FAA airport design, construction and equipment standards and specifications contained in advisory circulars current on the date of project approval.

10. Recordkeeping and Audit. It will maintain an accounting record for audit purposes for a period of 3 years after completion of the project. All records will satisfy the requirements of 14 CFR part 158 and will contain documentary evidence for all items of project costs.

11. Reports. It will submit reports in accordance with the requirements of 14 CFR

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part 158, subpart D, and as the Administrator may reasonably request.

12. Airport Noise and Capacity Act of 1990. It understands 49 U.S.C. 47524 and 47526 require the authority to impose a PFC be terminated if the Administrator determines the public agency has failed to comply with that act or with the implementing regulations promulgated thereunder.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158–2, 65 FR 34543, May 30, 2000]

**PART 161—NOTICE AND APPROVAL OF AIRPORT NOISE AND ACCESS RESTRICTIONS**

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- 161.503 Informal resolution; notice of apparent violation.
- 161.505 Notice of proposed termination of airport grant funds and passenger facility charges.

AUTHORITY: 49 U.S.C. 106(g), 47523–47527, 47533.

SOURCE: Docket No. 26432, 56 FR 48698, Sept. 25, 1991, unless otherwise noted.

**Subpart A—General Provisions**

**§ 161.1 Purpose.**

This part implements the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2153, 2154, 2155, and 2156). It prescribes:

(a) Notice requirements and procedures for airport operators implementing Stage 3 aircraft noise and access restrictions pursuant to agreements between airport operators and aircraft operators;

(b) Analysis and notice requirements for airport operators proposing Stage 2 aircraft noise and access restrictions;