

(latest edition) for all projects not included in an existing Federal airport program grant.

(2) A notice of intent to use PFC revenue where the FAA has previously acknowledged a notice of intent to impose a PFC must:

(i) Be preceded by further consultation with air carriers and the opportunity for public comment under §§ 158.23 and 158.24 of this part. However, a meeting with the air carriers is optional if all information is the same as that provided with the impose authority notice;

(ii) Include a copy of any comments received by the public agency during the air carrier consultation and public comment processes (§§ 158.23 and 158.24) and the public agency's response to any disagreements or negative comments; and

(iii) Include any updated and changed information:

(A) Required by paragraphs (b)(1), (2), (5), (6), and (7) of this section; and

(B) Required by paragraph (c)(1)(ii) of this section.

(d) *FAA review of notices of intent.* (1) The FAA will review the notice of intent to determine that:

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

(B) Each proposed project meets the requirements of § 158.15;

(C) Each project proposed at a PFC level above \$3.00 meets the requirements of § 158.17(a)(2) and (3);

(D) All applicable airport layout plan, airspace, and environmental requirements have been met for each project;

(E) Any request by the public agency to exclude a class of carriers from the requirement to collect the PFC is reasonable, not arbitrary, nondiscriminatory, and otherwise complies with the law; and

(F) The consultation and public comment processes complied with §§ 158.23 and 158.24.

(2) The FAA will also make a determination regarding the public agency's compliance with 49 U.S.C. 47524 and 47526 governing airport noise and access restrictions and 49 U.S.C. 47107(b) governing the use of airport revenue.

Finally, the FAA will review all comments filed during the air carrier consultation and public comment processes.

(e) *FAA acknowledgment of notices of intent.* Within 30 days of receipt of the public agency's notice of intent about its PFC program, the FAA will issue a written acknowledgment of the public agency's notice. The FAA's acknowledgment may concur with all proposed projects, may object to some or all proposed projects, or may object to the notice of intent in its entirety. The FAA's acknowledgment will include the reason(s) for any objection(s).

(f) Public agency actions following issuance of FAA acknowledgment letter. If the FAA does not object to either a project or the notice of intent in its entirety, the public agency may implement its PFC program. The public agency's implementation must follow the information specified in its notice of intent. If the FAA objects to a project, the public agency may not collect or use PFC revenue on that project. If the FAA objects to the notice of intent in its entirety, the public agency may not implement the PFC program proposed in that notice. When implementing a PFC under this section, except for § 158.25, a public agency must comply with all sections of part 158.

(g) *Acknowledgment not an order.* An FAA acknowledgment issued under this section is not considered an order issued by the Secretary for purposes of 49 U.S.C. 46110 (Judicial Review).

(h) *Sunset provision.* This section will expire May 9, 2008.

[Doc. No. FAA-2004-17999, 70 FR 14936, Mar. 23, 2005]

§ 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;

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(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 termination 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

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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.

(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—