Final rule: The rule retains the requirements in the NPRM, providing for periodic review and/or audit of both the public agency and the carriers. While the FAA expects to rely primarily on the audits performed for the air carrier and public agency, the statute calls for direct Federal audit and review. This provision is particularly important since carriers collecting less than 50,000 PFC's annually are not required to provide for an independent audit.

Subpart E

Subpart E provides for termination of PFC authority when the Secretary determines revenue is not being used in accordance with this regulation. It also allows for a reduction in a public agency's AIP funds to ensure compliance with this regulation.

§ 158.83 Informal resolution. (New Section) The NPRM proposed that the Administrator may enter into informal resolution with the public agency if, after review under § 158.71, there were concerns that PFC revenue was not being used in accordance with this regulation or with section 1113(e) of the FA Act. Under the final rule informal resolution will be attempted in each case.

Comments: Carrier comments generally support the proposed termination process but a number of commenters from airports and financial institutions express concern about the Administrator's ability to terminate PFC collection. According to the commenters, the ability to terminate could complicate the use of bonds backed by PFC revenue. These comments claim the perceived risk of termination would require bonds to be issued at higher rates of interest. Commenters recommend limiting the ability of the Administrator to terminate PFC's, including a requirement of informal resolution, before a more formal process is instituted.

Final rule: The final rule requires the Administrator undertake informal resolution with the public agency to attempt to solve any concerns before a formal process is begun. Other changes in the termination procedure made in response to public agency and financial market concerns are discussed below.

§ 158.85 Termination of authority to impose PFC's. (Proposed § 158.83). If informal resolution was not successful, the NPRM proposed a process to begin proceedings to terminate PFC authority. The Administrator was required to publish a notice of proposed termination in the *Federal Register*, including the basis for the proposed action, and any corrective action the public agency could take. The proposed date for comments and corrective action would have been 30 days after the notice. If requested by the public agency, a hearing would have been held prior to the Administrator's final decision. The Administrator would then publish a notice of the final decision in the *Federal Register*. The decision could be to terminate the authority to impose a PFC in whole or in part or to allow full continued authority.

Comments: Airports and financial institutions are concerned with the uncertainty associated with FAA's unilateral ability to terminate PFC authority. Airports state that the uncertainty would result in greater debt costs, ultimately resulting in higher project costs. Representatives of the financial community question the ability to finance a bond if PFC authority is terminated. These commenters argue that continuity of PFC revenue pledged against debt service is essential, and termination should occur only after all other courses of action have been exhausted including AIP offset. If termination is required, it should come only after informal resolution as well as a public hearing, with specific time frames for each step of the process. Some commenters suggest PFC authority should not be terminated if PFC revenue is pledged to a bond until the bond is liquidated. Some commenters recommend disapproval of future amendments or authority to impose new PFC's rather than termination. A number of commenters also recommended this section include termination for violation of Sections 9304(e) and 9307 of the Airport Noise and Capacity Act.

Final rule: The final rule retains the Administrator's ability to terminate PFC authority. This authority is provided for in the statute. However, the process has been revised significantly to assure all parties that every effort would be made to resolve a problem before formal termination. A process that will last a minimum of 130 days is required before the Administrator can terminate PFC authority. In addition to a mandatory attempt at informal resolution as provided in § 158.83, the rule continues to require the Administrator to publish a notice of proposed termination, but allows for no less than 60 days rather than 30 for corrective action. If corrective action is not taken, the Administrator will provide the public agency with an opportunity to be heard. This hearing will be in a form and manner appropriate to the circumstances, and will occur after at least 30 days following a second notice in the *Federal Register*. The Administrator will then publish a third notice in the *Federal Register* of the final decision, and any prescribed corrective action that is still possible. If corrective action is still possible, the public agency

will also have an additional 30 days to take the corrective action before the Administrator notifies carriers to discontinue collection.

The rule has not adopted the recommendation that a public agency be permitted to continue to receive PFC revenue in violation of this regulation if it has pledged the PFC revenue to bond payments. The FAA believes that it is inappropriate for the passenger, rather than the bond holder, to incur the risk for the bond. Moreover, the public agency's choice of a method for financing a project cannot be a basis for limiting that agency's duty to carry out the requirements of the statute.

§ 158.87 Loss of Federal airport grant funds. (Proposed: § 158.85). As proposed, this section would have allowed the Administrator to reduce the public agency's AIP funds if PFC collection were excessive or if PFC revenue were not being used as approved.

Comments: As discussed earlier, many commenters believe AIP funds should be reduced rather than allow the Administrator to terminate PFC authority. An industry group commented that FAA should not be able to reduce future AIP funds without a public hearing.

Final Rule: The final rule retains the Administrator's ability to offset AIP funds if PFC revenue are not used appropriately rather than terminate PFC authority. However, the FAA does not believe the ability to reduce AIP funds alone in place of termination would be adequate. PFC revenue could greatly exceed AIP funds, reducing the incentive for a public agency to take corrective action. In addition, the Administrator may have to wait for up to a year to reduce any AIP funds if the airport has already received its funds for the year. The statute, and therefore this rule, does not require a public hearing before such AIP offset. However, the public agency is likely to have had a hearing through the termination process.

Subpart F

Subpart F specifies how funds apportioned under the Airport Improvement Program would be reduced to public agencies controlling certain large and medium airports imposing a PFC, and the procedure for implementing such reductions.

§ 158.93 Public agencies subject to reduction. Section 9111 of the statute requires that funds apportioned under Section 507(a)(1) of the Airport and Airway Improvement Act of 1982, be reduced at commercial service airports imposing a PFC and enplaning 0.25 percent or more of total annual enplanements in the United States. There are currently 71 airports in this category. Apportionments for all other commercial service airports would not be reduced.

As proposed, the apportionment would be reduced on an airport-by-airport basis rather than on the amount apportioned to a public agency for all airports controlled by the agency. If a public agency controlled more than one airport, the reduction in apportionments would be calculated separately for each airport.

Comments: Commenters point out that only passenger entitlement funds, and not cargo or state apportionments, should be reduced in return for authority to impose a PFC.

Final Rule: No changes were made in this section because the NPRM was clear in stating that funds apportioned under Section 507(a)(1) of the AAIA would be reduced. That section applies only to apportionments to primary airports based on passenger counts.

§ 158.95 Implementation of reduction. The NPRM provided for apportionments to be reduced at large and medium hubs in the fiscal year following the date of PFC application approval. The apportionment in the fiscal year of approval would not be reduced. The amount of the reduction would have equaled 50 percent of the PFC revenue forecast for the fiscal year. However, a public agency would not lose more than 50 percent of its apportioned funds and the annual calculation of AIP apportioned amounts would have reflected the reductions caused by PFC revenue.

The NPRM proposed adjustments in reductions to reflect actual results should forecasts prove inaccurate or should the charge expiration date change. The adjustment would occur in the apportionment calculation for the following year, except the total reduction would not exceed 50 percent of the otherwise apportioned amounts.

Comments: Several commenters suggest apportionment funds not available to the primary airport be granted to airports within the same general area or the same state. Other comments propose a hearing be held before any reductions in apportionments are made. One comment objects to the fact that apportionment would not be reduced in the same year as approval is granted to impose a PFC.