

Subpart C

Subpart C specifies requirements for providing notice of the imposition of PFC's, and for collecting, handling and remitting PFC's. This subpart has been designed to allow as much flexibility as possible to the public agencies and the air carriers and foreign air carriers while still maintaining adequate protection for each party involved.

§ 158.43 Public Agency Notification to Collect PFC's. (Proposed: Public agency notification to air carriers and foreign air carriers.) As proposed, this section would have required each public agency that had been granted authority to impose a PFC to give written notice to the carriers and foreign air carriers operating at the airport. The carriers would then be responsible for notifying their agents, including other issuing carriers, of the requirement to collect and the effective date to begin collection. As proposed, the effective date of the PFC would be no sooner than 30 days after notification.

Comments: Commenters suggest all notices of approval to impose PFC's appear in the *Federal Register*. These commenters also want some provision for notification for any subsequent amendment to the amount of PFC collected. Commenters suggest that the public agency be required to give more than an "estimated" charge expiration date, because public agencies would be unable to forecast the exact date to stop collecting the PFC. Some commenters, including the joint submission, also want the FAA to set up and maintain a PFC clearinghouse and publish a monthly report that would list any PFC's approved in that month and any relevant EAS information. Travel agents note the absence of specific requirements for notifying the CRS vendors or travel agents, and suggest that FAA provide a mechanism for such notification.

Final Rule: Under the final rule, those carriers required to collect the PFC are provided notice of collection levels, the total revenue to be collected and the charge effective date. This date must be at least 60 days from the date the public agency notifies the carriers and must be on the first day of a month. This should provide sufficient time for carriers to arrange collection procedures.

A public agency must notify the carriers required to collect the PFC of any amendment to the total amount of PFC revenue being collected or the level of PFC imposed, and the word "proposed" has been added to "expiration date" to recognize that this date is proposed. Each carrier will be responsible for notifying its agents, including travel agents.

§ 158.45 Collection of PFC's on tickets issued in the United States (Proposed: Collection of PFC's). This section as proposed contemplated that the issuing carrier, upon notification, would be required to collect a PFC on all air travel tickets sold on or after the charge effective date. The ticket would be required to show the PFC imposed at each airport and the total PFC paid by each passenger. As required by statute, no PFC's would be collected after the passenger has paid two charges on a one-way trip (or two in each direction of a round trip) and no PFC may be collected when the passenger is being provided air service for which essential air service (EAS) compensation is being paid. The NPRM also stipulated a PFC could not be collected when a passenger's travel to an airport charging a PFC is the result of an involuntary change in a passenger's itinerary. All PFC's would be collected and remitted by the issuing carrier as noted on the ticket, thus eliminating the need for interline settlements.

Comments: The issue drawing the most attention in the comments was the determination of one-way and round trips for the purpose of determining which airports in a passenger's itinerary are entitled to receive PFC revenue. The joint submission recommends that PFC's only be collected at the first four airports where PFC's are imposed without regard to whether the itinerary was a round trip. They argue this is the simplest and least expensive way for the carriers to redesign their systems, and would also be the least confusing to passengers. Recognizing that statutory requirements could prevent the adoption of this proposal, the joint submission offers an alternative under which the PFC would be assessed at the first two airports and the last two airports on a passenger's itinerary at which a PFC is being imposed. Although the second alternative presented is more costly than the first, the joint submission supports the adoption of either of these alternatives.

Most commenters agree with the NPRM that, in the event of an involuntary change in a passenger's itinerary not requested by the passenger, the PFC's should be remitted to the airports on the original ticket itinerary. Conversely, for voluntary changes requested by the passenger, the commenters support assessing the PFC. However, they recommend limiting refunds or new PFC's to those cases in which there is an adjustment made to the amount paid by the passenger.

Another major issue was the treatment of foreign carriers. The comments from individual foreign carriers and from IATA request that foreign carriers be exempt from collecting and remitting PFC's. Commenters indicate that some countries prohibit the collection of foreign taxes. The PFC, they contend,

would be considered such a tax. (While carriers already routinely collect customs service inspection fees, the airline ticket tax, and other such charges, these commenters claim this is done on a "voluntary" basis.)

Some comments from individual airports indicate that there should be a penalty for carriers that refuse to collect or remit PFC's.

Final Rule: The first change is in the title. Because of the comments received on the treatment of foreign air carriers and on tickets issued outside the U.S., the final rule addresses these issues in two different sections. Upon notification by the public agency, the collecting carriers will be required to collect PFC's on all tickets issued in the U.S. on or after the charge effective date. The appropriate charge is the PFC in effect at the time the ticket is issued.

The PFC's collected will reflect a passenger's itinerary at the time of issuance. Any changes in itinerary initiated by a passenger that require an adjustment to the amount paid by the passenger are subject to collection or refund of PFC's.

Each air travel ticket must show the total amount paid by the passenger for PFC's and each airport for which the PFC is collected. For each one-way trip, a PFC may only be collected for the first two airports where PFC's are imposed. For each round trip, a PFC will be collected only for enplanements at the first two airports and the last two enplaning airports where PFC's are imposed. This assures that PFC's will be collected from passengers on both directions of a round trip and not more than four charges will be made.

The rule requires that no PFC can be collected from a passenger on any flight to an eligible point on an air carrier that receives essential air service compensation on that route.

Carriers and their agents must stop collecting PFC's on the charge expiration date that is specified in a notice from the public agency or as required by the Administrator.

The FAA has not included in this section any penalties for carriers for non-collection of PFC's. However, carriers are subject to the same penalties for violations of this rule as for any other violation of FAA regulations.

§ 158.47 Collection of PFC's on tickets issued outside the U.S. (Proposed: No previous section). This is a new section of the rule, created in response to the comments received from individual foreign carriers and from IATA requesting special treatment for foreign carriers.

No foreign air carrier is required to collect a PFC on tickets written on its own imprinted ticket stock unless it serves a point or points in the U.S. Under this section, an air carrier or foreign air carrier that issues tickets outside the U.S. has three alternatives. 1) It may follow the procedures for tickets sold in the U. S. as set forth in § 158.45. 2) It may collect the PFC's for the passenger's U.S. departure gateway at the time of ticket issuance outside the U.S.; or 3) It may collect the PFC from the passenger at the time the passenger is last enplaned in the U.S. Foreign and domestic carriers are given equal flexibility for tickets issued outside the U.S.

If a carrier chooses not to follow the procedures in § 158.45, it is only required to collect PFC's for public agencies controlling the last airport at which the passenger is enplaned prior to departure from the U.S. Some commenters complain that foreign air carriers would be unable to keep track of different PFC levels and imposing airports. However, the FAA believes that no such burden exists at an airport directly served by the carrier. Whenever the PFC is collected, the collecting carrier must give a written indication, but not necessarily printed on the ticket, that such PFC has been paid. The same procedures discussed in § 158.45 concerning changes in itinerary initiated by a passenger are also applicable in this section.

Those air carriers and foreign air carriers that elect to collect the PFC at the time of issuance are not required to make separate provision to collect PFC's at the airport for tickets sold by other air carriers or foreign air carriers or the agents of such carriers. While this will reduce PFC revenue received by the passenger's departure airport, the FAA believes it is not reasonable to require carriers to establish two different PFC collection systems. Those carriers that collect the PFC at the gateway airport must examine the ticket of each enplaning passenger and collect the PFC from any passenger whose ticket does not indicate that the PFC was collected at the time of issuance. As in § 158.45, collected PFC's shall be distributed as indicated to the passenger, and collecting carriers and their agents shall stop collecting the PFC on the charge expiration date included in a notice from the public agency or the Administrator.

§ 158.49 Handling of PFC's (Proposed § 158.47) The NPRM proposed that each air carrier and foreign air carrier responsible for collecting PFC's would be required to account for PFC charges separately in accordance with Generally Accepted Accounting Principles (GAAP).

Comments: Many of the comments indicate that using GAAP is inappropriate; that GAAP is for the presentation of information in financial statements and not for accounting purposes. Instead the commenters recommend that the FAA require only that carriers maintain a financial management system that establishes accountability of the funds.

Other comments on this section focus on how carriers should treat the funds they collect for the public agencies before remittance. Several individual airports urge the FAA to require carriers to establish separate escrow accounts in which to hold PFC revenue pending remittance to the public agency. Bond rating agencies and other financial entities ask the FAA to regulate the type of investment instruments in which the air carriers and foreign air carriers could invest PFC revenue. These commenters express concern that the holders of bonds backed by PFC revenue would not be protected if the carriers could invest in high-risk, high yield investments, and suggest that all PFC revenue be aggregated in separate trust accounts with strict stipulations on the type of investments allowed. These commenters are particularly concerned that, in the event of a carrier's bankruptcy, PFC revenue would become subject to bankruptcy proceedings and the public agency would be denied access to the funds. Individual carriers, on the other hand, indicate that such an accounting system would be an unnecessary and expensive administrative burden.

The joint submission suggests that the carriers: 1) be allowed to commingle PFC revenue with other revenue but treat PFC's as trust assets of the public agencies in which the carriers hold only a possessory interest and not an equitable interest; 2) be required to disclose the existence and amount of funds subject to the PFC trust in any financial statements; and 3) be required to place PFC revenue in a separate trust fund promptly if the carrier misses a payment or payments to the public agency without a satisfactory justification to the Secretary. The joint submission also suggests that the Secretary may decide that it is sufficient to issue a notice to the carrier to remit the revenue promptly and meet future payment deadlines or face further action.

Final Rule: Instead of requiring the use of Generally Accepted Accounting Principles, the final rule provides that collecting carriers must maintain their financial management systems in accordance with the Department of Transportation's Uniform System of Accounts and Reports, which are contained in 14 CFR Part 241. Those carriers not subject to Part 241 must establish and maintain an accounts payable system to handle the PFC revenue.

The FAA adopted the commenters' suggestion on how to handle the PFC revenue between collection and remittance. The rule allows the carriers to commingle the PFC revenue with other sources of revenue, but the carriers must regard the PFC revenue as trust funds held for the beneficial interest of the public agencies imposing the PFC. This is revenue in which the carriers hold only a possessory and not an equitable interest. The carriers must also disclose the existence and amount of these funds subject to the PFC trust in any financial statements. The final rule does not impose investment requirements on PFC revenue. Such a requirement would interject the Federal Government too deeply into management of local funds. Moreover, the final rule provides for additional carrier compensation, thus reducing the likelihood of carriers investing PFC revenue in risky high yield investments.

§ 158.51 Remittance of PFC's. (Proposed: § 158.49). The NPRM proposed that revenue collected by the issuing carrier or its agent within the first 15 days of a month would be remitted by the fifteenth day of the following month. Revenue collected within the second half of the month would be remitted by the end of the following month. Thus, an air carrier would be allowed to retain the PFC revenue for a maximum of 45 days and funds would be remitted to the public agency twice a month.

Comments: Overwhelmingly, commenters think such remittance is excessive and overly burdensome. Some individual airports support twice-monthly remittance and some individual carriers suggest quarterly remittance. The joint submission recommends monthly remittance, 30 days after the end of the month in which the PFC was collected.

Final Rule: The carriers shall submit the PFC revenue to the public agency on a monthly basis no later than the last day of the following calendar month.

§ 158.53 Collection Compensation. The NPRM provided for carriers to retain any interest they may earn on PFC revenue from time of collection to time of remittance as compensation for the administrative costs associated with collecting, handling, and remitting PFC's.

Comments: Most carriers claim that the float, expected to be about \$0.03 per PFC, is inadequate to cover their expected costs. Although total cost figures differed, they reflect a carrier's level of automation for administrative and accounting processes, with the most automated carriers incurring the greatest