DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

[Docket No. 28149]

Proposed Final Policy on Part 150 Approval and Funding of Noise Mitigation Measures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed final policy on part 150 approval and funding of Noise Mitigation Measures, and request for supplemental comment on its Impacts on Passenger Facility Charges.

SUMMARY: The Federal Aviation Administration (FAA) has prepared for issuance a final policy concerning approval and eligibility for Federal funding of certain noise mitigation measures. This policy would increase the incentives for airport operators to prevent the development of new noncompatible land uses around airports and assure the most cost-effective use of Federal funds spent on noise mitigation measures. This would include certain limitations on the eligibility of airport improvement program (AIP) funds and passenger facility charges (PFC). The proposed policy was published in the **Federal Register** on March 20, 1995 (60 FR 14701), and public comments were received and considered. This document sets forth the revised policy as proposed for issuance. However, prior to the issuance of the policy the FAA is requesting supplemental comment on the impact of its limitations on PFC eligibility. The FAA will consider any comments on PFC eligibility thus received and revise the policy as may be appropriate prior to issuing the final policy. All other issues are considered to have been adequately covered during the original comment period.

Accordingly and after any revisions resulting from supplemental comments received on the impacts on PFC eligibility, as of January 1, 1998, the FAA will approve under 14 CFR part 150 (part 150) only remedial noise mitigation measures for existing noncompatible development and only preventive noise mitigation measures in areas of potential new noncompatible development. The FAA will not approve remedial noise mitigation measures for new noncompatible development that is allowed to occur in the vicinity of airports after the effective date of this final policy. As of the same effective date, eligibility for Airport Improvement Program (AIP) funding under the noise set-aside will be determined using criteria consistent with this policy. Specifically, remedial noise mitigation measures for new noncompatible development that occurs after the effective date of this final policy will not be eligible for AIP funding under the noise set-aside, regardless of previous FAA approvals under part 150, the status of implementation of an individual airport's part 150 program, or the status of any pending application for AIP funds. This policy also applies to projects that are eligible for noise set-aside funds without a part 150 program. This change in AIP eligibility will change in a similar way the eligibility of noise projects for passenger facility charge (PFC) funding. That is, the FAA will not approve the use of PFC funds to remediate noise impacts for new noncompatible development that occurs after the effective date of this policy.

DATES: Comments are due on or before June 27, 1997. This policy will be effective January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Albee, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3553, facsimile (202) 267–5594; Internet: WAlbee@mail.hq.faa.gov; or Mr. Ellis Ohnstad, Manager, Airports Financial Assistance Division (APP–500), Office of Airport Planning and Programming, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3831, facsimile (202) 267–5302.

SUPPLEMENTARY INFORMATION:

Background

The Airport Noise Compatibility Planning Program (14 CFR part 150, hereinafter referred to as part 150 or the part 150 program) was established under the Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. 47501 through 47509, hereinafter referred to as ASNA). The part 150 program allows airport operators to submit noise exposure maps and noise compatibility programs to the FAA voluntarily. According to the ASNA, a noise compatibility program sets forth the measures that an airport operator has taken or has proposed for the reduction of existing noncompatible land uses and the prevention of additional noncompatible land uses within the area covered by noise exposure maps.

The ASNA embodies strong concepts of local initiative and flexibility. The submission of noise exposure maps and noise compatibility programs is left to the discretion of local airport operators. Airport operators may also choose to submit noise exposure maps without preparing and submitting a noise compatibility program. The types of measures that airport operators may include in a noise compatibility program are not limited by the ASNA, allowing airport operators substantial latitude to submit a broad array of measures—including innovative measures—that respond to local needs and circumstances.

The criteria for approval or disapproval of measures submitted in a part 150 program are set forth in the ASNA. The ASNA directs the Federal approval of a noise compatibility program, except for measures relating to flight procedures: (1) If the program measures do not create an undue burden on interstate or foreign commerce; (2) if the program measures are reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses; and (3) if the program provides for its revision if necessitated by the submission of a revised noise exposure map. Failure to approve or disapprove a noise compatibility program within 180 days, except for measure relating to flight procedures, is deemed to be an approval under the ASNA. Finally, the ASNA sets forth broad eligibility criteria, consistent with the ASNA's overall deference to local initiative and flexibility.

The FAA is authorized, but not obligated, to fund projects via the Airport Improvement Program (AIP) to carry out measures in a noise compatibility program that are not disapproved by the FAA. Projects that are eligible for AIP funding are also eligible to be funded with local PFC revenue upon the FAA's approval of an application filed by a public agency that owns or operates a commercial service airport. The use of PFC revenue for such projects does not require an approved noise compatibility program under part 150.

In establishing the airport noise compatibility planning program, which became embodied in FAR part 150, the ASNA did not change the legal authority of state and local governments to control the uses of land within their jurisdictions. Public controls on the use of land are commonly exercised by zoning. Zoning is a power reserved to the states under the U.S. Constitution. It is an exercise of the police powers of the states that designates the uses permitted on each parcel of land. This power is usually delegated in state enabling legislation to local levels of government.

Many local land use control authorities (cities, counties, etc.) have not adopted zoning ordinances or other controls to prevent noncompatible development (primarily residential) within the noise impact area of airports. An airport's noise impact area, identified within noise contours on a noise exposure map, may extend over a number of different local jurisdictions that individually control land uses. For example, at five airports recently studied, noise contours overlaid portions of 2 to 25 different jurisdictions.

While airport operators have included measures in noise compatibility programs submitted under part 150 to prevent the development of new noncompatible land uses through zoning and other controls under the authorities of appropriate local jurisdictions, success in implementing these measures has been mixed. A study performed under contract to the FAA, completed in January 1994, evaluated 16 airports having approved part 150 programs for the implementation of land use control measures. This study found that of the 16 airports, 6 locations had implemented the recommended zoning measures, 7 locations had not implemented the recommended zoning measures, and 3 were in the process of implementation.

Another independent study evaluated 10 airports that have FAA approved part 150 programs in place and found that 4 locations had prevented new noncompatible development and 6 locations had not prevented such new development. At the letter 6 locations, the study reported that 26 nonairport sponsor jurisdictions had approved new noncompatible development and 28 nonairport sponsor jurisdictions and 1 airport sponsor jurisdiction had vacant land that is zoned to allow future noncompatible development.

The independent study identified the primary problem of allowing new noncompatible land uses near airports to be in jurisdiction that are different from the airport sponsor's jurisdiction. This is consistent with observations by the FAA and with a previous General Accounting Office report which observed that the ability of airport operators to solve their noise problems is limited by their lack of control over the land surrounding the airports and the operators's dependence on local communities and states to cooperate in implementing land use control measures, such as zoning for compatible uses.

The FAA's January 1994 study explored factors that contribute to the failure to implement land use controls for noise purposes. A major factor is the multiplicity of jurisdictions with land use control authority within airport noise impact areas. The greater the number of different jurisdictions, the greater the probability that at least some of them will not implement controls. Some jurisdictions have not developed cooperative relationships with the airport operator, which impedes appropriate land use compatibility planning. Some jurisdictions are not aware of the effects of aircraft noise and of the desirability of land use controls. This appears to be caused by a lack of ongoing education and communication between the airport and the jurisdictions, and to be worsened by lack of continuity in local government.

Some jurisdictions do not perceive land use controls as a priority because the amount of vacant land available for noncompatible development within the airport noise impact area is small, perhaps constituting only minor development on dispersed vacant lots, or because the current demand for residential construction near the airport is low to nonexistent. In such areas, land use control changes are not considered to have the ability to change substantially the number of residents affected by noise. Jurisdictions may also give noise a low priority compared to the economic advantages of developing more residential land or the need for additional housing stock within a community. A zoning change from residential to industrial or commercial may not make economic sense if little demand exists for this type of development. Therefore, a zoning change is viewed as limiting development opportunities and dimishing the opportunities for tax revenues.

In some cases, zoning for compatible land use has meet with organized public opposition by property owners arguing that the proposed zoning is a threat to private property rights, and that they deserve monetary compensation for any potential property devaluation. Further, basis zoning doctrine demands that the individual and parcels be left with viable economic value, i.e., be zoned for a use for which here is reasonable demand and economic return. Otherwise, the courts may determine a zoning change for compatibility to be a ''taking'' of private property for public use under the Fifth Amendment to the U.S. Constitution, requiring just compensation.

One or more of the factors hindering effective land use controls may be sufficient importance to preclude some jurisdictions from following through on the land use recommendations of an airport's part 150 noise compatibility program. When either an airport sponsor's or a nonairport sponsor's jurisdiction allows additional noncompatible development within the airport's noise impact area, it can result in noise problems for the people who move into the area. This can, in turn, result in noise problems for the airport operator in the form of inverse condemnation or noise nuisance lawsuits, public opposition to the expansion of the airport's capacity, and local political pressure for airport operational and capacity limitations to reduce noise. Some airport operators have taken the position that they will not provide any financial assistance to mitigate aviation noise for new noncompatible development. Other airport operators have determined that it is a practical necessity for them to include at least some new residential areas within their noise assistance programs to mitigate noise impacts that they were unable to prevent in the first place—particularly if they have airport expansion plans. Over a relatively short period of time, the distinctions blur between what is ''new'' and what is ''existing'' residential development with respect to airport noise issues.

Airport operators currently may include new noncompatible land uses, as well as existing noncompatible land uses, within their part 150 noise compatibility programs and recommend that remedial noise mitigation measures—usually either property acquisition or noise insulation—be applied to both situations. These measures have been considered to qualify for approval by the FAA under 49 USC 47504 and 14 CFR part 150. The part 150 approval enables noise mitigation measures to be eligible for Federal funding, although it does not guarantee that Federal funds will be provided.

Similar remedial measures are eligible to be funded with PFC revenue collected by public agencies pursuant to the provisions of 49 USC 40117 and 14 CFR part 158. Project eligibility for PFC use is established by the eligibility of such a project under the AIP. While approval by the FAA for a public agency to use PFC revenue for noise mitigation purposes does not require an approval part 150 noise compatibility program, the public agency must demonstrate the existence of noncompatible land uses around the airport and the efficacy of the proposed noise project.

The Change in FAA Policy

Beginning January 1, 1998, the FAA will approve under part 150 only remedial noise mitigation measures for

existing noncompatible development and only preventive noise mitigation measures in areas of potential new noncompatiable development and only preventive noise mitigation measures in areas of potential new noncompatible development. As of the same date, criteria for determining AIP eligibility under the noise set-aside and the use of PFC revenue that are consistent with this policy will be applied by the FAA. Specifically, after the effective date of this final policy, remedial noise mitigation measures for new noncompatible development that occurs from that date forward will not be eligible for AIP funding under the noise set-aside, regardless of previous FAA approvals under part 150, the status of implementation of an individual airport's part 150 program, or the status of any pending application for AIP funds. This policy also applies to projects that are eligible for the noise set-aside without a part 150 program pursuant to 49 U.S.C. 4704(c). Additionally, because a project must be eligible under the AIP to be eligible for PFC funds, this policy will affect the eligibility of noise mitigation measures for PFC funding. Consequently, after the effective date of this final policy, the FAA will not approve the use of PFC funds to implement remedial noise mitigation measures for new noncompatible development that occurs from that date forward.

Additional Comment Period for Effects on PFC Eligibility

This final policy explicitly includes passenger facility charges (PFC) within the prohibition of funding for remedial noise measures for new noncompatible development. However, the proposed policy that was published in the **Federal Register** and made available for public comment was more generic in its discussion of funding and did not specifically cite PFC eligibility. The public comments on funding that were received focused almost exclusively on Airport Improvement Program (AIP) funding. The policy's impact on PFC eligibility is identical to its impacts on AIP eligibility. Accordingly, a docket is open for a period of 30 days after the date of publication of this proposed final policy for public comment upon those issues related to the policy's impacts upon PFC eligibility. All other issues are considered to have been adequately covered during the original comment period. After consideration of any public comments thus received, the FAA may further refine the policy by revising portions of the policy related to PFC eligibility. Inasmuch as the FAA anticipates that any such revisions may be incorporated and the final policy issued within a reasonably short time, the effective date of this policy will be January 1, 1998.

Discussion

The continuing development of noncompatible land uses around airports is not a new problem. The FAA, airport operators, and the aviation community as a whole have for some years expended a great deal of effort to deal with the noise problems that are precipitated by such development.

With respect to the part 150 program and Airport Improvement Program (AIP) noise grants, the FAA considered in the 1989–1990 timeframe whether to disallow Federal assistance for new noncompatible development (note that these deliberations occurred prior to the advent of the PFC program). The choice posed at that time was either (1) allow Federal funding for airport operator recommendations in part 150 programs that included new noncompatible land uses within the parameters of noise mitigation measures targeted for financial assistance from the airport (e.g., acquisition, noise insulation), or (2) disallow all Federal funding for new noncompatible development that local jurisdictions fail to control through zoning or other land use controls. No other alternatives were considered.

The FAA selected the first option—to continue to allow Federal funds to be used to mitigate new noncompatible development as well as existing noncompatible development if the airport operator so chose. Several factors supported this decision. One factor was lack of authority by airport operators to prevent new noncompatible development in nonairport sponsor jurisdictions, although airport sponsors bear the brunt of noise lawsuits. Intense local opposition to an airport can be detrimental to its capacity, especially if any expansion of airport facilities is needed. The FAA also considered the plight of local citizens living with a noise impact that they may not have fully understood at the time of home purchase. Land use noise mitigation measures, funded by the airport either with or without Federal assistance, may be the only practical tool an airport operator has to mitigate noise impacts in a community. The FAA was hesitant to deny airport operators and the affected public Federal help in this regard. In addition, the FAA gave deference to the local initiative, the flexibility, and the broad eligibility for project funding under the ASNA.

Since this review in 1989–1990, the FAA has given extensive additional consideration to the subject of noncompatible land uses around airports. The change in FAA policy presented here involves a more measured and multifaceted approach than the proposal considered in 1989–1990.

A primary criterion in the ASNA for the FAA's approval of measures in an airport's part 150 noise compatibility program is that the measures must be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Until now, the FAA has applied this criterion as a whole when issuing determinations under part 150; that is, if a measure either reduces or prevents noncompatible development, no matter when that development occurs, it may be approved as being reasonably consistent. No distinction has been made by the FAA between remedial noise mitigation measures that reduce noncompatible development and preventive noise mitigation measures that prevent new noncompatible development. Airport operators may, therefore, recommend and receive FAA approval under part 150 for remedial acquisition or soundproofing of new residential development.

The FAA now believes that it would be more prudent to distinguish between (1) noise mitigation measures that are reasonably consistent with the goal of reducing existing noncompatible land uses (i.e., remedial measures) and (2) noise mitigation measures that are reasonably consistent with the goal of preventing the introduction of additional noncompatible land uses (i.e., preventive measures). Using such a distinction, airport operators would need to identify clearly within the area covered by noise exposure maps the location of existing noncompatible land uses versus the location of potentially new noncompatible land uses. Many airport operators currently record this distinction in their noise exposure map submissions, when identifying noncompatible land uses. Potentially new noncompatible land uses could include (1) areas currently undergoing residential or other noncompatible construction; (2) areas zoned for residential or other noncompatible development where construction has not begun; and (3) areas currently compatible but in danger of being developed noncompatibly within the timeframe covered by the airport's noise compatibility program.

The purpose of distinguishing between existing and potential new noncompatible development is for airport operators to restrict their

consideration of remedial noise mitigation measures to existing noncompatible development and to focus preventive noise mitigation measures on potentially new noncompatible development. The most commonly used remedial noise mitigation measures are land acquisition and relocation, noise insulation, easement acquisition, purchase assurance, and transaction assistance. The most commonly used preventive noise mitigation measures are comprehensive planning, zoning, subdivision regulations, easement acquisition restricting noncompatible development, revised building codes for noise insulation, and real estate disclosure. Acquisition of vacant land may also be a preventive noise mitigation measure with supporting evidence in the airport operator's part 150 submission that acquisition is necessary to prevent new noncompatible development because noncompatible development on the vacant land is highly likely and local land use controls will not prevent such development. Often, combinations of these measures are applied to ensure the maximum compatibility.

Under this final FAA policy, airport operators would not be limited to applying the most commonly used noise mitigation measures in their noise compatibility programs. Local flexibility to recommend other measures, including innovative measures, under part 150 would be retained. However, all noise mitigation measures applied to existing noncompatible development must clearly be remedial and serve the goal of reducing existing noncompatible land uses. Similarly, all noise mitigation measures applied to potential new noncompatible development must clearly be preventive and serve the goal of preventing the introduction of additional noncompatible land uses.

Any future FAA determinations issued under part 150 will be consistent under this policy. The FAA's approval of remedial noise mitigation measures will be limited to existing noncompatible development. The FAA's approval of preventive noise mitigation measures will be applied to potential new noncompatible development. The FAA recognizes that there will be gray areas which will have to be addressed on a case-by-case basis within these policy guidelines. For example, minor development on vacant lots within an existing residential neighborhood, which clearly is not extensive new noncompatible development, may for practical purposes need to be treated with the same remedial measure applied to the rest of the neighborhood. Another example would be a remedial situation in which noise from an airport's operation has significantly increased, resulting in new areas that were compatible with initial conditions becoming noncompatible. Airport operators will be responsible for making the case for exceptions to the policy guidelines in their part 150 submittals.

It should be noted that noise mitigation would continue to be eligible for AIP and PFC funds if approved as mitigation measures in an FAA environmental document for airport development project(s). This final policy does not affect that eligibility.

Eligibility for Federal funding of noise projects through the noise set-aside of the AIP will follow the same policy as the FAA's part 150 determinations—remedial projects for existing noncompatible development and preventive projects for potential new noncompatible development. The FAA will apply the same eligibility criteria to those few types of noise projects, such as soundproofing of schools and health care facilities, that are eligible for AIP funds under the noise set-aside without an approved part 150 program. The change in AIP eligibility will cause a like change in the eligibility of noise projects for PFC funding.

The impact of revising the FAA's policy on part 150 determinations and funding eligibility will be to preclude the use of the part 150 program and AIP or PFC funds to remediate new noncompatible development within the noise contours of an airport after the effective date of this final policy. By precluding this option while at the same time emphasizing the array of preventive noise mitigation measures that may be applied to potential new noncompatible development, the FAA seeks to focus airport operators and local governments more clearly on using these Federal programs to the maximum extent to prevent noncompatible development around airports, rather than attempting to mitigate noise in such development after the fact. The FAA has determined that such a policy will better serve the public interest. Unlike the FAA's previous consideration of this issue in 1989–1990, AIP and PFC funding may be available to assist airport operators in dealing with new noncompatible development that is not being successfully controlled by local jurisdictions, so long as the airport's methods prevent the noncompatible development rather than mitigating it after development has occurred. This should be a more cost-effective use of available funds since remedial noise mitigation measures generally cost more for a given unit than preventive measures.

In selecting a date to implement this final policy, the FAA is balancing a desire to implement a beneficial program change as rapidly as possible with practical transition considerations of ongoing part 150 programs. One approach considered was to implement it on an airport-by-airport basis, selecting either the date of the FAA's acceptance of an airport's noise exposure maps or the date of the FAA's approval of an airport's noise compatibility program under part 150.

This approach would have the advantage of directly typing this policy to a point in time for which an airport operator has defined, in a public process, the size of the airport's noise impact area and has consulted with local jurisdictions on measures to reduce and prevent noncompatible land uses. There are, however, disadvantages to this approach. More than 200 airports have participated in the part 150 program, beginning in the early 1980's. Thus, selecting either the noise exposure map's acceptance date or the noise compatibility program's approval date for these airports, which includes the great majority of commercial service airports with noise problems, would entail either applying this final policy retroactively or applying it prospectively at some future date as such airports update their maps and programs.

The selection of an airport-by-airport retroactive date would have required the FAA and airport operators to review previous part 150 maps and programs, historically reconstructing which land use development was ''existing'' at that time and which development is ''new'' since then, potentially to withdraw previous FAA part 150 determinations approving remedial measures for ''new'' development, and not issue new AIP grants for any ''new'' development (which by 1997 may have already been built and in place for a number of years and be regarded locally as an integral part of the airport's mitigation program for existing development). There was the further practical consideration of benefits to be achieved. It may now be too late to apply preventive noise mitigation measures to noncompatible land uses that have been developed since an airport's noise exposure maps have been accepted or noise compatibility program has been approved. If remedial noise mitigation measures were now determined not to be applicable to such areas, the areas would be left in limbo, having had no advance warning of a change in Federal policy.

There would also be disadvantages to applying this final policy prospectively on an airport-by-airport basis as an airport either updates a previous part 150 program or completes a first-time part 150 submission. The major disadvantages would be in the timeliness of implementing this final policy and the universality of its coverage. Since part 150 is a voluntary program, airport operators may select their timing of entry into the program and the timing of updates to previous noise exposure maps and noise compatibility programs. The result would be a patchwork implementation, with some airports operating under the new policy regarding part 150 noise mitigation measures and funding and other airports operating under the old policy for an unspecified number of years. An unintended and counterproductive side effect could be the postponement by some airports of updated noise exposure maps and noise compatibility programs in order to maintain Federal funding eligibility under the previous policy.

The FAA has determined that its preferred option is to select one prospective date nationwide as the effective date for this final policy, rather than to implement it based on an individual airport's part 150 activities, either maps or program. A specific date will ensure nationwide application on a uniform basis and provide a more timely implementation than prospective airport-by-airport implementation dates. A specific date will also eliminate any perceived advantages in postponing new or updated part 150 programs. the FAA considered two options with respect to the selection of a specific date: (1) The date of issuance of a final policy following the evaluation of comments received on its proposal or (2) a future date, 180 days to a year after publication of a final policy to allow transition time for airport operators to accommodate previously approved part 150 programs, recent part 150 submissions, or those programs or submissions under development.

While the date of issuance of a final policy was considered to have the advantage of timeliness, this was outweighed by the disadvantage of too abrupt a transition from one policy to another without giving airport operators and local communities a chance to react. The FAA anticipated in its notice of this change in policy that there would be a transition period from the date of issuance of a final policy of at least 180 days to avoid disrupting airport operators' noise compatibility programs that have already been submitted to the FAA and are undergoing statutory review. The FAA also announced in its notice that provision for this period plus an additional margin of time beyond 180 days would allow airport operators adequate opportunity to amend previously completed noise compatibility programs or programs currently underway, in consultation with local jurisdictions, to emphasize preventive rather than remedial measures for new development. Accordingly, the FAA sought comment on how long to extend a transition period beyond the 180 days noted—to a possible maximum of 1 year from the date of issuance of the final policy. In view of the extended time period since publication of the original notice, plus the opportunity for supplemental comment on the impacts of the policy on PFC eligibility, the effective date of January 1, 1998, is considered to more than fulfill the 1 year implementation timeframe that was proposed in the original notice and should provide adequate time to revise or update noise compatibility programs that are in preparation.

The potential future expenditure of AIP funds for projects to remediate new noncompatible development during a transition period is believed to be minimal, based upon the FAA's review of the sample of airports included in the FAA's recent study and in an independent study, as well as general program knowledge. Not all airports have a problem of continuing uncontrolled noncompatible development within the area covered by noise contours. Among those that do have a problem, few of them offer to provide remedial financial assistance for the new development, as shown in their part 150 submissions. Even in those cases where financial assistance for remediation has been recommended for new noncompatible development, it has generally been limited in scope and identified as a lower priority than funding remediation for existing noncompatible development. Further, funding for such new noncompatible development tends to be anticipated only in the latter years of an airport's part 150 program when it may not be needed because of shrinking noise contours resulting from the national transition to the use of Stage 3 aircraft.

Since part 150 is a voluntary program, each airport operator has the discretion to make its own determinations regarding the impact of this final policy on existing noise compatibility programs. If an impact is found, each operator can determine whether to immediately amend its program during the allowed transition period or to wait until the program is otherwise updated. The FAA will not initiate withdrawals of any previous part 150 program approvals based on this policy. However, any remedial noise mitigation measures for noncompatible development that is allowed to occur within the area of an airport's noise exposure maps after the effective date of this final policy will have to be funded locally, since the measures will not be eligible for AIP assistance from the noise set-aside or for PFC funding. New part 150 approvals after the effective date of this final policy will conform to this policy.

Discussion of Comments

On March 20, 1995, the FAA issued a notice of proposed policy (60 FR 14701), and solicited comments from the public on the proposed policy change. The issues raised in the comments are summarized and addressed below:

Twenty-one individuals and organizations submitted comments on the proposal. Comments were submitted by airport operators, airport associations, aviation associations, pilot associations, public agencies, community civic organizations, and businesses and business organizations. Of the 21 commenters, all but 8 commented favorably upon the policy as proposed by the FAA. Those eight commenters expressed preferences for three of the five alternatives upon which the FAA had solicited comments: retain the existing policy (alternative Number 1), retain the existing policy for airport operators that have taken earnest but unsuccessful steps to prevent new noncompatible development in jurisdictions outside their control (alternative Number 2), retain the existing policy for noncompatible land uses within the DNL 65 dB contour with an all Stage 3 fleet (alternative Number 3), retain existing policy for part 150 approval, but eliminate Federal funding eligibility for remedial measures for new noncompatible development (alternative Number 4), and implement the proposed policy on a airport-by-basis (alternative Number 5). Three of those commenters expressed a preference for alternative Number 1; three preferred alternative Number 2; and two preferred alternative Number 4. A discussion of the issues raised by the commenters follows. Comments were also requested on how long a transition period beyond the 180 days to allow—to a possible maximum 1 year total—from the date of issuance of the policy. Discussion of the comments on the effective date of the policy and the FAA's response follows the discussion of issues.

Issues

A review of the comments on the substance of the proposed policy revealed six general issues or concerns. Each of those issues and the FAA's response is presented below.

Issue: Airport expansion causing the noncompatibility: Four commenters expressed concern that airport expansion which increased the noise exposure of previously compatible development might become ineligible for Federal noise mitigation funds.

FAA Response: The new policy will continue the eligibility of such properties. From the discussion of the proposed policy (60 FR 14701, March 20, 1995), ''The FAA recognizes that there will be gray areas which will have to be addressed on a case-by-case basis within these policy guidelines. (An) example would be a remedial situation in which noise from an airport's operation has significantly increased, resulting in new areas that were compatible with initial conditions becoming noncompatible. Airport operators would be responsible for making the case for exceptions to the policy guidelines in their part 150 submittals.''

It should be noted that noise mitigation would continue to be eligible for AIP and PFC funds if approved as mitigation measures in an FAA environmental document for airport development project(s). This final policy does not affect that eligibility. Foresighted airport planning, the programmed phase out of noisy Stage 2 transport type jet airplanes and the subsequent shrinkage of noise contours for many airports, plus aggressive noise compatibility planning and implementation through effective local land use controls and building codes, can and should largely preclude situations in which airport expansion causes new noncompatible uses.

Issue: Compatible development on bypassed lots within existing noise impacted neighborhoods: Several commenters expressed concern about development of bypassed lots or additions to existing structures within noise impacted neighborhoods.

FAA Response: Bypassed lots, e.g., vacant or in-fill lots and other small parcels of vacant land within otherwise developed neighborhoods, are usually unsuitable for development with uses significantly different from that of their neighbors. It would be impractical, for example, to require industrial or commercial development on a vacant lot within an existing residential neighborhood. Any policy or land use control that effectively prevents any economically viable development of such properties raises the specter of public use of private property without due compensation. The new policy will continue the eligibility of such properties, although on a case-by-case basis. From the discussion of the proposed policy (60 FR 14701, March 20, 1995), ''For example, minor development on vacant lots within an existing residential neighborhood, which is clearly not extensive new noncompatible development, may for practical purposes need to be treated with the same remedial measure applied to the rest of the neighborhood.'' Also from that discussion, ''Airport operators would be responsible for making the case for exceptions to the policy guidelines in their part 150 submittals.'' In interpreting this, any such new structures or additions to existing structures should have the appropriate sound attenuation measures incorporated as an integral part of their initial construction rather than planning to have them added through a subsequent remedial soundproofing program. Those remedial programs are designed to bring relief to preexisting structures.

Issue: School additions serving population growth in existing noise impacted neighborhoods: One commenter asked for continued eligibility for school additions necessary to serve rapidly growing school age population within existing noise impacted neighborhoods.

FAA Response: Generally, when a school addition or other community facility is necessary to serve the local neighborhood and relocation outside the noise impact area is impractical, it should remain eligible for Federal funding assistance for the additional cost of including the appropriate sound attenuation in its initial construction. Eligibility for remedial noise mitigation measures for additions to existing noise impacted schools or neighborhood service facilities required by demographic changes within their service areas will be considered by the FAA on a case-by-case basis.

Issue: Proposed Policy will be more costly and weakens the position of the airport operator: One or more commenters felt that the proposed policy is less preferable than the present policy and may be more costly since it encourages airport operators to acquire land or rights in land in lieu of negotiations with neighboring communities. Concern was expressed that it also removes an important negotiating tool—that of Federal matching grants to mitigate the noise in neighboring jurisdictions.

FAA Response: Purchase of noise impacted lands by the airport without their use for an airport purpose, or their lease or resale for an airport compatible use, is costly both in terms of the acquisition costs and of the extended costs of maintenance and loss of tax base. The proposed policy is, in part, designed to give airport operators who do not exercise land use control jurisdiction an incentive to press responsible officials into action and to engage in more vigorous negotiations with land use control jurisdictions that have land impacted by the airport's noise, but do not have proprietary interest in the airport. The policy does so by assuring both airport sponsors and local land use control jurisdictions that no AIP of PFC funds will be available to mitigate the airport's noise impacts upon the noncompatible uses that they permit to be developed in the face of and in full knowledge of the airport's noise.

Issue: Conflicts with state noise compatibility programs: One commenter expressed concern that the proposed change was not compatible with its existing state noise compatibility laws.

FAA Response: The state cited, California, has been a leader in the airport noise compatibility effort and has noise standards in place that require airport operators to bring noncompatible land uses into compliance with those standards. However, the airport operator has no direct control to prevent the introduction of new noncompatible uses. The new policy is not intended to work counter to such positive noise compatibility efforts, it is intended to reinforce such efforts. Where noncompatible uses existed prior to the effective date of this policy, they are still eligible for AIP or PFC assistance for remedial noise compatibility measures. The new policy is designed to provide the airport operator with additional leverage to discourage the introduction of new noncompatible uses.

Issue: Sharing of responsibilities: One commenter suggested that the language of the original notice tended to suggest that local communities that are not the airport's sponsors might not be predisposed to act in a fully responsible manner to carry through with noise compatibility programs.

FAA Response: This was certainly not the intent of the notice, nor is that the FAA's perspective. The FAA recognizes that by and large most communities act, within their means, in a quite responsible manner vis-á-vis airport noise compatibility. However, we also recognize that such communities may be under locally significant economic

and political pressures to allow noncompatible development. It is the FAA's view that the active cooperation and coherent efforts of all parties involved are required to successfully plan and implement an airport noise compatibility program that meets the community's economic, political, and aviation needs. That is a central goal of the part 150 program and the rationale for its extensive consultation and community involvement elements.

Effective date of the policy

Several commenters made recommendations on dates for the provisions of the policy to become effective after its publication in the **Federal Register.** Their recommended dates ranged from ''as soon as possible,'' to 90 days, to ''no earlier than 18 months.'' In selecting a date to implement this final policy, the FAA balanced the desire to implement a beneficial program change as rapidly as possible with the practical transition considerations of ongoing part 150 programs. In the notice for public comment, the FAA anticipated a transition period of at least 180 days from the date of issuance of a final policy to avoid disrupting airport operators' noise compatibility programs that have already been submitted to the FAA and are undergoing statutory review. The notice also suggested an additional margin of time to a maximum of 1 year to allow airport operators adequate opportunity to amend previously completed noise compatibility programs or programs currently under development, in consultation with local jurisdictions, to emphasize preventive rather than remedial measures for new development. Accordingly, and after careful consideration of the public comments on this issue and the extended time since FAA issued notice of this proposed policy, the FAA selects a transition period to end December 31, 1997. This should afford airport operators, local land use control authorities, developers, and others with ample opportunity to revise their plans, programs, land use controls, and building codes.

Issue: Use of statements from the proposed policy: We note that statements in the proposed policy (60 FR 14701) have been misread.

FAA Response: These statements recognized the role that state and local governments play in airport noise compatibility planning. They did not reach the issue of whether zoning decisions that regulate airports development and operations within an airport's existing boundaries may be federally preempted. The statement ''Neither the FAA nor any agency of the Federal Government has zoning authority'' has been deleted because it led to some confusion.

Notice of Proposed FAA Policy

Accordingly, by this publication the FAA is formally notifying airport operators and sponsors, airport users, the officials of all public agencies and planning agencies whose area, or any portion of whose area, of jurisdiction are within the noise contours as depicted on an airport's part 150 noise exposure map, and all persons owning property within, considering acquisition of property within, considering moving into such areas, or having other interests in such areas, of the following proposed final FAA policy concerning future approval under 14 CFR part 150 and eligibility of AIP and PFC funding of certain noise mitigation measures.

Proposed Final Policy Statement

Beginning January 1, 1998, the FAA will approve under part 150 only remedial noise mitigation measures for existing noncompatible development and only preventive noise mitigation measures in areas of potential new noncompatible development. As of the same date, edibility for AIP noise set-aside funding and PFC funding will be determined using criteria that are consistent with this policy. Specifically, remedial noise mitigation measures for new noncompatible development occurring after the effective date of this final policy will not be approved by the FAA under part 150 and will not be eligible for AIP noise set-aside funding or approved for the use of PFC funding, regardless of previous FAA approvals of such measures under part 150, the status of implementation of an individual airport's part 150 program, or the status of any pending application to use AIP funds or PFC revenue for noise mitigation purposes. This policy also applies to projects that are eligible under the noise set-aside without a part 150 program. Eligibility for remedial noise mitigation measures for bypassed lots or additions to existing structures within noise impacted neighborhoods, additions to existing noise impacted schools or other community facilities required by demographic changes within their service areas, and formerly noise compatible uses that have been rendered noncompatible as a result of airport expansion or changes in airport operations, and other reasonable exceptions to this policy on similar grounds must be justified by airport operators in submittals to the FAA and will be considered by the FAA on a case-by-case basis. This policy does not affect noise mitigation that is included in FAA-approved environmental documents for airport development projects.

Issued in Washington, DC, on May 20, 1997.

Paul R. Dykeman,

Deputy Director of Environment and Energy.

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FEDERAL TRADE COMMISSION

16 CFR Part 436

Franchise Rule Public Workshop Conferences

AGENCY: Federal Trade Commission.

ACTION: Public workshop conferences.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') will hold six public workshop conferences in connection with the Advance Notice of Proposed Rulemaking (''ANPR'') on the Trade Regulation Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,'' 16 CFR Part 436 (the ''Franchise Rule'' and ''Rule''). In addition, the Commission will continue to accept comments on the ANPR until December 31, 1997.

DATES: The public workshop conferences will be held as follows:

Conf. No.	Topics	Location	Dates
1	Trade Show Promoters	Washington, DC	July 28, 29.
2	Business Opportunities	Chicago, IL	Aug. 21, 22.
3	UFOC, Internet, International Co-Branding, Alternative Law Enforcement	New York, NY	Sept. 18, 19.
4	Business Opportunities	Dallas, TX	Oct. 20, 21.
5	UFOC, Internet, International, Co-Branding, Alternative Law Enforcement	Seattle, WA	Nov. 6, 7.
6	Business Opportunities	Washington, DC	Nov. 20, 21.