

needed on projects not affecting operations. The FAA did not adopt these suggestions because the statute is quite clear that air carriers should be consulted, that a meeting is required, and that the nature of the project is not a basis for eliminating consultation on a PFC-financed project.

There were also comments recommending that airlines not currently serving the airport, air cargo carriers and passenger representatives be consulted. The FAA encourages public agencies to involve as many interested parties as possible in the consultation process, but cannot, under the statute, make such widespread consultation a requirement. Of course, for any project requiring environmental study prior to implementation, all interested persons must be afforded the opportunity to provide comment. In addition, the FAA provides notice to and opportunity for comment by all interested parties during the application review process under § 158.27.

Some commenters argue that notice should be sent by registered letter or published in the *Federal Register*; others suggest that a facsimile transmission would be adequate. The FAA has chosen not to specify the form of written notice, leaving that choice to the public agency. However, failure by a public agency to satisfy the written notice requirement of this section could result in disapproval of an application. The *Federal Register*, as the vehicle used by the Federal Government to provide public notice, is not readily available for use by non-Federal organizations or individuals.

The remaining changes in this section result from reorganization and editing to improve clarity.

§ 158.25 Applications (Proposed: § 158.27 Application.) A main feature of the procedure proposed in the NPRM was the requirement that all environmental and technical studies for a proposed project be completed and approved before the PFC application could be submitted. As proposed, this section would have required public agencies to file applications not more than one year in advance of the proposed charge effective date and to implement an approved project within 2 years of that date. No provision was made for separate approval to impose a PFC in advance of project approval. Applications for more than one project would have been acceptable, but no work other than project formulation could have commenced until project approval.

The NPRM also set forth information that would have been required to accompany the application, and specified that the Administrator could request additional information if needed. In addition, the proposed rule referred to an application form depicted in Appendix A and accompanying public agency assurances set forth in Appendix B.

Comments: Most commenters argue that PFC application procedures modelled after those for AIP grants, as proposed in the NPRM, would be too burdensome and restrictive. They urge instead simpler, more flexible, procedures for application, review and approval.

A number of commenters argue that authority to impose PFC's should be allowed separately in advance of project approval, as long as the public agency can demonstrate that it has under consideration or preparation sufficient projects that are nominally eligible for use of the PFC revenue collected. One commenter proposes that approval of a major capital program, a new airport, for example, be tied to a showing by the public agency of a demonstrated need for the program.

Under the two-step process most suggest, a public agency could submit an application to impose a PFC for projects currently in the planning stage and later file for approval of a specific project, or an extensive list of projects such as a long term capital plan. The documentation needed for project approval, say these commenters, can be submitted when appropriate for review and approval of specific projects on which PFC revenue would be spent.

Some respondents suggest slightly differing sequences for completing environmental and technical requirements in relation to PFC and project approval. One suggests that these requirements be accomplished in tandem with consultation; another that they be done concurrently with the Administrator's review and approval process; a third argues that environmental and technical approvals are not needed for PFC-financed projects; and a fourth suggests that a previously approved ALP can be used to satisfy that requirement.

Many commenters also suggest that an application to impose a PFC in advance of approval to use PFC revenue be accompanied by a list of back-up projects on which the accumulated revenue could be spent if major multi-phase projects were ultimately disapproved. A similar suggestion is that the public agency describe any alternative methods it is considering to accomplish its stated objectives.

A comment appearing frequently is that the term "project" in the application should be broadened to include major capital plans and multi-phased programs. Those who support this concept argue that this would give public agencies the flexibility they need to apply PFC revenue to specific projects in the most efficient manner and reduce the need to reapply for each successive project.

Many commenters also suggest that a public agency should have the flexibility to revise its implementation schedule for approved projects in a capital plan in any order it considers appropriate. This they argue, would allow public agencies to respond quickly to changing local priorities and to take advantage of more economical contracting and procurement opportunities. Another proposal for added flexibility suggests that public agencies be allowed to gradually phase in increasing PFC levels at their airports.

A number of comments specifically relate to time limits proposed in sections 158.27(c) and 158.27(d) of the NPRM. A few suggest that applications be accepted more than 1 year in advance of the proposed charge effective date; others argue for more than the proposed 2 years that would have been allowed between application approval and project implementation; and at least one commenter urged that no more than 6 months be allowed from the time of PFC approval to implementation.

A number of commenters express confusion with respect to the term "formulation" as it was used in the application procedure outlined in the NPRM. Several respondents suggest that the FAA define the term and some offer their own definition. Other commenters seek to expand the meaning of project to include various specific activities often associated with project formulation such as contracting for architectural and engineering services.

Others strongly urge that projects such as environmental studies and preliminary plans be eligible or reimbursable in conjunction with proposed projects. They assert that smaller airports in particular will not be able to afford the cost of required studies if they cannot use PFC revenue for that purpose.

Some commenters suggest that the application also include a certification from the public agency that it is not in violation of sections 9304 or 9307 of the Airport Noise and Capacity Act of 1990. A suggested alternative is that the FAA make that a specific standard of the approval process. Another commenter proposes that public agencies certify in the application, and on the form depicted in Appendix A of the NPRM, that FAA's NEPA requirements have been satisfied.

One commenter argues that the application should include a checklist on which the public agency would be required to indicate deficiencies in airport safety or design standards. This commenter argues that an application to impose a PFC for a project other than to address such deficiencies should require an additional justification. Another seeks a requirement for project description to ensure that projects intended to benefit primarily all-cargo operators be easily identified for disapproval.

Some commenters recommend that the meaning of several terms used in the NPRM should be clarified or their use eliminated. Among these, it is suggested that the proposed requirement for a financial plan be revised to accommodate preliminary financial estimates; that the final rule provide guidelines for preparing acceptable enplanement projections; and that applications require greater specificity in the factors used to propose a charge effective date and other estimates related to total PFC revenue. One comment suggests that there is no valid need for a public agency to project the total PFC amount.

While one commenter asks for an explanation of what additional information the Administrator might request, as was provided for in the NPRM, another proposes that the provision be deleted.

Finally, two public agencies propose that certain existing agreements between airport sponsors under the AIP be used to justify relaxation of application requirements. One recommends that, where the FAA has issued a letter of intent (LOI) with respect to future funding of an approved program or project, and the LOI requires the public agency to impose a PFC, the public agency not be required to obtain the additional approval to impose a PFC. Another suggests that sponsors already obligated by AIP grant assurances be relieved of having to submit additional assurances with an application to impose a PFC.

Final Rule: The FAA agrees that the authority to impose a PFC can be granted in advance of an approval to use PFC revenue on specific projects.

Accordingly, this section of the final rule is restructured to provide two application options. Under the final rule, a public agency may apply for authority to impose a PFC while finalizing the plans and studies for a project to be financed with the PFC revenue. The application to use the PFC revenue may then be submitted when all needed plans are complete and prerequisite approvals have been obtained. Alternatively, if a public agency is ready to immediately implement a project using PFC revenue, it may apply to do so at the same time it files the application to impose the PFC. The information to be submitted with an application for the authority to impose a PFC and to use PFC revenue are set forth in § 158.25(b) and (c), respectively, in the final rule.

The FAA considers the final rule to permit substantial flexibility on alternative sequences to complete the requirements for approvals to impose a PFC and to use PFC revenue. A public agency may, in many instances, pursue completion of these requirements concurrently. The FAA considers it unnecessary, however, to specify in the rule the various paths by which a public agency satisfy the requirements.

The information to be submitted in all cases in which a public agency seeks the authority to impose a PFC is set forth in section 158.25(b). Inasmuch as the final rule does not include a specific form on which the application is to be submitted, as was proposed in Appendix A of the NPRM, the listing of required information in this section is more detailed. (The FAA intends to develop an application form independently from this rule, but a public agency need not await its availability in order to file an application.)

The application to impose a PFC requires information about the public agency, the airport at which the PFC is to be imposed and at which the revenue is to be used, the PFC level to be imposed, the proposed charge effective date and the project, including its justification.

In this regard, the definition of "project" in subpart A is revised as discussed above to clarify the FAA's intent that large capital programs and multi-phased projects, as well as more modest projects, are considered approvable. The requirement under section 158.25(b)(6), therefore, may be interpreted broadly or narrowly, as in the case of a public agency with plans for the immediate use of PFC revenue on discrete projects.

The results of consultation with air carriers and foreign air carriers are also to be submitted.

If the public agency wishes to request that any class of air carrier not be required to collect the PFC at the airport, that request and specified information regarding the class must accompany the application.

If the project is still in the planning stage and the public agency is seeking only the authority to impose a PFC, the financial information required by § 158.25(b)(14) must still be included. However, a public agency is required to provide only as much information as can reasonably be expected to be available during the planning stages of a comprehensive capital program. Finally, the FAA retains the provision whereby the Administrator may request additional information.

In a case where the public agency intends to proceed immediately with a PFC-financed project, the application should include the information required under section 158.25(c)(1) of the final rule. If such is the case, the public agency need not submit the information set forth in section 158.25(b)(14). It should be noted that a public agency is required to submit a signed certification regarding the completion of any necessary environmental, ALP and airspace studies and approvals. (If the application is to conduct planning or environmental study projects, to be done in preparation for a later application involving construction, this certification is not required.) The FAA intends to monitor the veracity of this certification closely to ensure that all requirements are fully met before granting approval to use PFC revenue.

If a public agency has obtained approval of an application for the authority to impose a PFC, and later applies for the authority to use accumulated PFC revenue, it must first consult further with air carriers and foreign air carriers. This consultation is intended to be less rigorous than the first in that it requires no meeting at which the public agency presents its proposed project to the carriers. It should, however, emphasize new or revised PFC or project information, including cost, that is relevant to the application. The public agency must then submit the information required under section 158.24(c)(2) of the final rule, including a summary of the further consultation. Again, the emphasis should be on changes to the original application to impose a PFC.

Whether a public agency intends to seek approval to use PFC revenue concurrent with or subsequent to the approval to impose a PFC, the project it proposes may consist of one or more discrete projects or a general program of projects. In either case, the public agency has the option to implement approved projects in whatever order best responds to local priorities and best meets local objectives regarding airport development.

The FAA agrees that an application to impose a PFC by a public agency that has been found to be in violation of these provisions should not be approved, and incorporates this provision as a criterion for approval, rather than including it as an item to be included in the application. See the discussion below on section 158.29, the Administrator's decision, in this regard.

The FAA has concluded that it is unlikely that a public agency will file an application to impose a PFC more than 1 year in advance of its proposed charge effective date and, consequently, this provision is deleted in the final rule. The 2-year limit for implementing a project approved under section 158.25(c), however, is considered appropriate. When coupled with the option to impose a PFC for an additional 3 years before approval to use the funds, as discussed below under section 158.31 and section 158.33, a public agency may accumulate PFC revenue for up to 5 years before actually implementing a project. See the discussion of sections 158.31 and 158.33 below regarding duration of authority to impose a PFC prior to obtaining project approval and prior to implementing an approved project.

The FAA considered developing a definition for "formulation" but has not done so. The problem lies, in part, with the fact that some costs of formulating a project, e.g., environmental studies, can be undertaken

by public agencies as individual projects. (Some commenters interpreted the NPRM too narrowly in this regard.) Conversely, land acquisition, which is considered project formulation under the AIP, clearly could not be financed with PFC revenue until such use is approved.

This issue is resolved in the final rule by revising the definition of "allowable cost" as discussed above under subpart A to clarify that the costs can be incurred prior to approval to impose a PFC or use PFC revenue. It should be understood, however, that a public agency that incurs costs related to a project before the project is approved, may use PFC revenues to reimburse those costs only if the project is ultimately approved.

The FAA has chosen not to require an airport safety checklist or specific steps to highlight any particular type of project. To do so would indicate that the FAA intends to substitute its priorities for those of the public agency controlling the airport. In addition, with respect to concerns about airport safety, the FAA conducts periodic inspections of certificated commercial service airports to help ensure that critically needed safety projects are implemented when needed.

This should be addressed during the required consultation process prior to the filing of an application. With regard to highlighting specific types of projects to preclude PFC of funding ineligible items, section 158.15(b)(6) indicates some of the types of projects that are ineligible for use of PFC revenue. The FAA is confident that, because eligibility for PFC-financed projects so closely parallels that for AIP-financed projects with the exception of gates and related areas, there is little likelihood that ineligible projects will be proposed or financed with PFC revenue. Consequently, these proposals are not incorporated in the final rule.

The FAA has not adopted suggestions that final rule incorporate more specific guidelines for preparing any types of projections or any estimating methods that a public agency may use to develop its proposed charge effective or expiration dates. There is sufficient expertise extant in this specialized area that to proscribe a particular methodology by rule would reduce flexibility to adapt new or proven methods to locally controlled estimating needs. Although the FAA declines to specify the methods for developing such estimates, the final rule retains the requirements that public agencies present certain temporal and financial forecasts.

Readers will also note that the final rule retains the provision allowing the Administrator to request additional information if it is needed to fully evaluate an application. Although the Administrator would have that authority even in the absence of this provision, its presence is intended to advise public agencies that some additional information may be needed in certain circumstances. Because it cannot be predicted what specific information could be needed in a given case, however, the FAA has chosen not to articulate examples of information that potentially could be requested.

The final rule also retains the application requirement that public agencies certify in writing that they will comply with certain assurances related to the imposition of PFC's and the use of PFC revenues. These are considered necessary to ensure that projects constructed with PFC revenues are compatible with airport safety and design standards, further the policy of encouraging air carrier competition, and assuring compliance with specific PFC-related requirements. The individual assurances in the final rule are discussed below under Appendix A.

The FAA has also decided not to adopt the proposal that an airport sponsor required by a letter of intent issued under the AIP to impose a PFC be exempt from the PFC-related application requirements. While certain of the consultation and application requirements may be redundant, the statute cannot be interpreted to provide such an exemption. In addition, although prior consultation and project approval will very likely allow speedier review and approval, it can also be expected that new issues will arise pertaining to imposition of the PFC and use of the revenue.

§ 158.27 Review of applications (Proposed: Review and Approval Process). As proposed, this section included the procedures for review of applications and the standards and procedures for approval of applications by the Administrator in a single section. With respect to review, the NPRM proposed that the Administrator would review the completeness of the application within 30 days after receipt. If the application was complete, the Administrator would have published a notice in the *Federal Register* soliciting public comment. Comments would be due in 30 days. Following review of the record, including public comments, the Administrator would have issued a decision within 120 days of the receipt of the application.

If the application was not substantially complete, the NPRM provided for the Administrator to advise the public agency of the deficiencies, and the public agency would have had 15 days to advise the Administrator of its intention to supplement the application. If the public agency chose not to supplement

the application, the Administrator would have proceeded with a *Federal Register* notice inviting public comment and would have issued a decision within 120 days after receipt of the application. If the public agency supplemented the application, the Administrator would have reviewed the supplemented application for completeness. If the Administrator still considered the supplemented application to be incomplete, the public agency would have had a further opportunity to supplement the application. This process could have been repeated until the Administrator determined that the application was substantially complete or the public agency declined to file further supplements. Following notice and an opportunity for public comment, the Administrator would have issued a decision within 120 days after receipt of the final supplement.

The proposed rule also included provisions specifying the contents of the Administrator's decision to be published in the *Federal Register* and the standards for approval of PFC applications.

Comments: A number of commenters urge that the process be streamlined, and many propose the elimination of certain requirements, as discussed below. At least one commenter suggests that some expedition could be achieved if certain steps could proceed in tandem rather than sequentially. Others propose that certain requirements be eliminated.

Two airports propose that the rule provide for an Administrator's decision in less than 120 days, especially in the case of PFC applications that are not opposed by carriers. One of these proposals is part of a larger recommendation to expedite the review process.

With respect to completeness determinations, an airport operator proposes that the FAA take only 15 days to review the completeness of the application. On a related matter, another airport authority proposes that instead of restarting the 120-day decisional clock with receipt of each supplement, the final rule provide for a suspension of the clock between the time the Administrator determines the application is not substantially complete and receipt of the final supplement. Finally, one commenter suggests that notices of substantially complete applications under § 158.27(a) include a description of information required to achieve full conformity, or, in the alternative, that the concept of substantially complete be defined. Some airport commenters propose eliminating the *Federal Register* notice following receipt of an application as unduly burdensome or limiting public comments on the *Federal Register* notice to airport users. Another proposes that commenters be required, not merely permitted, to submit any comments in the local consultation process as their comments to the FAA. One trade association recommends that the FAA comment period conform to the period allowed in the local consultation process. A Federal Government agency proposes that the final rule omit the requirement that commenters serve a copy of their comments on the public agency and that the FAA arrange to forward public comments.

Final Rule: In addition to the many changes made in direct response to the public comments, the FAA has made a major structural change in the final rule. In the NPRM, § 158.29 contained proposed provisions that would govern both the FAA's review of an application and the Administrator's decision. The FAA has separated the provisions on FAA review and the Administrator's decision into § 158.27 and § 158.29 respectively. This separation is made because the same review process will be used for both an application for authority to impose a PFC and an application to use PFC revenue. In contrast, the Administrator's decision and standards for approval will vary with each kind of application. Section 158.29 is discussed more fully below.

The FAA has made some changes to simplify the review process, as discussed below. In addition, the provision for separate applications to impose PFC's and to use PFC revenue should permit some public agencies to impose a PFC sooner than would have been possible under the NPRM. However, many of the steps of the review process are mandated by statute, e.g., notice and an opportunity for comment after FAA receipt of an application. Other steps are necessary to meet requirements imposed on the FAA. For example, the preliminary review for completeness is necessary to ensure the FAA will be able to make a decision on an application within the time required by statute. Many of the commenters' suggestions, including, for example, the proposal for a complete expedited review process, could not be implemented in the final rule as discussed below.

To simplify the review process, the final rule eliminates multiple supplements to applications deemed to be substantially incomplete by the Administrator. Under the final rule, the public agency may be required to provide only one supplement to the application. This change should eliminate the possibility that the review process can be extended for long periods without a final decision. A decision denying an application would not prevent the public agency from reapplying following further consultations.

The final rule does not provide for concurrent completion of different steps of the process, although that may be possible in the future.