


DATE: 04/20/98⁹⁹ AGENDA ITEM # 21
() APPROVED () DENIED
() CONTINUED TO _____

To: James L. App, City Manager
From: Mike Compton, Director of Administrative Services 
Subject: Airport Specific Plan
DATE: April 20, 1999

Need:

For the Council to authorize disposition of the negative cash balance and fund balance in the Airport Specific Plan (ASP).

Facts:

1. Preparation of the Airport Specific Plan began in fiscal year 1992.
2. Consistent with the preparation of the other plans, it was intended that the adopted fee schedule would include a provision for repaying the 'advance' of funds to prepare the Plan.
3. Work on preparation of the Plan was suspended and it remains unfinished at this time.
4. Given the City Council's actions to allow development projects to proceed without the benefit of the plan, it is highly unlikely that the Plan will be completed.
5. Prior to the suspension of activity on preparation of the Plan, the City' General Fund had incurred costs totaling \$139,958.40.
6. This matter was considered by the Council's ad hoc fiscal policy review committee on August 14, 1998 who recommended that it be reimbursed from the Airport Operations Fund.
7. This recommendation was presented to the Council at their September 1, 1998.
8. Due to testimony that this was inappropriate use of airport revenues, no action was taken other than to direct staff to contact the Federal Aviation Administration (FAA) regarding the appropriateness of utilizing airport resources to reimburse the entire cost of the ASP.
9. Staff has communicated with FAA, both verbally and in writing. The essence of FAA's response is that the entire cost of preparing the ASP may not be reimbursed from airport resources. Only a proportional share based upon direct benefit to airport operations may be reimbursed from airport resources.

Analysis and Conclusions:

Based upon this opinion by FAA, staff has determined that 28.9% of the cost of preparing the ASP may be reimbursed to the General Fund. The 28.9% represents the proportional share of total airport acreage (1,231 acres) to the total acreage included in the ASP (4,261 acres) which included the entire airport acreage. Using this proportional share percentage, the airport

operations fund would reimburse the General Fund \$40,433.98 and the General Fund would bear the cost of the remaining balance, \$99,524.42. The total cost incurred was \$139,958.40.

The Fiscal Policy Committee has reviewed the FAA response and supports the methodology proposed above for allocating the ASP preparation costs.

Fiscal
Impact:

The airport operations fund had cash resources at 6/30/98 of \$458,000 and as of 2/28/99 had \$446,000. Thus, there are sufficient resources to accommodate the \$40,433.98 reimbursement to the General Fund. In the case of the General Fund, the remaining portion, \$99,524.42, will be written off and will, in effect, be charged off against any projected year ending surplus/carryover.

Options:

- a. That the Council adopt a resolution approving the reimbursement to the General Fund by the Airport Operations Fund for its proportional share and writing off the remaining balance to the General Fund; or
- b. Amend, modify or reject any of the options above.

RESOLUTION NO. 99-

RESOLUTION NO. 99-

A RESOLUTION OF THE CITY OF EL PASO DE ROBLES
APPROVING A METHODOLOY FOR DISPOSITION OF
THE AIRPORT SPECIFIC PLAN FUND NEGATIVE
CASH BALANCE

WHEREAS, the City's General Fund advanced the cost for preparation of the Airport Specific Plan; and

WHEREAS, the Plan was not completed; and

WHEREAS, before work on the Plan was suspended, the City incurred a total cost of \$139,958.40; and

WHEREAS, the municipal airport was included in the Plan and stood to benefit had it been completed; and

WHEREAS, based upon an opinion received from the Federal Aviation Administration that the Airport Operations Fund may share proportionally based upon benefit in the cost incurred to prepare the Plan; and

WHEREAS, based upon acreage of the airport versus the total acreage included in the Plan, the proportional shares would be 28.9% Airport Operations Fund and 71.1% General Fund.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of El Paso de Robles that

1. That the Airport Operations shall reimburse the General Fund the amount of \$40,433.98 representing 28.9% the total cost incurred, \$139,958.40; and
2. That the General Fund shall bear the cost of the remaining 71.1% or \$99524.42.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 20th day of April, 1999 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Duane Picanco, Mayor

ATTEST:

Madelyn Paasch, Clerk



U.S. Department
of Transportation
**Federal Aviation
Administration**

San Francisco Airports District Office
831 Mitten Road, Room 210
Burlingame, California 94010-1303

February 4, 1999

RECEIVED

FEB - 8 1999

ADMINISTRATIVE SERVICES

Mr. Michael J Compton
Director of Administrative Services
City of El Paso Robles
1000 Spring Street
Paso Robles, California 93446

Dear Mr. Compton:

Subject: Proposal to allocate "Airport Specific Plan" cost to Airport Enterprise Fund

Thank you for the reminder concerning our guidance for allocation of costs of the "Airport Specific Plan" completed several years ago. I apologize for the delay in responding to your original request, as my travel schedule has been significant the past 60 days. .

Though not mentioned in your letter, it is my understanding that the intent of this Plan was to develop a planning document for approximately 3,500 acres of land in the vicinity of the airport. As a former Planning Commission Chairman, my assumptions for items to be included in the Specific Plan would be: 1) distribution, location, and extent of the uses of land, including open space; 2) the proposed location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities; 3) standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources; and 4) a program for implementation measures including regulations, programs, public works projects, and financing measures to carry out those projects. It is appears that the findings of the Consultants report indicated that significant funding resources were needed in order to complete the identified projects and the finalization of the study was not funded nor completed.

I have taken the liberty to check with Roger Oxborrow concerning the status Airport Master Plan and understand that though the Airports Master Plan was to receive a partial update, and some work was accomplished during this planning study, no final updated document was completed for the airport.

It appears that the generic title of "Airport Specific Plan" was intended to accomplish a comprehensive planning document for a large undeveloped area within the City Limits, of which the airport was a small part, and therefore only had a minor impact on the approved Airport Master Plan document. In light of this review, though some project costs could be allocated to the airport fund, it appears that the benefit to the Airport Master Plan would be a small part of the total Plan project expense.

In each Airport Improvement Project provided to the City of Paso Robles for funding of airport projects, there are Assurances that obligate the City to maintain certain standards of review, audit and compliance. Of these assurances, a major assurance is the "Revenue Diversion" portion that essentially states that "all airport revenue will be utilized to fund only costs directly and substantially related to the actual air transportation of passengers or property." I have attached a copy of the project Assurances and have specifically outlined Assurance # 25 for your reference. Utilizing this provision and standards commonly practiced in our compliance enforcement practices, only a small portion of the total "Airport Specific Plan" \$140,000 cost could be allocated

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to the Airport Enterprise Fund and any amount would require documentation for review by our office.

If you have any additional questions concerning this matter, please advise me at your convenience.

Sincerely,



Donald J. Thompson
Airport Certification/Safety Inspector

John L. Pfeifer, Manager

ASSURANCES
Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurance against exclusive rights or the terms, conditions and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.

- p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- q. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- r. Powerplant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- t. Copeland Antikickback Act - 18 U.S.C. 874.¹
- u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

- Executive Order 11246 - Equal Employment Opportunity¹
- Executive Order 11990 - Protection of Wetlands
- Executive Order 11998 - FloodPlain Management
- Executive Order 12372 - Intergovernmental Review of Federal Programs.
- Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 14 CFR Part 150 - Airport noise compatibility planning.
- d. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to nonconstruction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- i. 49 CFR Part 20 - New restrictions on lobbying.
- j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- k. 49 CFR Part 23 - Participation by minority business enterprise in Department of Transportation programs.
- l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.^{1 2}
- m. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from Federal financial assistance.¹
- n. 49 CFR Part 29 - Governmentwide debarment and suspension (non-procurement) and governmentwide requirements for drug-free workplace (grants).
- o. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- p. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.¹

Office of Management and Budget Circulars

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-128 - Audits of State and Local Governments.
 - ¹ These laws do not apply to airport planning sponsors.
 - ² These laws do not apply to private sponsors.

³ 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

2. **Responsibility and Authority of the Sponsor.**
 - a. **Public Agency Sponsor:** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
 - b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.
3. **Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.
4. **Good Title.**
 - a. It holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
 - b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.
5. **Preserving Rights and Powers.**
 - a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
 - b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
 - c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to

- undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
 - e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
 - f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.
6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. For noise compatibility program projects, other than land acquisition, to be carried out on property not owned by the airport and over which property another agency has land use control or authority, the sponsor shall obtain from each such agency a written declaration that such agency supports that project and the project is reasonably consistent with the agency's plans regarding the property.
 7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.
 8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.
 9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.
 10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.
 11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.
 12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Recordkeeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates. It shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference. It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications. It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

17. Construction Inspection and Approval. It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects. In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for nonaeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- (1) Operating the airport's aeronautical facilities whenever required;
- (2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
- (3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use. It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make its airport available as an airport for public use on reasonable terms and without unjust discrimination, to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport.

- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
 - (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory carriers and nonsignatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport; from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. **Exclusive Rights.** It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:
- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
 - b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as

an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. **Fee and Rental Structure.** It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. **Airport Revenues.**

- y. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- z. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- aa. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. **Reports and Inspections.** It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - (i) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - (ii) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. **Use by Government Aircraft.** It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that-
- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
 - b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.
28. **Land for Federal Facilities.** It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.
29. **Airport Layout Plan.**
- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
 - b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.
30. **Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the

following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

31. Disposal of Land.

a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, 1) be paid to the Secretary for deposit in the Trust Fund, or 2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.

b. (1) For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (a) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (b) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

(2) Land shall be considered to be needed for airport purposes under this assurance if (a) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (b) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport.

Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

c. Disposition of such land under (a) or (b) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services. It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions. It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications. It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated May 1, 1995, and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition. (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons

as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. **Access By Intercity Buses.** The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

CURRENT FAA ADVISORY CIRCULARS FOR AIP PROJECTS

Updated on: 5/1/95

NUMBER	SUBJECT
70/7460-1H CHG 1 & 2	Obstruction Marking and Lighting
150/5000-13	Announcement of Availability--RTCA Inc., Document RTCA-221, Guidance and Recommended Requirements for Airport Surface Movement Sensors
150/5100-14C	Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects
150/5210-5B	Painting, Marking and Lighting of Vehicles Used on an Airport
150/5210-7B	Aircraft Fire and Rescue Communications
150/5210-14	Airport Fire and Rescue Personnel Protective Clothing
150/5210-15	Airport Rescue & Firefighting Station Building Design
150/5210-18	Systems for Interactive Training of Airport Personnel
150/5220-4B	Water Supply Systems for Aircraft Fire and Rescue Protection
150/5220-10A	Guide Specification for Water/Foam Type Aircraft Rescue and Firefighting Vehicles
150/5220-13B	Runway Surface Condition Sensor Specification Guide
150/5220-14A	Airport Fire and Rescue Vehicle Specification Guide
150/5220-16A	Automated Weather Observing Systems for NonFederal Applications
150/5220-17A	Design Standards for Aircraft Rescue Firefighting Training Facilities
150/5220-18	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-19	Guide Specification for Small, Dual-Agent Aircraft Rescue and Firefighting Vehicles
150/5220-20 CHG 1	Airport Snow and Ice Control Equipment
150/5220-21 CHG 1	Guide Specification for Lifts Used to Board Airline Passengers With Mobility Impairments
150/5300-13 CHG 1, 2, 3, 4	Airport Design
150/5300-14	Design of Aircraft Deicing Facilities
150/5300-15	Use of Value Engineering for Engineering Design of Airport Grant Projects
150/5320-5B	Airport Drainage
150/5320-6C CHG 1 & 2	Airport Pavement Design and Evaluation
150/5320-12B	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-14	Airport Landscaping for Noise Control Purposes
150/5325-4A CHG 1	Runway Length Requirements for Airport Design
150/5340-1G	Standards for Airport Markings
150/5340-4C CHG 1 & 2	Installation Details for Runway Centerline Touchdown Zone Lighting Systems
150/5340-5B CHG 1	Segmented Circle Airport Marker System
150/5340-14B CHG 1 & 2	Economy Approach Lighting Aids
150/5340-17B	Standby Power for NonFAA Airport Lighting Systems
150/5340-18C CHG 1	Standards for Airport Sign Systems
150/5340-19	Taxiway Centerline Lighting System
150/5340-21	Airport Miscellaneous Lighting Visual Aids
150/5340-23B	Supplemental Wind Cones

CURRENT FAA ADVISORY CIRCULARS FOR AIP PROJECTS

Updated on: 5/1/95

NUMBER	SUBJECT
150/5340-24 CHG 1	Runway and Taxiway Edge Lighting System
150/5340-27A	Air-to-Ground Radio Control of Airport Lighting Systems
150/5345-3D	Specification for L821 Panels for Remote Control of Airport Lighting
150/5345-5A	Circuit Selector Switch
150/5345-7D CHG 1	Specification for L824 Underground Electrical Cable for Airport Lighting Circuits
150/5345-10E	Specification for Constant Current Regulators Regulator Monitors
150/5345-12C	Specification for Airport and Heliport Beacon
150/5345-13A Control	Specification for L841 Auxiliary Relay Cabinet Assembly for Pilot of Airport Lighting Circuits
150/5345-26B CHG 1 & 2	Specification for L823 Plug and Receptacle, Cable Connectors
150/5345-27C	Specification for Wind Cone Assemblies
150/5345-28D CHG 1	Precision Approach Path Indicator (PAPI) Systems
150/5345-39B CHG 1	FAA Specification L853, Runway and Taxiway Centerline Retroreflective Markers
150/5345-42C CHG 1	Specification for Airport Light Bases, Transformer Housings, Junction Boxes and Accessories
150/5345-43D	Specification for Obstruction Lighting Equipment
150/5345-44F CHG 1	Specification for Taxiway and Runway Signs
150/5345-45A	Lightweight Approach Light Structure
150/5345-46A	Specification for Runway and Taxiway Light Fixtures
150/5345-47A	Isolation Transformers for Airport Lighting Systems
150/5345-49A	Specification L854, Radio Control Equipment
150/5345-50 CHG 1	Specification for Portable Runway Lights
150/5345-51 CHG 1	Specification for Discharge-Type Flasher Equipment
150/5345-52	Generic Visual Glideslope Indicators (GVGI)
150/5345-53	Airport Lighting Equipment Certification Program
150/5360-9	Planning and Design of Airport Terminal Facilities at NonHub Locations
150/5360-12A	Airport Signing & Graphics
150/5360-13 CHG 1	Planning and Design Guidance for Airport Terminal Facilities
150/5370-2C	Operational Safety on Airports During Construction
150/5370-6B	Construction Progress and Inspection Report-Airport Grant Program
150/5370-10A CHG 1, 2, 3, 4, 5, 6, 7, 8	Standards for Specifying Construction of Airports
150/5370-11 CHG 1	Use of Nondestructive Testing Devices in the Evaluation of Airport Pavements
150/5370-12	Quality Control of Construction for Airport Grant Projects
150/5390-2A	Heliport Design
150/5390-3	Vertiport Design



CITY OF EL PASO DE ROBLES

"The Pass of the Oaks"

January 21, 1999

Don Thompson
Federal Aviation Administration
San Francisco Airports District Office
831 Mitten road, Suite 210
San Francisco, CA 94010-1303

Re: Paso Robles Municipal Airport - Use of Cash Resources

Dear Mr. Thompson:

It has been nearly two months since the City previously corresponded with you by mail regarding the use cash resources in the City's Airport Operations Fund. A copy of that previous correspondence is enclosed.

To date, no response has been received. It would be sincerely appreciated if you provide a response at your very earliest convenience so that closure may be made on this matter.

Should you have any questions or need of additional information, please don't hesitate to contact the undersigned at (805)237-3999.

Respectfully yours,

Michael J. Compton
Director of Administrative Services

cc: James L. App, City Manager



CITY OF EL PASO DE ROBLES

"The Pass of the Oaks"

November 25, 1998

Don Thompson
Federal Aviation Administration
San Francisco Airports District Office
831 Mitten Road, Suite 210
Burlingame, CA 94010-1303

Re: Paso Robles Municipal Airport - Use of Cash Resources

Dear Mr. Thompson:

You may not recall but I spoke with on the phone about a month ago regarding the use of cash resources accounted for in the City's Airport Operations Fund.

To refresh your memory, the situation in question revolves around the preparation of a planning document, "Airport Specific Plan" (PLAN), relative to the development of properties located at and surrounding the municipal airport. As the PLAN developed, it became evident that the impact fees for the infrastructure improvements identified in the PLAN would have to be set at a level which would likely discourage any future development. As a result, the City Council suspended any further work on the PLAN and decided to consider development of the airport and surrounding properties on a project by project basis.

However, the City had, by the time preparation of the PLAN was suspended, incurred an expense of \$140,000. A subcommittee of the City Council determined that it would be appropriate for the expense to be born by the Airport Operations Fund and recommended same to the full City Council. At the City Council meeting when the matter of reimbursement was considered, it was alleged, during the public comment section, that payment from the Airport Operations Fund was illegal and/or against FAA regulations. Decision on the matter was postponed until such time as a final determination could be made as to whether or not the allegation had any merit.

Accordingly, it would be sincerely appreciated, if such a document exists, if you would send a copy of any written FAA regulation and/or restriction which would prevent the City Council from paying for preparation of the PLAN from the Airport Operations Fund. Please note the airport would have been the primary beneficiary of the development and implementation of the PLAN.

While it may not be related to the question at hand, given the current financial condition of the Airport Operations Fund, payment of the \$140,000 from the Airport Operations Fund would not in any way encumber the City's ability to meet current and future maintenance and operational expenditure needs. Nor would it encumber the City's ability to match FAA grants for airport related improvements.

Your immediate response would be sincerely appreciated. Should you have any questions or need of additional information, please don't hesitate to contact the undersigned at (805)237-3999.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Michael J. Compton".

Michael J. Compton
Director of Administrative Services

MEMORANDUM

TO: James L. App, City Manager
John R. McCarthy, Director Of Public Works
Mike Compton, Director of Administrative Services

FROM: Roger Oxborrow, Airport Services Coordinator *RO*

SUBJECT: Airport Revenue Legislation

DATE: March 15, 1999

Attached is a copy of a legislative summary from one of my national airport organizations, which addresses the subject of airport revenue diversion. This is brought about as a result of some major cases throughout the country wherein governing bodies have attempted to improperly divert airport revenues for purposes other than airport operations. As indicated in the enclosed material, the FAA was mandated by Congress to provide definition to these laws within four months of the passage of the mandate. After 4 ½ years of discussion they have reached a determination of how this law will be applied.

The essence of their findings is presented in the attached. It has been presented in the question-and-answer format, as well as a copy of the law itself. A number of the questions which have been posed are applicable to our situation, and would serve to provide more definitive direction to issues that we have discussed previously.

If you would like further discussion, or to take any action on this issue, particularly with the Airport Advisory Committee and their interest in this subject, please let me know.

REGULATORY AFFAIRS

ADVISORY NOTICE

Craig Williams, Manager
craig.williams@airportnet.org

Christopher Tebo, Director
chris.tebo@airportnet.org

Beth Van Emburgh, Associate Manager
beth.vanemburgh@airportnet.org

Total Pages: 1 + Attachment

TO: AAAE Airport Chiefs

FROM: Christopher Tebo

DATE: February 23, 1999

RE: Final Policy on Airport Revenue Diversion

As you may know, the Federal Aviation Administration last week published its final Policy and Procedures Concerning the Use of Airport Revenue. AAAE had submitted two sets of comments on earlier drafts of this policy to the FAA docket and many of our suggestions were included in the Final Policy. In our last Airport Report, we summarized the major points of the policy and indicated that the full document was available from AirportNet™ at:
<http://www.airportnet.org/depts/regaff/new.htm>.

Enclosed, you will find a legal memorandum on this Final Policy for your information and reference. I have also enclosed the actual text of the policy and a copy of two related FAA forms that you as an airport operator must now submit annually to the agency.

I hope you will find this information helpful.

American Association of Airport Executives

4212 King Street Alexandria, VA 22302

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www.airportnet.org

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MEMORANDUM

TO: AAAE Chief Executives

FROM: Jack Corbett and Rise Peters

DATE: February 22, 1999

SUBJECT: (ALMOST) EVERYTHING YOU NEED TO KNOW (RIGHT NOW)
ABOUT FAA'S FINAL POLICY ON AIRPORT REVENUE DIVERSION

Public Law 103-305 (August 23, 1994) required the DOT Secretary to establish within ninety days policies and procedures to enforce Federal requirements against "illegal airport revenue diversion" and assurances that "airports be as [financially] self-sustaining as possible." Four and a half years later, FAA has just issued its final Policy and Procedures Concerning the Use of Airport Revenue ("Final Policy") (64 FR 7696, February 16, 1999). A hard copy of the Final Policy itself is enclosed; the 20 pages of introductory material are easily downloaded from the Federal Register's website.¹

This summary report focuses on the more interesting airport revenue diversion issues in the Final Policy, presented in question and answer format. This of course does not substitute for reading the actual text and carefully applying it to your airport's situation. Note that this policy statement sets standards for an airport's use of its own locally-raised funds; standards for expenditure of Passenger Facility Charge (PFC) funds and Airport Improvement Program (AIP) funds are even more restrictive.

As you know, the issue of "illegal airport revenue diversion" has been prominent since 1993 when the Mayor of Los Angeles indicated his desire to use \$30 million of LAX airport revenue for general municipal purposes. The airlines strongly opposed that possibility and took the issue to the U.S. Department of Transportation and to Congress, asking for Federal statutory and regulatory protection against such "hidden taxation" of aviation users.

¹ The PDF version is available in the Federal Register's format:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=99-3529-filed.pdf.
It is also available in TEXT form:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=99-3529-filed.
Call if you wish to be mailed a hard copy of the entire Final Policy document.

Congress enacted revenue diversion statutes in 1994 and 1996 to supplement the original 1982 requirements. The law requires that, except for "grandfathered" cases, airport owners must use "all revenues generated by the airport .. for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property (the "revenue retention" requirement). In addition, the "self-sustaining" requirement states that an airport must have a rate structure that makes the airport as self-sustaining as possible under the circumstances existing at the airport.

During this period, the DOT Office of Inspector General (OIG) issued dozens of audits concerning revenue use at individual airports in an effort to determine whether FAA was implementing its authority over revenue diversion as aggressively as Congress wished.²

A DOZEN FREQUENTLY ASKED QUESTIONS ON REVENUE DIVERSION

1. What's the basic goal of the Final Policy concerning illegal airport revenue diversion?

Congress and DOT/FAA want to assure that airports are not diverting resources to their parent airport-sponsoring governments by making payments for which they don't get equivalent value in return. That's the so-called "revenue-use" requirement. In addition, the Final Policy is designed to limit airports' ability to lease airport land or facilities to other units of government at less than fair market value without an acceptable justification (the "self-sustaining" requirement). Congress recognized that an airport could divert funds to another governmental entity either by overpaying that government from airport revenues or by undercharging it for its use of airport assets. The Final Policy asserts that in general, dealings between airports and other units of government should result in fees and payments at the level that would be produced by arm's length bargaining.

Secondarily, DOT/FAA want to assure that airport revenues are used for airport purposes: expenditures made to any governmental or private entity for purposes not directly benefiting the airport also are "illegal" revenue diversion. Certain activities of a few multipurpose port authorities and governments collecting aviation fuel taxes were statutorily grandfathered in 1982 and 1987; these activities are termed "legal" airport revenue diversion but get disproportionate amounts of Congressional and press attention.

Finally, the Final Policy articulates what level of user fees, charges, etc., should be generated from users and lessees of airport facilities. Generally, for aeronautical uses

² Even though OIG audits get press attention, airports must satisfy FAA, not OIG, regarding revenue diversion matters, as FAA administers the revenue diversion policy under delegation from the DOT Secretary.

(such as air carriers, general aviation operators, and fixed-base operators), the airport must establish user fees that recover airport costs. For nonaeronautical uses of airport property, the airport operator generally must charge a fair market value (FMV) rental rate.

2. Does the Final Policy on airport revenue diversion apply to my airport? If my airport were to give up all future Federal airport entitlement and discretionary grants, would we ultimately be freed from these Federal revenue use requirements?

Basically the Final Policy applies to any airport that received Federal assistance during the last 20 years. Airports that were subject to revenue use restrictions on October 1, 1996 (generally because of the past receipt of Federal airport aid); privately owned airports accepting Federal grants on or after that date; and any other airports receiving Federal property on or after that 1996 date are now subject to the revenue use restriction. A 1996 Congressional statute specified that revenue use restrictions would be permanent, so long as the facility operated as an airport. Thus, an airport that is now subject to the revenue use restriction may not free itself of the revenue use restrictions by declining to accept future AIP funds.

In contrast, AIP sponsor assurances, including the self-sustaining requirement, are enforceable for the useful life of the project being financially assisted but not for more than 20 years (except for land acquisition).

3. What's included within the definition of "airport revenue" to which the Final Policy applies?

Everything. All the traditional airport revenue sources are covered, including fees, charges, etc., for use of the airport's aeronautical and nonaeronautical assets and revenues from sponsor-run activities on the airport. State and local taxes on aviation fuel (except taxes in effect on December 30, 1987) are airport revenue. Proceeds from the sale, lease or other transfer or disposal of an airport or airport property are included in the definition of airport revenue whether or not the airport property in question had been acquired with airport revenue or with other funds provided by the airport sponsoring government.³ Revenues generated by off-airport property, such as remote airport parking lots, downtown airport terminals, and off-airport duty-free shops, are included. Royalties from mineral extractions from on-airport property or revenues generated or crops resulting from agricultural use of airport property are also included.

The sole exception involves PFC revenues and property acquired with Federal

³ Airport directors should not look at this provision only in the narrow sense of a sale, lease or "privatization" of a publicly-owned airport. This policy would be relevant whenever an airport's governmental ownership was being changed (e.g., city airport department to independent airport authority). If any money or assets were being given (back) to the original sponsoring government body, the airport must provide detail when FAA is reviewing the transfer documents.

funds or donated by the Federal government; these funds are not considered airport revenue for purposes of this policy because they are all covered by even more restrictive legal requirements than the revenue-use rules.

4. Can my airport donate small amounts of airport revenue to local charitable/community service organizations? If so, what are the limits? How about letting airport property be used for community/charitable/recreational purposes at less than FMV or for nominal (\$1 per year) rent?

First, remember that there are two policy issues involved in your financial relationships with your communities: expenditure of airport revenues (triggering the revenue use requirement), and use of airport property without charging for its full value (triggering the self-sustaining requirement).

Acceptable charitable contributions: As to expenditure of airport funds, the Final Policy provides that airport revenue may be used to support community activities or to participate in community events if those expenditures are directly and substantially related to the operation of the airport. The "directly and substantially related" standard can be met if the contribution has the intangible benefit of enhancing the airport's acceptance by neighboring communities. Sample permitted expenditures are (a) the purchase of tickets for an annual community luncheon at which the Airport Director delivers a speech reviewing the state of the airport; and (b) a contribution to a golf tournament sponsored by a "friends-of-the-airport" committee.

Where the contribution is "minimal," the value of the benefit to the airport will not be questioned if there is a reasonable connection between the recipient organization and the benefit of community acceptance for the airport. A cited example of an acceptable minimal contribution was participation, at a cost of \$250, in a local school fair with a booth focusing on operation of the airport and career opportunities in aviation.

Unacceptable charitable contributions: If there is no clear relationship between the charitable or community expenditure and airport operations, the use of airport revenue would be a (prohibited) expenditure for the benefit of the community, rather than an operating cost of the airport. Thus, an airport may not pay for a parade float touting the local community (rather than the airport), because that would not be considered to be "directly related to the operation of the airport." Even a minimal expenditure would not be permissible. Other examples given of prohibited "not directly related" expenditures are (1) \$50,000 to sponsor a local film society's annual film festival; and (2) a contribution of \$6,000 to a community cultural heritage festival.

Recreational uses: As to the use of airport property, the Final Policy permits below FMV use of airport property for public ball fields, parks, and other recreational and other community purposes to maintain positive airport-community relations. These discounts must meet the following conditions: (1) the contribution of airport property

enhances public acceptance of the airport; (2) the use is desired by the local community; (3) the use doesn't adversely impact the airport; (4) the property is not expected to produce more than "minimal" rent in any event; (5) community use does not preclude future airport reuse of the property; and (6) airport revenue does not directly support the community use.

Aviation-related programs: In addition, the Final Policy allows certain uses at less than FMV because they provide tangible or intangible benefits to aviation and the airport: (1) not-for-profit aviation museums, (2) accredited aeronautical secondary and post-secondary education programs, (3) Civil Air Patrol ("CAP") leases, and (4) military use (Air Force Reserve; Air National Guard).

Other leases of non-aeronautical assets to private, nonprofit organizations generally will be required to be at FMV unless the sponsor can demonstrate a benefit to aviation and the airport.

FAA is not adopting a definition of "minimal" for either the revenue use or the self-sustaining requirements. For property that is capable of generating more than "minimal" revenue, a sponsor could charge less than FMV rental rates for community use if the revenue earned from the community use approximates that level of revenue that could otherwise be generated. Providing such property for community use at no charge would not be appropriate.

Under certain circumstances the sponsoring government of the airport could also obtain nonaeronautical use of airport property at less than FMV. Qualified less-than-FMV uses by the sponsoring government could include park or recreational uses or other public service functions. However, sponsor fire fighting and police units must pay reasonable rents for use of airport property, but an offset will be allowed to reflect the value of any services provided by these personnel to the airport.

The community use provision of the Final Policy does not apply to airport property used by a department or subsidiary agency of the sponsoring government seeking an alternative site for the sponsor's general governmental purposes at less-than-commercial value. For example, a city cannot claim the community use exception for a nominal lease of airport property for a municipal vehicle maintenance garage.

5. How much can my airport spend on airport promotion and marketing programs? Does it matter whether we spend airport revenue or just temporarily waive fees for airlines offering new services? How much can the airport pay toward the mayor's trade missions to Europe and Asia?

Again, different FAA policies with respect to expenditure of airport funds and use of airport property apply.

Permitted marketing expenditures: FAA agrees that expenditures for the pro-

motion of an airport, promotion of new air service and competition at the airport, and marketing of airport services are legitimate costs of an airport's operation. These expenditures, including the cost of employees engaged in the promotion of airport services, may be financed entirely with airport revenue. FAA will rely on airport management to assure that the level of expenditures for such purposes will be reasonable in relation to the airport's specific financial situation. Disproportionately high expenditures for these activities may cause a review of the expenditures on an *ad hoc* basis to verify that all expenditures actually qualify as legitimate airport costs.

Cooperative airport-airline advertising of air service, particularly wholly funded with airport revenues, must comply with AIP grant assurances prohibiting unjust discrimination against airlines not benefiting by such advertising.

Airport revenues can be used to share the costs of broader regional or destination marketing (such as a mayor's multi-purpose trade mission) only if the advertising or promotional material includes a specific reference to the airport. A sample permitted expenditure would be (a) a Superbowl hospitality tent for corporate aircraft crews at a sponsor-owned general aviation terminal intended to promote the use of that airport by corporate aircraft; and (b) the cost of promotional items bearing airport logos distributed at various aviation industry events.

Prohibited marketing expenditures: Marketing and promotional activities unrelated to airports or airport systems may not be funded with airport revenue. Sample examples are funding hospitality training to taxi drivers, and funding an airport sponsor community's float containing no reference to the airport in a New Year's Day parade.

Airline "subsidies" (prohibited) vs. airline fee waivers (permitted): The Final Policy distinguishes direct payments of "subsidies" to airlines by airports to encourage new service (prohibited) from waivers of or discounts from an airport's traditional fee structure to encourage new air service (permitted) in two respects. First, direct payments to airlines trigger the revenue-use restriction policy, whereas waivers or discounts trigger the less rigorous self-sustaining requirement. More importantly, FAA categorizes an airport's payments to airlines for air service as "general regional economic development and promotion, rather than airport promotion." As such, FAA maintains use of airport revenue for such purposes is statutorily prohibited. FAA notes that other community organizations -- such as chambers of commerce or regional economic development agencies -- can fund programs to subsidize new air service. Fee waivers and discounts to airlines by airports are permitted during a limited "promotional period," which is not defined because of different circumstances at different airports (although FAA has approved a 90-day promotional period at one airport). However, such waivers or discounts must be offered by the airport to all users willing to provide the type and level of new service that qualifies for the promotional discount.

Comment: FAA's discussion about "waivers of airline fees for promotional purposes" was challenged by both airline and airport association commentators on an earlier draft policy. Both believe that an airport's waiving fees is indistinguishable from making payments to airlines of airport revenue. Beyond that point of agreement, the airport associations believe that both direct payments and fee waivers should be permissible if they are reasonably related to the objective of improving air service at the airport. Some individual airports argue that allowing parent government bodies temporarily to subsidize airline operational costs for new service, while prohibiting an airport from using its own revenue for the same purpose, amounts to "form over substance" and doesn't enhance airline competition.

6. How much of the cost of mass transit connections at airports can be paid for with airport revenues?

Again, two policies apply. Airport revenue may be used for capital and operating costs of those portions of an airport ground access project that can be considered an airport capital project, or of that part of a local facility that is owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. The FAA has approved the use of airport revenue for the actual costs incurred for structures and equipment associated with an airport terminal building station and a rail connector between the airport station and the nearest mass transit rail line (San Francisco BART), where the structures and equipment were (1) located entirely on airport property, and (2) designed and intended exclusively for the use of airport passengers.

Making airport property available at less than fair market rental for public transit terminals, rights-of-way, and related facilities will not be considered improper if the transit system is publicly owned and operated (or operated by contract on behalf of the public owners), and the facilities are directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. A lease of nominal value in the circumstances described in this section would be considered consistent with the self-sustaining requirement.

Generally, private ground transportation services are charged as a nonaeronautical use of the airport. In cases where publicly owned transit services are extremely limited and where a private transit service (*i.e.*, bus, rail, or ferry) provides the primary source of public transportation, making property available at less than fair market rental to this private service would not be considered improper.

Comment: The Final Policy, influenced by DOT multimodal policies, allows airports to subsidize public and some privately operated mass transit operations by the airport's charging less than FMV for use of airport property for rights-of-way, etc. The airport associations support the broader DOT approach. The Air Transport Association, in contrast, believes the Final Policy exceeds FAA's statutory authority; ATA has already

legally challenged use of PFCs for one transit project.

If enacted, the Clinton Administration's FAA reauthorization legislation, submitted to Congress on February 8, 1999, would further expand airport financial involvement in mass transit capital funding. Under this proposal, airports could contribute to the capital cost of the mass transit system -- up to the pro rata share of aviation passengers' (and visitors' and employees') use of that system -- with either PFC revenues or, by extension, airport revenues. Under current law, in contrast, there's an all-or-nothing rule: if a mass transit system is not used exclusively by airline passengers, visitors, and employees, airport revenues can't be used for its construction.

7. Is it true that Congress has set limits on my airport's ability to repay our sponsoring government's past contributions and loans to the airport? What are the rules?

In 1996 Congress limited the use of airport revenue to pay back past contributions by airport sponsors as well as claims for interest payments on these past contributions. The provision resulted from claims by the City of Los Angeles that past expenditures by the City for the airport should now be repaid plus accumulated interest or with an inflationary adjustment. Congress was concerned that claims of old unreimbursed contributions and interest payments thereon would be used to divert today's airport revenue back to sponsoring governments.

The Final Policy reflects FAA's understanding of this Congressional provision: (1) for contributions clearly documented (when made) as an interest-bearing loan, the airport may repay both the loan principal and interest from airport funds without time limitation. However, any interest charged to the airport should not exceed the rate that the sponsor received for other investments at the time of its contribution; and (2) for contributions not clearly documented as a loan, the airport sponsoring government can seek reimbursement of past funds it had contributed toward the capital and/or operating costs of the airport only if the request is made within six (6) years of the date the contribution or expenditure took place.

Interest may be calculated only from the date the FAA determines that the sponsor is entitled to reimbursement for its contribution. Reimbursement to a government entity must be supported by adequate documentary evidence. If the underlying accounting data is not available, reimbursement would be allowed based on audited financial statements if such statements clearly identify the expenses as having been incurred for eligible airport purposes. Budget estimates are not a sufficient basis for reimbursement of government entities because they are only estimates of projected expenditures, not records of actual expenditures.

The FAA interprets the new statute to apply to unreimbursed contributions or expenditures made both before and after October 1, 1996.

Comment: Congress added this policy in 1996, and thus FAA included it in the Final Policy without requesting public comment. This policy may be a "sleeper"; many airport sponsoring communities that contributed needed funds to their airports more than six years ago haven't realized that Congress retroactively eliminated any rights they had to future reimbursement when the airport becomes more self-sustaining. It is an open question as to whether Congress acted illegally in imposing a six-year statute of limitations on sponsor claims for reimbursement with retroactive effect. (This concern is eliminated when the contribution came in the form of a traditional loan or where the contributing governments are not legally the "airport sponsor.") What seems clear is that this policy could have the unintended effect of making sponsoring communities less willing to share funds with their airports.

8. What rules will FAA use to review the share of indirect costs that can be paid from airport revenue to the airport sponsoring government? Can we pay for a share of City Council or Mayor's office costs for overseeing airport policy and management issues?

FAA has simplified its approach to indirect cost allocation. Cost allocation plans now must be consistent with Attachment A of OMB Circular A-87 (<http://www.whitehouse.gov/WH/EOP/OMB/html/circulars/a087/a087-all.html>). This document sets forth general principles for developing cost allocation plans and provides principles for cost allocation methodologies.

FAA had earlier proposed to preclude an airport's payment of indirect costs unless all units of the governmental sponsor were likewise billed for their proportionate share of such allocated costs. The Final Policy has been narrowed to require billings by the parent government of indirect costs to all "comparable" units of the airport sponsor. "Comparability" is not defined because it will depend on the specific circumstances of an airport sponsor.

If the legislative and executive branches of the sponsoring government have direct, tangible oversight and control responsibilities for the airport, and if their activities provide general benefits to the airport, such as in the areas of funding, capital development and marketing, the airport's fairly allocated share of such costs (and central services costs) can be paid from airport revenues.

9. How will compliance with the Final Policy be achieved by FAA? Is there any "safe harbor" or maximum dollar amount or percentage of airport revenues specified in the Final Policy so that we could avoid compliance problems if we stayed within the "safe harbor"?

There are no "safe harbor" provisions in the Final Policy, although a cap on an airport's general promotional and marketing expenses had earlier been proposed by the airport associations but was later dropped.

Congress in 1996 stiffened the remedies for improper use of airport revenues and mandated new compliance monitoring programs by FAA. The Final Policy reflects these new requirements. The FAA will use four primary sources of information to detect airport revenue diversion: (1) the annual airport financial reports submitted by the sponsor; (2) findings from a single audit in accordance with OMB Circular A-133; (3) investigations following a third-party complaint; and (4) DOT OIG audits. Details regarding the first two follow:

Annual financial reports: Each airport annually submits to the DOT Secretary and makes available to the public a listing in detail of (1) all amounts the airport paid to other governmental units and the purposes for which each payment was made; and (2) all services and property the airport provided to other governmental units and the compensation received for each service or unit of property provided. A copy of the two FAA forms used by the airport for those reports is attached.⁴

Single audit: Congress has also required a single audit review whenever an airport program grant is classified by your outside auditor as a major program pursuant to the requirements of OMB Circular A-133. The audit report submitted to DOT must include a specific determination and opinion "regarding the appropriateness of the disposition of airport funds paid or transferred to a sponsor."

10. What are the current penalties for violation of the Final Policy?

FAA's administrative enforcement process (FAR Part 16) includes actions against airports alleging violation of the revenue use restrictions. If a violation is determined, FAA can (1) withhold future airport grants; (2) withhold approval of any increase in past grants; (3) withhold payments under existing grants; and (4) withhold approval of any new PFC application. Further, FAA can file suit in a U.S. District Court and can withhold Federal transportation funds (including highway and transit moneys) if the parent airport governing body has failed to reimburse the airport for revenue diversion viola-

⁴ The DOT OIG recently released another audit of Denver International Airport's Use of Airport Revenues and challenged a broad range of airport expenditures or absence of adequate collections; the audit report is worth reviewing (AV-1999-052, January 27, 1999; website address: www.dot.gov/oig). OIG specifically noted that Denver had not complied with the 1996 statutory requirement requiring an independent auditor's opinion concerning the appropriateness of the use of airport revenue and taxes at the airport. Airport directors should also review their annual FAA Form 5100-126 submissions as these forms will provide the information from which future OIG audits will flow.

OIG maintains, and FAA chose not to comment, that the City of Denver inappropriately used airport revenues, *inter alia*, to collect an excessive investment service fee from the airport (\$538,000), and to pay for a study of a proposed public transit project off of airport property (\$148,000). The airport also expended \$3000 inappropriately for the Straw Hat Golf Classic at the request of the Denver Chamber of Commerce. Further, the airport did not collect airport revenues for utility costs not billed to airport tenants (\$347,000), for airport property not leased at FMV (\$550,000), and for services not performed by tenants in lieu of rents (\$281,000).

tions. Since 1996, DOT has the statutory authority to obtain civil penalties from the airport sponsor of up to three times the amount of diverted airport revenues as a last resort in achieving compliance.

11. How can FAA mandate reimbursement for prohibited airport revenue expenditures when there is no parent airport sponsor government involved (e.g., an independent airport authority) or when any airport has purchased prohibited items commercially?

Good questions. FAA's enforcement program is designed for a traditional revenue diversion situation -- where a "downtown" parent government charges its airport department more than fair value for services rendered -- perhaps because the airport is a "deeper pocket" than other departments or governmental functions. Even then the Final Policy does not make clear to the reader that Congress wants FAA to obtain reimbursement from the offending parent body rather than by penalizing the airport operation. Thus, all the above-enumerated penalty options that would adversely impact the airport operation, and not the offending parent government's bankbook, won't achieve Congress's objective here. Triple civil penalties against the parent government or the parent's potential loss of other Federal transportation funds seemingly will be the most effective options for assuring reimbursement.

Where an independent airport authority expends airport revenue for prohibited purposes under the Final Policy (e.g., participates in expensive non-airport-connected parades, makes impermissible marketing expenditures), how can FAA mandate reimbursement? There is no entity to provide reimbursement since commercial vendors have supplied the products contracted for. FAA's extracting civil penalties from the airport authority takes even more money away from available airport revenues.

12. What happens next?

Legally, probably nothing since the U.S. Courts of Appeals favor challenges to Federal regulations when they are applied to specific fact patterns. Some of these items (sponsor contributions, mass transit connections, etc.) may be addressed during Congressional development of AIP reauthorization legislation this year. A couple of revenue diversion subjects bump up against evolving DOT/FAA policy statements in open dockets on airport rates and charges (FAA Docket No. 29303) and airport competition practices (Docket No. OST 98-4025).

Attachments: Final Policy
Applicable Statutory Provisions
FAA Form 5100-125, Operating and Finance Summary
FAA Form 5100-126, Financial Governmental Payment Report

ABOUT THE FIRM'S TRANSPORTATION PRACTICE GROUP

Spiegel & McDiarmid is a national law firm located in Washington, D.C., that primarily represents public agencies and local governments in energy, transportation, environmental, legislative and communications matters. The firm has more than 400 clients located in 40 states and the District of Columbia. As a matter of policy, the firm does not represent any airlines or opponents of airport development.

The Transportation Practice Group serves many public airport sponsors, large and small, across the nation. For the past eleven years we have organized and presented AAAE's *Basic Airport Law Seminar* on a *pro bono* basis to more than 800 airport attorneys and officials. We have also organized revenue diversion workshops for AAAE since 1994 and have given presentations to ACI-NA on this and other legal subjects for decades.

Airport clients comment that our broad experience with DOT, FAA, aviation industry, and Capitol Hill officials gets them quicker answers or input, in part because of our Washington, D.C., location. This work is increasing as FAA and DOT lose personnel and institutional memory through retirements and the downsizing that is accompanying "reinventing Government." Again, our legal services supplement what airport staff and local counsel can appropriately handle themselves.

In the current context, we have assisted airport clients with many potential airport revenue diversion issues, including: (a) explaining applicable Federal law and policy to skeptical "downtown" officials; (b) having informal discussions with FAA Headquarters officials on airport revenue diversion issues not directly covered by existing policy and precedent; and (c) defending airport clients against formal revenue diversion complaints in FAA administrative proceedings.

More broadly, we provide a wide range of legal services to airport clients: (1) **regular telephone counseling** upon request by airport directors and their senior staffs on numerous specialized Federal aviation legal or policy issues; (2) **airport capital financing**, relating to user fees, PFC and AIP funding sources, and negotiating and drafting airline use-and-lease agreements; (3) **regulatory and legislative matters**, including strategy for AIP discretionary funds and PFC approvals, airline competition matters, and international air service, working with DOT, FAA, EPA, *etc.*, Congressional delegations, and liaison with AAAE and ACI-NA staffs; (4) **litigation** in Federal courts, before the DOT, and in other agency enforcement actions involving airports (FAR Part 16); (5) **preparation or review of original documents**, including FBO and other airside leases, for compliance with Federal requirements; and (6) **environmental matters**, from bulletproofing environmental documents to airport environmental audits to obtaining Federal funding for environmental mitigation projects.

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APPLICABLE FEDERAL STATUTORY PROVISIONS RELATING TO AIRPORT REVENUE DIVERSION

The primary statutory provisions are as follows:

- ◇ 49 U.S.C. 47107(b) -- the "revenue retention" requirement states that, except for "grandfathered" cases, airport owners must use "all revenues generated by the airport .. for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property."
- ◇ 49 U.S.C. 47107(a)(13) -- the "self sustaining" requirement states that an airport must have a rate structure that makes the airport as self-sustaining as possible under the circumstances existing at the airport.
- ◇ 49 U.S.C. 47107(a)(19) -- requires each airport sponsor to report to FAA each year concerning its financial transactions with other units of government.
- ◇ 49 U.S.C. 47107(l) -- requires FAA to set up "policies and procedures to ensure enforcement against illegal diversion of airport revenue." In this provision as well, Congress specified four types of actions that it defined as illegal revenue diversion:
 - (1) direct or indirect payments that do not reflect the value of services and facilities provided to the airport;
 - (2) use of airport revenue for general economic development, marketing and promotional activities unrelated to airports or airport systems;
 - (3) payments in lieu of taxes or other assessments that exceed the value of services provided; and
 - (4) payments to compensate nonsponsoring governmental bodies for lost tax revenues in excess of stated tax rates.
- ◇ 49 U.S.C. 47107(n) -- provides that FAA must hold a hearing on "an audit or any other report" identifying illegal diversion, and, if illegal diversion is found, order reimbursement and, if reimbursement is not made, withhold any DOT funds due the sponsor. If these remedies fail, FAA can seek civil penalties, which will then be transferred to the affected airport.

federal register

Tuesday
February 16, 1999

Part II

Department of Transportation

Federal Aviation Administration

Policy and Procedures Concerning the
Use of Airport Revenue; Notice

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue**AGENCY:** Federal Aviation Administration (FAA) DoT**ACTION:** Policy statement.

SUMMARY: This document announces the final publication of the Federal Aviation Administration policy on the use of airport revenue and maintenance of a self-sustaining rate structure by Federally-assisted airports. This statement of policy ("Final Policy") was required by the Federal Aviation Administration Authorization Act of 1994, and incorporates provisions of the Federal Aviation Administration Reauthorization Act of 1996. The Final Policy is also based on consideration of comments received on two notices of proposed policy issued by the FAA in February 1996, and December 1996, which were published in the *Federal Register* for public comment. The Final Policy describes the scope of airport revenue that is subject to the Federal requirements on airport revenue use and lists those requirements. The Final Policy also describes prohibited and permitted uses of airport revenue and outlines the FAA's enforcement policies and procedures. The Final Policy includes an outline of applicable record-keeping and reporting requirements for the use of airport revenue. Finally, the Final Policy includes the FAA's interpretation of the obligation of an airport sponsor to maintain a self-sustaining rate structure to the extent possible under the circumstances existing at each airport.

DATES: This Final Policy is effective February 16, 1999.

FOR FURTHER INFORMATION CONTACT: J. Kevin Kennedy, Airport Compliance Specialist, Airport Compliance Division, AAS-400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8725; Barry L. Molar, Manager, Airport Compliance Division, AAS-400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3446.

Policy Statement

For the reasons discussed above, the Federal Aviation Administration adopts the following statement of policy concerning the use of airport revenue:

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Section I.—Introduction

The Federal Aviation Administration (FAA) issues this document to fulfill the statutory provisions in section 112 of the Federal Aviation Administration Authorization Act of 1994, Pub.L. No. 103-305, 108 Stat. 1569 (August 23, 1994), 49 USC 47107(l), and Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264, 110 Stat. 3213 (October 9, 1996), to establish policies and procedures on the generation and use of airport revenue. The sponsor assurance prohibiting the unlawful diversion of airport revenues, also known as the revenue-use requirement, was first mandated by Congress in 1982. Simply stated, the purpose of that assurance, now codified at 49 USC §§ 47107(b) and 47133, is to provide that an airport owner or operator receiving Federal financial assistance will use airport revenues only for purposes related to the airport. The Policy Statement implements requirements adopted by Congress in the FAA Reauthorization Acts of 1994 and 1996, and takes into consideration comments received on the interim policy statements issued on February 26, 1996, and December 18, 1996.

Section II—Definitions**A. Federal Financial Assistance**

Title 49 USC § 47133, which took effect on October 1, 1996, applies the airport revenue-use requirements of § 47107(b) to any airport that has received "Federal assistance." The FAA considers the term "Federal assistance" in § 47133 to apply to the following Federal actions:

1. Airport development grants issued under the Airport Improvement Program and predecessor Federal grant programs.
2. Airport planning grants that relate to a specific airport;
3. Airport noise mitigation grants received by an airport operator;
4. The transfer of Federal property under the Surplus Property Act, now codified at 49 USC § 47151 *et seq.* and
5. Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Improvement Act of 1970 or under Section 516 of the Airport and Airway Improvement Act of 1982 (AALA).

B. Airport Revenue

1. All fees, charges, rents, or other payments received by or accruing to the sponsor for any one of the following reasons are considered to be airport revenue:

a. Revenue from air carriers, tenants, lessees, purchasers of airport properties, airport permittees making use of airport property and services, and other parties. Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

i. For the right to conduct an activity on the airport or to use or occupy airport property;

ii. For the sale, transfer, or disposition of airport real property (as specified in the applicability section of this policy statement) not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including transfer through a condemnation proceeding;

iii. For the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

iv. For the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport (e.g., a downtown duty-free shop).

b. Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

i. From any activity conducted by the sponsor on airport property acquired with Federal assistance;

ii. From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C. §§ 47107(b) or 47133; or

iii. From any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, but only to the extent of the fair rental value of the airport property. The fair rental value will be based on the fair market value.

2. State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered to be airport revenue subject to the revenue-use requirement. However, revenues from state taxes on aviation fuel may be used to support state aviation programs or for noise mitigation purposes, on or off the airport.

3. While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with Federal grants must be used in accordance with the agreement between the FAA and the sponsor.

Where such an agreement gives the FAA discretion, FAA may consider this policy as a relevant factor in specifying the permissible use or uses of the proceeds.

C. Unlawful Revenue Diversion

Unlawful revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, when the use is not "grandfathered" under 49 U.S.C. § 47107(b)(2). When a use would be diversion of revenue but is grandfathered, the use is considered lawful revenue diversion. See Section VI, Prohibited Uses of Airport Revenue.

D. Airport Sponsor

The airport sponsor is the owner or operator of the airport that accepts Federal assistance and executes grant agreements or other documents required for the receipt of Federal assistance.

Section III—Applicability of the Policy

A. Policy and Procedures on the Use of Airport Revenue and State or Local Taxes on Aviation Fuel

1. With respect to the use of airport revenue, the policies and procedures in the Policy Statement are applicable to all public agencies that have received a grant for airport development since September 3, 1982, under the Airport and Airway Improvement Act of 1982 (AAIA), as amended, recodified without substantive change by Public Law 103-272 (July 5, 1994) at 49 U.S.C. 47101, et seq., and which had grant obligations regarding the use of airport revenue in effect on October 1, 1996 (the effective date of the FAA Authorization Act of 1996). Grants issued under that statutory authority are commonly referred to as Airport Improvement Program (AIP) grants. The Policy Statement applies to revenue uses at such airports even if the sponsor has not received an AIP grant since October 1, 1996.

2. With respect to the use of state and local taxes on aviation fuel, this Policy Statement is applicable to all public agencies that have received an AIP development grant since December 30, 1987, and which had grant obligations regarding the use of state and local taxes

on aviation fuel in effect of October 1, 1996.

3. Pursuant to 49 U.S.C. § 47133, this Policy Statement applies to any airport for which Federal assistance has been received after October 1, 1996, whether or not the airport owner is subject to the airport revenue-use grant assurance, and applies to any airport for which the airport revenue-use grant obligation is in effect on or after October 1, 1996. Section 47133 does not apply to an airport that has received Federal assistance prior to October 1, 1996, and does not have AIP airport development grant assurances in effect on that date.

4. Requirements regarding the use of airport revenue applicable to a particular airport or airport operator on or after October 1, 1996, as a result of the provisions of 49 U.S.C. § 47133, do not expire.

5. The FAA will not reconsider agency determinations and adjudications dated prior to the date of this Policy Statement, based on the issuance of this Policy Statement.

B. Policies and Procedures on the Requirement for a Self-Sustaining Airport Rate Structure

1. These policies and procedures apply to the operators of publicly owned airports that have received an AIP development grant and that have grant obligations in effect on or after the effective date of this policy.

2. Grant assurance obligations regarding maintenance of a self-sustaining airport rate structure in effect on or after the effective date of this policy apply until the end of the useful life of each airport development project or 20 years, whichever is less, except obligations under a grant for land acquisition, which do not expire.

C. Application of the Policy to Airport Privatization

1. The Airport Privatization Pilot Program, codified at 49 U.S.C. § 47134, provides for the sale or lease of general aviation airports and the lease of air carrier airports. Under the program, the FAA is authorized to exempt up to five airports from Federal statutory and regulatory requirements governing the use of airport revenue. The FAA can exempt an airport sponsor from its obligations to repay Federal grants, in the event of a sale, to return property acquired with Federal assistance and to use the proceeds of the sale or lease exclusively for airport purposes. The exemptions are subject to a number of conditions.

2. Except as specifically provided by the terms of an exemption granted under the Airport Privatization Pilot

Program, this policy statement applies to a privatization of airport property and/or operations.

3. For airport privatization transactions not subject to an exemption under the Pilot Program:

FAA approval of the sale or other transfer of ownership or control, of a publicly owned airport is required in accordance with the AIP sponsor assurances and general government contract law principles. The proceeds of a sale of airport property are considered airport revenue (except in the case of property acquired with Federal assistance, the sale of which is subject to other restrictions under the relevant grant contract or deed). When the sale proposed is the sale of an entire airport as an operating entity, the request may present the FAA with a complex transaction in which the disposition of the proceeds of the transfer is only one of many considerations. In its review of such a proposal, the FAA would condition its approval of the transfer on the parties' assurances that the proceeds of sale will be used for the purposes permitted by the revenue-use requirements of 49 U.S.C. §§ 47107(b) and 47133. Because of the complexity of an airport sale or privatization, the provisions for ensuring that the proceeds are used for the purposes permitted by the revenue-use requirements may need to be adapted to the special circumstances of the transaction. Accordingly, the disposition of the proceeds would need to be structured to meet the revenue-use requirements, given the special conditions and constraints imposed by the fact of a change in airport ownership. In considering and approving such requests, the FAA will remain open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the objectives and obligations of revenue-use requirements, without unnecessarily interfering with the appropriate privatization of airport infrastructure.

4. It is not the intention of the FAA to effectively bar airport privatization initiatives outside of the pilot program through application of the statutory requirements for use of airport revenue. Proponents of a proposed privatization or other sale or lease of airport property clearly will need to consider the effects of Federal statutory requirements on the use of airport revenue, reasonable fees for airport users, disposition of airport property, and other policies incorporated in Federal grant agreements. The FAA assumes that the proposals will be structured from the outset to comply with all such

requirements, and this proposed policy is not intended to add to the considerations already involved in a transfer of airport property.

Section IV—Statutory Requirements for the Use of Airport Revenue

A. General Requirements, 49 U.S.C. §§ 47107(b) and 47133

1. The current provisions restricting the use of airport revenue are found at 49 U.S.C. §§ 47107(b), and 47133. Section 47107(b) requires the Secretary, prior to approving a project grant application for airport development, to obtain written assurances regarding the use of airport revenue and state and local taxes on aviation fuel. Section 47107(b)(1) requires the airport owner or operator to provide assurances that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

- a. The airport;
- b. The local airport system; or
- c. Other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

B. Exception for Certain Preexisting Arrangements (Grandfather Provisions)

Section 47107(b)(2) provides an exception to the requirements of Section 47107(b)(1) for airport owners or operators having certain financial arrangements in effect prior to the enactment of the AAIA. This provision is commonly referred to as the "grandfather" provision. It states:

Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

C. Application of 49 U.S.C. § 47133

1. Section 47133 imposes the same requirements on all airports, privately-owned or publicly-owned, that are the subject of Federal assistance. Subsection 47133(a) states that:

Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of—

- (a) the airport;
- (b) The local airport system; or
- (c) Other local facilities owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of persons or property.

2. Section 47133(b) contains the same grandfather provisions as section 47107(b).

3. Enactment of section 47133 resulted in three fundamental changes to the revenue-use obligation, as reflected in the applicability section of this policy statement.

a. Privately owned airports receiving Federal assistance (as defined in this policy statement) after October 1, 1996, are subject to the revenue-use requirement.

b. In addition to airports receiving AIP grants, airports receiving Federal assistance in the form of gifts of property after October 1, 1996, are subject to the revenue-use requirement.

c. For any airport or airport operator that is subject to the revenue-use requirement on or after October 1, 1996, the revenue-use requirement applies indefinitely.

4. This section of the policy refers to the date of October 1, 1996, because the FAA Authorization Act of 1996 is by its terms effective on that date.

D. Specific Statutory Requirements for the Use of Airport Revenue

1. In section 112 of the FAA Authorization Act of 1994, 49 U.S.C. § 47107(l)(2) (A-D), Congress expressly prohibited the diversion of airport revenues through:

- a. Direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;
- b. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;
- c. Payments in lieu of taxes or other assessments that exceed the value of services provided; or
- d. Payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

2. Section 47107(l)(5), enacted as part of the FAA Authorization Act of 1996, provides that:

(A) Any request by a sponsor to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) Any amount of airport funds that are used to make a payment or

reimbursement as described in subparagraph (a) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

3. 49 U.S.C. § 40116(d)(2)(A) provides, among other things, that a State, political subdivision of a State or authority acting for a State or a political subdivision may not: "(iv) levy or collect a tax, fee or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes."

E. Passenger Facility Charges and Revenue Diversion

The Aviation Safety and Capacity Expansion Act of 1990 authorized the imposition of a passenger facility charge (PFC) with the approval of the Secretary.

1. While PFC revenue is not characterized as "airport revenue" for purposes of this Policy Statement, specific statutory and regulatory guidelines govern the use of PFC revenue, as set forth at 49 U.S.C. 40117, "Passenger Facility Fees," and 14 CFR Part 158, "Passenger Facility Charges." For purposes of this policy, the terms "passenger facility fees" and "passenger facility charges" are synonymous.) These provisions are more restrictive than the requirements for the use of airport revenue in 49 U.S.C. 47107(b), in that the PFC requirements provide that PFC collections may only be used to finance the allowable costs of approved projects. The PFC regulation specifies the kinds of projects that can be funded by PFC revenue and the objectives these projects must achieve to receive FAA approval for use of PFC revenue.

2. The statute and regulations prohibit expenditure of PFC revenue for other than approved projects, or collection of PFC revenue in excess of approved amounts.

3. As explained more fully below under enforcement policies and procedures in Section IX, "Monitoring and Compliance," a final FAA determination that a public agency has violated the revenue-use provision prevents the FAA from approving new authority to impose a PFC until corrective action is taken.

Section V—Permitted Uses of Airport Revenue

Permitted Uses of Airport Revenue

Airport revenue may be used for:

1. The capital or operating costs of the airport, the local airport system, or other

local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

2. The full costs of activities directed toward promoting competition at an airport, public and industry awareness of airport facilities and services, new air service and competition at the airport (other than direct subsidy of air carrier operations prohibited by paragraph VI.B.12 of this policy), and salary and expenses of employees engaged in efforts to promote air service at the airport, subject to the terms of this policy statement. Other permissible expenditures include cooperative advertising, where the airport advertises new services with or without matching funds, and advertising of general or specific airline services to the airport. Examples of permitted expenditures in this category include: (a) a Superbowl hospitality tent for corporate aircraft crews at a sponsor-owned general aviation terminal intended to promote the use of that airport by corporate aircraft; and (b) the cost of promotional items bearing airport logos distributed at various aviation industry events.

3. A share of promotional expenses, which may include marketing efforts, advertising, and related activities designed to increase travel using the airport, to the extent the airport share of the promotional materials or efforts meets the requirements of V.A.2. above and includes specific information about the airport.

4. The repayment of the airport owner or sponsor of funds contributed by such owner or sponsor for capital and operating costs of the airport and not heretofore reimbursed. An airport owner or operator can seek reimbursement of contributed funds only if the request is made within 6 years of the date the contribution took place. 49 U.S.C. 47107(l).

a. If the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made, the sponsor may repay the loan principal and interest from airport funds. Interest should not exceed a rate which the sponsor received for other investments for that period of time.

b. For other contributions to the airport, the airport owner or operator may seek reimbursement of interest only if the FAA determines that the airport owes the sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport. Interest shall be determined in the manner provided in 49 U.S.C. 47107(o), but may be assessed only from the date of the FAA's determination.

5. Lobbying fees and attorney fees to the extent these fees are for services in support of any activity or project for which airport revenues may be used under this Policy Statement. See Section VI: Prohibited Uses of Airport Revenue.

6. Costs incurred by government officials, such as city council members, to the extent that such costs are for services to the airport actually received and documented. An example of such costs would be the costs of travel for city council members to meet with FAA officials regarding AIP funding for an airport project.

7. A portion of the general costs of government, including executive offices and the legislative branches, may be allocated to the airport indirectly under a cost allocation plan in accordance with V.B.3. of this Policy Statement.

8. Expenditure of airport funds for support of community activities, participation in community events, or support of community-purpose uses of airport property if such expenditures are directly and substantially related to the operation of the airport. Examples of permitted expenditures in this category include: (a) the purchase of tickets for an annual community luncheon at which the Airport director delivers a speech reviewing the state of the airport; and (b) contribution to a golf tournament sponsored by a "friends of the airport" committee. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that a benefit of that nature is intangible and not quantifiable. Where the amount of contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and the benefit of local community acceptance for the airport. An example of a permitted expenditure in this category was participation in a local school fair with a booth focusing on operation of the airport and career opportunities in aviation. The expenditure in this example was \$250.

9. Airport revenue may be used for the capital or operating costs of those

portions of an airport ground access project that can be considered an airport capital project, or of that part of a local facility that is owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. The FAA has approved the use of airport revenue for the actual costs incurred for structures and equipment associated with an airport terminal building station and a rail connector between the airport station the nearest mass transit rail line, where the structures and equipment were (1) located entirely on airport property, and (2) designed and intended exclusively for the use of airport passengers.

B. Allocation of Indirect Costs

1. Indirect costs of sponsor services may be allocated to the airport in accordance with this policy, but the allocation must result in an allocation to the airport only of those costs that would otherwise be allowable under 49 U.S.C. § 47107(b). In addition, the documentation for the costs must meet the standards of documentation stated in this policy.

2. The costs must be allocated under a cost allocation plan that meets the following requirements:

a. The cost is allocated under a cost allocation plan that is consistent with Attachment A to OMB Circular A-87, except that the phrase "airport revenue" should be substituted for the phrase "grant award," wherever the latter phrase occurs in Attachment A;

b. The allocation method does not result in a disproportionate allocation of general government costs to the airport in consideration of the benefits received by the airport;

c. Costs allocated indirectly under the cost allocation plan are not billed directly to the airport; and

d. Costs billed to the airport under the cost allocation plan must be similarly billed to other comparable units of the airport owner or operator.

3. A portion of the general costs of government, such as the costs of the legislative branch and executive offices, may be allocated to the airport as an indirect cost under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

4. Central service costs, such as accounting, budgeting, data processing, procurement, legal services, disbursing and payroll services, may also be allocated to the airport as indirect costs

under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

C. Standard of Documentation for the Reimbursement to Government Entities of Costs of Services and Contributions Provided

1. Reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, must be supported by adequate documentary evidence. Documentary evidence includes, but is not limited to:

a. Underlying accounting data such as general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses; and corroborating evidence such as invoices, vouchers and indirect cost allocation plans, or

b. Audited financial statements which show the specific expenditures to be reimbursed by the airport. Such expenditures should be clearly identifiable on the audited financial statements as being consistent with section VIII of this policy statement.

2. Documentary evidence to support direct and indirect charges to the airport must show that the amounts claimed were actually expended. Budget estimates are not sufficient to establish a claim for reimbursement. Indirect cost allocation plans, however, may use budget estimates to establish predetermined indirect cost allocation rates. Such estimated rates should, however, be adjusted to actual expenses in the subsequent accounting period.

D. Expenditures of Airport Revenue by Grandfathered Airports

1. Airport revenue may be used for purposes other than capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the sponsor and directly and substantially related to the air transportation of passengers or property, if the "grandfather" provisions of 49 U.S.C. § 47107(b)(2) are applicable to the sponsor and the particular use. Based on previous DOT interpretations, examples of grandfathered airport sponsors may include, but are not limited to the following:

a. A port authority or state department of transportation which owns or operates other transportation facilities in addition to airports, and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for non-airport purposes. Such sponsors may have obtained legal opinions from

their counsel to support a claim of grandfathering. Previous DOT interpretations have found the following examples of pre-AAIA legislation to provide for the grandfather exception:

b. Bond obligations and city ordinances requiring a five percent "gross receipts" fee from airport revenues. The payments were instituted in 1954 and continued in 1968.

c. A 1955 state statute for the assessing of a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

d. City legislation authorizing the transfer of a percentage of airport revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.

e. A 1957 state statutory transportation program governing the financing and operations of a multi-modal transportation authority, including airport, highway, port, rail and transit facilities, wherein state revenues, including airport revenues, support the state's transportation-related, and other, facilities. The funds flow from the airports to a state transportation trust fund, composed of all "taxes, fees, charges, and revenues" collected or received by the state department of transportation.

f. A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes but requires annual payments in lieu of taxes to several local governments and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, facilities of the authority, its expenses, reserves, and the payment in lieu of taxes fund.

2. Under the authority of 49 U.S.C. § 47115(f), the FAA considers as a factor militating against the approval of an application for AIP discretionary funds, the fact that a sponsor has exercised its rights to use airport revenue for nonairport purposes under the grandfather clause, when in the airport's fiscal year preceding the date of application for discretionary funds, the FAA finds that the amount of airport revenues used for nonairport purposes exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban

Consumers published by the Bureau of Labor Statistics of the Department of Labor.

Section VI—Prohibited Uses of Airport Revenue

A. Lawful and Unlawful Revenue Diversion

Revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, unless that use is grandfathered under 49 U.S.C. § 47107(b)(2) and the use does not exceed the limits of the 'grandfather' clause. When such use is so grandfathered, it is known as lawful revenue diversion. Unless the revenue diversion is grandfathered, the diversion is unlawful and prohibited by the revenue-use restrictions.

B. Prohibited Uses of Airport Revenue

Prohibited uses of airport revenue include but are not limited to:

1. Direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value.
2. Direct or indirect payments that are based on a cost allocation formula that is not consistent with this policy statement or that is not calculated consistently for the airport and other comparable units or cost centers of government.
3. Use of airport revenues for general economic development.
4. Marketing and promotional activities unrelated to airports or airport systems. Examples of prohibited expenses in this category include participation in program to provide hospitality training to taxi drivers and funding an airport operator's float containing no reference to the airport, in a New Years Day parade.
5. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government.
6. Payments to compensate non-sponsoring governmental bodies for lost tax revenues to the extent the payments exceed the stated tax rates applicable to the airport.
7. Loans to or investment of airport funds in a state or local agency at less than the prevailing rate of interest.
8. Land rental to, or use of land by, the sponsor for nonaeronautical

purposes at less than fair rental/market value, except to the extent permitted by Section VII.D of this policy.

9. Use of land by the sponsor for aeronautical purposes rent-free or for nominal rental rates, except to the extent permitted by Section VII.E of this policy.

10. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport. However, airport revenue may be used where airport development requires a sponsoring agency to take an action, such as undertaking environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project, or constructing a ground access facility that would otherwise be eligible for the use of airport revenue. Payments of impact fees must meet the general requirement that airport revenue be expended only for actual documented costs of items eligible for use of airport revenue under this Policy Statement. In determining appropriate corrective action for an impact fee payment that is not consistent with this policy, the FAA will consider whether the impact fee was imposed by a non-sponsoring governmental entity and the sponsor's ability under local law to avoid paying the fee.

11. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses of airport property except to the extent permitted by this policy. See Section V, Uses of Airport Revenue. Examples of prohibited expenditures in this category include expenditure of \$50,000 to sponsor a local film society's annual film festival; and contribution of \$6,000 to a community cultural heritage festival.

12. Direct subsidy of air carrier operations. Direct subsidies are considered to be payments of airport funds to carriers for air service. Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. Any fee waiver or discount must be offered to all users of the airport, and provided to all users that are willing to provide the same type and level of new services consistent with the promotional offering. Likewise prohibited direct subsidies do not include support for airline advertising or marketing of new services to the extent permitted by Section V of this Policy Statement.

Section VII—Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure

A. Statutory Requirements

49 U.S.C. § 47107(a)(13) requires airport operators to maintain a schedule of charges for use of the airport: "(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection."

The requirement is generally referred to as the "self-sustaining assurance."

B. General Policies Governing the Self-Sustaining Rate Structure Assurance

1. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. In considering whether a particular contract or lease is consistent with this requirement, the FAA and the Office of the Inspector General (OIG) generally evaluate the individual contract or lease to determine whether the fee or rate charged generates sufficient income for the airport property or service provided, rather than looking at the financial status of the entire airport.

2. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

3. At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve a self-sustaining income in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.

4. Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self-sustaining as possible in the circumstances existing at such airports.

5. Under 49 U.S.C. § 47107(a)(1) and the implementing grant assurance, charges to aeronautical users must be reasonable and not unjustly discriminatory. Because of the limiting effect of the reasonableness requirement, the FAA does not consider the self-sustaining requirement to require airport sponsors

to charge fair market rates to aeronautical users. Rather, for charges to aeronautical users, the FAA considers the self-sustaining assurance to be satisfied by airport charges that reflect the cost to the sponsor of providing aeronautical services and facilities to users. A fee for aeronautical users set pursuant to a residual costing methodology satisfies the requirement for a self-sustaining airport rate structure.

6. In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C. § 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users are not subject to the reasonableness requirement or the Department of Transportation Policy on airport rates and charges, the surplus funds accumulated from those fees must be used in accordance with 49 U.S.C. § 47107(b).

C. Policy on Charges for Nonaeronautical Facilities and Services

Subject to the general guidance set forth above and the specific exceptions noted below, the FAA interprets the self-sustaining assurance to require that the airport receive fair market value for the provision of nonaeronautical facilities and services, to the extent practicable considering the circumstances at the airport.

D. Providing Property for Public Community Purposes

Making airport property available at less than fair market rental value for public recreational and other community uses, for the purpose of maintaining positive airport-community relations, can be a legitimate function of an airport proprietor in operating the airport. Accordingly, in certain circumstances, providing airport land for such purposes will not be considered a violation of the self-sustaining requirement. Generally, the circumstances in which below-market use of airport land for community purposes will be considered consistent with the grant assurances are:

1. The contribution of the airport property enhances public acceptance of the airport in a community in the immediate area of the airport; the property is put to a general public use desired by the local community; and the public use does not adversely affect the

capacity, security, safety or operations of the airport. Examples of acceptable uses include public parks, recreation facilities, and bike or jogging paths. Examples of uses that would not be eligible are road maintenance equipment storage; and police, fire department, and other government facilities if they do not directly support the operation of the airport.

2. The property involved would not reasonably be expected to produce more than *de minimis* revenue at the time the community use is contemplated, and the property is not reasonably expected to be used by an aeronautical tenant or otherwise be needed for airport operations in the foreseeable future. When airport property reasonably may be expected to earn more than minimal revenue, it still may be used for community purposes at less than FMV if the revenue earned from the community use approximates the revenue that could otherwise be generated, provided that the other provisions of VII. D. are met.

3. The community use does not preclude reuse of the property for airport purposes if, in the opinion of the airport sponsor, such reuse will provide greater benefits to the airport than continuation of the community use.

4. Airport revenue is not to be used to support the capital or operating costs associated with the community use.

E. Use of Property by Not-for-Profit Aviation Organizations

1. An airport operator may charge reduced rental rates and fees to the following not-for-profit aviation organizations, to the extent that the reduction is reasonably justified by the tangible or intangible benefits to the airport or to civil aviation:

- a. Aviation museums;
- b. Aeronautical secondary and post-secondary education programs conducted by accredited educational institutions; or
- c. Civil Air Patrol units operating aircraft at the airport;

2. Police or fire-fighting units operating aircraft at the airport generally will be expected to pay a reasonable rate for aeronautical use of airport property, but the value of any services provided by the unit to the airport may be offset against the applicable reasonable rate.

F. Use of Property by Military Units

The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units

with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, U.S. Air Force Reserve, and Naval Reserve air units operating aircraft at the airport. Reserve and Guard units typically have an historical presence at the airport that precedes the Airport and Airway Improvement Act of 1982, and provide services that directly benefit airport operations and safety, such as snow removal and supplementary ARFF capability.

G. Use of Property for Transit Projects

Making airport property available at less than fair market rental for public transit terminals, right-of-way, and related facilities will not be considered a violation of 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13) if the transit system is publicly owned and operated (or operated by contract on behalf of the public owner), and the facilities are directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. A lease of nominal value in the circumstances described in this section would be considered consistent with the self-sustaining requirement.

H. Private Transit Systems

Generally, private ground transportation services are charged as a nonaeronautical use of the airport. In cases where publicly-owned transit services are extremely limited and where a private transit service (i.e., bus, rail, or ferry) provides the primary source of public transportation, making property available at less than fair market rental to this private service would not be considered inconsistent with 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13).

Section VIII—Reporting and Audit Requirements

The Federal Aviation Administration Authorization Act of 1994 established a new requirement for airports to submit annual financial reports to the Secretary, and the Act required the Secretary to compile the reports and to submit a summary report to Congress. The Federal Aviation Reauthorization Act of 1996 established a new requirement for airports to include, as part of their audits under the Single Audit Act, a review and opinion on the use of airport revenue.

A. Annual Financial Reports

Section 111(a)(4) of the 1994 Authorization Act, 49 U.S.C. § 47107(a)(19), requires airport owners or operators to submit to the Secretary

and to make available to the public an annual financial report listing in detail (1) all amounts the airport paid to other government units and the purposes for which each payment was made, (2) all services and property the airport provided to other government units and compensation received for each service or unit of property provided. Additionally, Section 111(b) of the 1994 Authorization Act requires a report, for each fiscal year, in an uniform simplified format, of the airport's sources and uses of funds, net surplus/loss and other information which the Secretary may require.

FAA Forms 5100-125 and 126 have been developed to satisfy the above reporting requirements. The forms must be filed with the FAA 120 days after the end of the sponsor's fiscal year. Extensions of the filing date may be granted if audited financial information is not available within 120 days of the end of the local fiscal year. Requests for extension should be filed in writing with the FAA Airport Compliance Division, AAS-400.

B. Single Audit Review and Opinion

1. **General requirement and applicability.** The Federal Aviation Reauthorization Act of 1996, Section 705; 49 U.S.C. § 47107(m) requires public agencies that are subject to the Single Audit Act, 31 U.S.C. § 7501-7505, and that have received Federal financial assistance for airports to include, as part of their single audit, a review and opinion of the public agency's funding activities with respect to their airport or local airport system.

2. **Federal Financial Assistance.** For the purpose of complying with 49 U.S.C. § 47107(m), Federal financial assistance for airports includes any interest in property received, by a public agency since October 1, 1996, for the purpose of developing, improving, operating, or maintaining a public airport, or an AIP grant which was in force and effect on or after October 1, 1996, either directly or through a state block grant program.

3. **Frequency.** The opinion will be required whenever the auditor under OMB Circular A-133 selects an airport improvement program grant as a major program. In those cases where the airport improvement program grant is selected as a major program the requirements of 49 U.S.C. § 47107(m) will apply.

4. **Major Program.** For the purposes of complying with 49 U.S.C. § 47107(m), a major program means an airport improvement program grant determined to be a major program in accordance with OMB Circular A-133, § 520 or an

airport improvement program grant identified by FAA as a major program in accordance with OMB A-133 § 215(c); except additional audit costs resulting from FAA designating an airport improvement program grant as a major program are discussed at paragraph 9 below.

5. **FAA Notification.** When FAA designates an airport improvement program grant as a major program, FAA will generally notify the sponsor in writing at least 180 days prior to the end of the sponsor's fiscal year to have the grant included as a major program in its next Single Audit.

6. **Audit Findings.** The auditor will report audit findings in accordance with OMB Circular A-133.

7. **Opinion.** The statutory requirement for an opinion will be considered to be satisfied by the auditor's reporting under OMB Circular A-133. Consequently when an airport improvement program grant is designated as a major program, and the audit is conducted in accordance with OMB Circular A-133, FAA will accept the audit to meet the requirements of 49 USC § 47107(m) and this policy.

8. **Reporting Package.** The Single Audit reporting package will be distributed in accordance with the requirements of OMB Circular A-133. In addition when an airport improvement program grant is a major program, the sponsor will supply, within 30 days after receipt by the sponsor, a copy of the reporting package directly to the FAA, Airport Compliance Division (AAS-400), 800 Independence Ave. SW 20591. The FAA regional offices may continue to request the sponsor to provide separate copies of the reporting package to support their administration of airport improvement program grants.

9. **Audit Cost.** When an opinion is issued in accordance with 47107(m) and this policy, the costs associated with the opinion will be allocated in accordance with the sponsor's established practice for allocating the cost of its Single Audit, regardless of how the airport improvement program grant is selected as a major program.

10. **Compliance Supplement.** Additional information about this requirement is contained in OMB Circular A-133 Compliance Supplement for DOT programs.

11. **Applicability.** This requirement is not applicable to (a) privately-owned, public-use airports, including airports accepted into the airport privatization program (the Single Audit Act governs only states, local governments and non-profit organizations receiving Federal assistance); (b) public agencies that do not have a requirement for the single

audit; (c) public agencies that do not satisfy the criteria of paragraph B.1 and 2; above; and Public Agencies that did not execute an AIP grant agreement on or after June 2, 1997.

Section IX—Monitoring and Compliance

A. Detection of Airport Revenue Diversion

To detect whether airport revenue has been diverted from an airport, the FAA will depend primarily upon four sources of information:

1. Annual report on revenue use submitted by the sponsor under the provisions of 49 U.S.C. § 47107(a)(19), as amended.

2. Single audit reports submitted, pursuant to 49 U.S.C. § 47107(m), with annual single audits conducted under 31 U.S.C. §§ 7501-7505. The requirement for these reports is discussed in Part IX of this policy.

3. Investigation following a third party complaint filed under 14 CFR, Part 16, FAA Rules of Practice for Federally Assisted Airport Proceedings.

4. DOT Office of Inspector General audits.

B. Investigation of Revenue Diversion Initiated Without Formal Complaint

1. When no formal complaint has been filed, but the FAA has an indication from one or more sources that airport revenue has been or is being diverted unlawfully, the FAA will notify the sponsor of the possible diversion and request that it respond to the FAA's concerns. If, after information and arguments submitted by the sponsor, the FAA determines that there is no unlawful diversion of revenue, the FAA will notify the sponsor and take no further action. If the FAA makes a preliminary finding that there has been unlawful diversion of airport revenue, and the sponsor has not taken corrective action (or agreed to take corrective action), the FAA may issue a notice of investigation under 14 CFR § 16.103.

If, after further investigation, the FAA finds that there is reason to believe that there is or has been unlawful diversion of airport revenue that the sponsor refuses to terminate or correct, the FAA will issue an appropriate order under 14 CFR § 16.109 proposing enforcement action. However, such action will cease if the airport sponsor agrees to return the diverted amount plus interest.

2. Audit or investigation by the Office of the Inspector General. An indication of revenue diversion brought to the attention of the FAA in a report of audit or investigation issued by the DOT Office of the Inspector General (OIG)

will be handled in accordance with paragraph B.1 above.

C. Investigation of Revenue Diversion Precipitated by Formal Complaint

When a formal complaint is filed against a sponsor for revenue diversion, the FAA will follow the procedures in 14 CFR Part 16 for notice to the sponsor and investigation of the complaint. After review of submissions by the parties, investigation of the complaint, and any additional process provided in a particular case, the FAA will either dismiss the complaint or issue an appropriate order proposing enforcement action.

If the airport sponsor takes the corrective action specified in the order, the complaint will be dismissed.

D. The Administrative Enforcement Process

1. Enforcement of the requirements imposed on sponsors as a condition of the acceptance of Federal grant funds or property is accomplished through the administrative procedures set forth in 14 CFR part 16. Under part 16, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel production of evidence, and adjudicate matters of compliance within the jurisdiction of the Administrator.

2. If, as a result of the investigative processes described in paragraphs B and C above, the FAA finds that there is reason to proceed with enforcement action against a sponsor for unlawful revenue diversion, an order proposing enforcement action is issued by the FAA and under 14 CFR 16.109. That section provides for the opportunity for a hearing on the order.

E. Sanctions for Noncompliance

1. As explained above, if the FAA makes a preliminary finding that airport revenue has been unlawfully diverted and the sponsor declines to take the corrective action, the FAA will propose enforcement action. A decision whether to issue a final order making the action effective is made after a hearing, if a hearing is elected by the respondent. The actions required by or available to the agency for enforcement of the prohibitions against unlawful revenue diversion are:

a. Withhold future grants. The Secretary may withhold approval of an application in accordance with 49 USC § 47106(d) if the Secretary provides the sponsor with an opportunity for a hearing and, not later than 180 days

after the later of the date of the grant application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

b. Withhold approval of the modification of existing grant agreements that would increase the amount of funds available. A supplementary provision in section 112 of the 1994 Authorization Act, 49 USC § 47111(e), makes mandatory not only the withholding of new grants but also withholding of a modification to an existing grant that would increase the amount of funds made available, if the Secretary finds a violation after hearing and opportunity to cure.

c. Withhold payments under existing grants. The Secretary may withhold a payment under a grant agreement for 180 days or less after the payment is due without providing for a hearing. However, in accordance with 49 USC § 47111(d), the Secretary may withhold a payment for more than 180 days only if he or she notifies the sponsor and provides an opportunity for a hearing and finds that the sponsor has violated the agreement. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

d. Withhold approval of an application to impose a passenger facility charge. Section 112 also makes mandatory the withholding of approval of any new application to impose a passenger facility charge under 49 USC § 40117. Subsequent to withholding, applications could be approved only upon a finding by the Secretary that corrective action has been taken and that the violation no longer exists.

e. File suit in United States district court. Section 112(b) provides express authority for the agency to seek enforcement of an order in Federal court.

f. Withhold, under 49 USC § 47107(n)(3), any amount from funds that would otherwise be available to a sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multi-modal transportation agency or transit agency of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor has failed to reimburse the airport after receiving notification of the requirement to do so.

g. Assess civil penalties.

(1) Under section 112(c) of Public Law 103-305, codified at 49 USC § 46301(a) and (d), the Secretary has statutory authority to impose civil penalties up to a maximum of \$50,000 on airport sponsors for violations of the AIP sponsor assurance on revenue diversion. Any civil penalty action under this section would be adjudicated under 14 CFR Part 13, Subpart G.

(2) Under section 804 of Public Law 104-264, codified at 49 USC § 46301(a)(5), the Secretary has statutory authority to obtain civil penalties of up to three times the amount of airport revenues that are used in violation of 49 USC §§ 47107(b) and 47133. An action for civil penalties in excess of \$50,000 must be brought in a United States District Court.

(3) The Secretary may, under 49 USC § 47107(n)(4), initiate a civil action for civil penalties in the amount equal to the illegal diversion in question plus interest calculated in accordance with 49 USC § 47107(o), if the airport sponsor has failed to take corrective action specified by the Secretary and the Secretary is unable to withhold sufficient grant funds, as set forth above.

(4) An action for civil penalties under this provision must be brought in a United States District Court. The Secretary intends to use this authority only after the airport sponsor has been given a reasonable period of time, after a violation has been clearly identified to the airport sponsor, to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, and only after other enforcement actions, such as withholding of grants and payments, have failed to achieve compliance.

F. Compliance With Reporting and Audit Requirements

The FAA will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements described in this Policy Statement. The failure to comply with these requirements can result in the withholding of future AIP grant awards and further payments under existing AIP grants.

Issued in Washington, DC on February 8, 1999.

Susan L. Kurland,

Associate Administrator for Airports.

[FR Doc. 99-3529 Filed 2-11-99; 8:45 am]

BILLING CODE 4910-13-P

Sponsor: _____

Operating and Financial Summary

Name of Airport: _____

Fiscal Year Ended: _____

Operating Revenue

Aeronautical Operating Revenue

1. Landing Fees
2. Terminal/International arrival area rental or other charge
3. Apron charges/holdowns
4. Fuel flowage fees
5. UMLites
6. FBO revenue: contract or sponsor-operated
7. Cargo and hanger rentals
8. Security Reimbursement
9. Misc. (Should not exceed 5% of total aeronautical)
10. Other (Enter total here and add attachment)

Total Aeronautical Operating Revenue

Non-Aeronautical Operating Revenue

1. Rent/land rental
2. Concessions
3. Parking
4. Rental Cars
5. In-flight Catering
6. Interest Income
7. Royalties from natural resource sales
8. Misc. (Should not exceed 5% of total nonaeronautical)
9. Other (Enter total here and add attachment)

Total Non-Aeronautical Operating Revenue

Total Operating Revenue

Non-Operating Revenue and Other Receipts

1. Bond Proceeds
2. Proceeds from sale of property not subject to Federal obligations
3. Proceeds from sale of property subject to SPA/grant obligations
4. Grant payments
5. Passenger Facility Charges
6. Other (Enter total here and add attachment)

Total Non-Operating Rev. and Other Receipts

Total Revenue and Other Receipts

In compliance with section 47107(a) of the Title 49 United States Code and section 111(b) of the Federal Aviation Administration Authorization Act of 1994.

Please complete this form in order assist the public in understanding airport finances and the use of airport generated revenue.

FAA Form 5100-125 (02)

AGENCY DISPLAY OF ESTIMATED BURDEN

The FAA estimates that the average burden for this report form is 5 hours per response. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to the Office of Management and Budget. You may also send comments to the Federal Aviation Administration, Program Support Branch, ARP-11, 800 Independence Avenue, SW, Washington, DC 20591, Attention: OMB Number 2120-0557.

Operating Expenses

1. Personnel Compensation and Benefits
2. Communications and Utilities
3. Supplies, Materials, Repairs, Maintenance
4. Services (1)
5. Insurance and Claims
6. Government in lieu, permit, impact fees, etc.
7. Misc. (Should not exceed 5% of total op expenses)
8. Other (Enter total here and add attachment)

Total Operating Expenses

Non-Operating Expense and Other Fund Use

1. Debt Service Payments Net of Capitalized Interest
2. Transfers to Reserves
 - a.
 - b.
 Total Transfers to Reserves
3. Capital Expenditures
 - a.
 - b.
 Total Capital Expenditures
4. Other Non-Operating Expenses and Fund Uses
 - a.
 - b.
 Total Other Non-Operating Expenses and Fund Uses

Total Non-Op Exps and Other Fund Uses

Total Expenses and Fund Uses

REVENUE SURPLUS (LOSS)

Guidance used for accounting (check one or more)

GAAP: OMB Circular A-87

(1) Services includes fees for other governmental services not included in other categories

Cash basis Accrual Other

I certify that the information on this form is true and accurate to the best of my knowledge and belief.

Authorized Representative

Date

Title

21-4

FINANCIAL GOVERNMENTAL PAYMENT REPORT

Sponsor: _____
 Name of Airport: _____
 Fiscal Year Ended: _____

Payments to other government units				Payments to other government units			
Government Entity: _____				Government Entity: _____			
1	Payee - Department or Agency	Purpose	Amount	1	Payee - Department or Agency	Purpose	Amount
2		Law Enforcement		2			
3		Firefighting		3			
4		Legal Services		4			
5		Engineering		5			
6		Procurement		6			
7				7			
8				8			
9				9			
10				10			
11				11			

Services and property provided to other government units				Services and property provided to other government units					
Government Entity: _____				Government Entity: _____					
1	Recipient - Department or Agency	Property/Service Provided	Value/Cost	Compensation Rec'd	1	Recipient - Department or Agency	Property/Service Provided	Value/Cost	Compensation Rec'd
2					2				
3					3				
4					4				
5					5				
6					6				
7					7				
8					8				

Total of cash and investments held in airport accounts at the end of the fiscal year: _____

In compliance with § 47107(e)(19) of Title 49 United States Code. I certify that the information on this form is true and accurate to the best of my knowledge and belief

Please complete this form noting fees and service provided to and received from governments. Please list each government if more than one.

 Authorized Representative

 Title

 Date

FAA Form 5100-128 (ix)
AGENCY DISPLAY OF ESTIMATED BURDEN.
 The FAA estimates that the average burden for this report form is 3 hours per response. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to the Office of Management and Budget. You may also send comments to the Federal Aviation Administration Program Support Branch ARP-11, 800 Independence Avenue, SW, Washington DC 20591 Attention OMB Number 2120-0557