Conservation Measure 72/XII

Prohibition of Directed Fishing for Finfish in Statistical Subarea 48.1

Taking of finfish, other than for scientific research purposes, is prohibited in Statistical Subarea 48.1 from 6 November 1993 until at least such time that a survey of stock biomass is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be re-opened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 73/XII

Prohibition of Directed Fishing for Finfish in Statistical Subarea 48.2

Taking of finfish, other than for scientific research purposes, is prohibited in Statistical Subarea 48.2 from 6 November 1993 until at least such time that a survey of stock biomass is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be re-opened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 95/XIV

Limitation of the By-catch of *Gobinonotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Notothenia rossii and Lepidonotothen squamifrons* in Statistical Subarea 48.3

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

In any directed fishery in Statistical Subarea 48.3 in any fishing season, the by-catch of *Gobinonotothen gibberifrons* shall not exceed 1,470 tons; the by-catch of *Chaenocephalus aceratus* shall not exceed 2,200 tons; and the by-catch of *Pseudochaenichthys georgianus, Notothenia rossii* and *Lepidonotothen squamifrons* shall not exceed 300 tons each. These limits shall be kept under review by the Commission taking into account the advice of the Scientific Committee.

Dated: December 11, 1996.

R. Tucker Scully,

Director, Office of Oceans Affairs.

[FR Doc. 96–31852 Filed 12–17–96; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice No. 2484]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Tuesday, January 7, 1997, in room 6319, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC.

The purpose of the meeting is to prepare for the 43rd session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is scheduled for July 14–18, 1997, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships, ship reporting, and related matters
—Development of measures complementary to the Code for Safe Carriage of Irradiated Nuclear Fuel (INF)
—Revision of SOLAS chapter V
—Ergonomic criteria for bridge equipment and layout
—Navigational aids and related matters
—International Telecommunication Union (ITU) matters including Radiocommunication ITU–R Study Group 8
—Amendments to the Merchant Ship Search and Rescue (MERSAR) Manual (1995 SOLAS/Conference resolution 8)
—Operational aspects of wing in ground (WIG) craft
—Possible amendments to the International Regulations for Prevention of Collisions at Sea (COLREGS)

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–MOV–3), Room 1407, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: December 9, 1996.

Russell A. LaMantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 96–32037 Filed 12–17–96; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 96–10–6 established the currently effective two-month SFFL applicable through November 30, 1996.

In establishing the SFFL for the two-month period beginning December 1, 1996, we have projected non-fuel costs based on the year ended September 30, 1996 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 96–12–14 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.4885
Latin America—1.5394
Pacific—1.5602

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: December 12, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–32027 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed policy; request for comments.

SUMMARY: On February 26, 1996, the FAA published for public comment, a comprehensive statement of policy and procedures concerning the use of airport revenue, based on the requirement that revenue at public airports have received Federal grants generally be used only for airport purposes. Comments received on the notice included comments on four issues not discussed in detail in the February notice: (1) The use of airport property and funds for community or charitable purposes; (2) the extent to which airport funds may be used for marketing and promotional activities; (3) guidance on the accounting and cost allocation practices that the FAA considers acceptable for purposes of compliance with the revenue retention requirement; and (4) the use of airport

property for public transportation facilities. This supplemental notice proposes additions to the policy proposed in February 1996 to include specific policies and guidance on these four issues, based on comments received. The final policy will reflect comments received on this supplemental notice as well as the general notice published in February. While the policy statement proposed is not made effective at this time, statutory requirements relating to the use of airport revenue remain in effect and will be enforced by the FAA. Airport sponsors may assume that the FAA would act consistently with the views expressed in this document in any enforcement action for revenue diversion taken before a final policy statement is issued.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Comments should be mailed, in quadruplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28472, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: ''Docket No. 28472.'' Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28472.'' The postcard will be date stamped and mailed to the commenter.

Comments on this Notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Benedict D. Castellano, Manager, Airport Safety and Compliance Branch, AAS–310, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267–8728; or Jonathan W. Cross, Airports Law Branch, AGC–610, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3473.

SUPPLEMENTARY INFORMATION:

This proposed statement of policy and related procedures is being published pursuant to section 112(a) of the Federal Aviation Administration Authorization Act of 1994, Pub. L. 103–305 (August 23, 1994) (1994 Authorization Act). That section requires the Secretary to establish policies and procedures assuring the ''prompt and effective enforcement'' of the requirement relating to the use of airport revenue (also called the ''revenue retention requirement'') (49 U.S.C. 47107(b)) and the requirement that airports be as self-sustaining as possible (49 U.S.C. 47107(a)(13)), and of the Airport Improvement Program (AIP) sponsor assurances made under these sections. Section 112 includes specific guidance and requirements for the mandated policies and procedures.

For convenience, the term ''sponsor'' is used throughout this document to mean the state or local government body obligated under an airport grant agreement. For purposes of the proposed policy statement the term is generally interchangeable with the term ''airport owner or operator'' used in some statutes. A sponsor may be an entity that exists only to operate the airport, such as an airport authority established by state law, or may be an authority established to operate a variety of transportation facilities including an airport. Other airports are owned by a state, county, or city government and operated by an agency of that government, in which case the state, county, or city is the sponsor, rather than the subordinate agency.

The Revenue Retention Requirement

Under the Airport and Airway Improvement Act of 1982, as amended (AAIA), part of title V of the Tax Equity and Fiscal Responsibility Act, Pub. L. 97–248, repealed and reenacted without substantive change, Pub. L. 103–272 (July 5, 1994), 49 U.S.C. 47101, *et seq.*, as amended by Pub. L. 103–305 (August 23, 1994), public agencies receiving Federal grants for airport development since September 3, 1982, are required to comply with the revenue retention requirement, section 511(a)(12) of the AAIA, now codified at 49 U.S.C. 47107(b). The revenue retention assurance requires airport owners to 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 related to the actual air transportation of passengers or property.''

The Requirement To Be as Self-Sustaining as Possible

A related requirement of the AAIA with respect to airport revenue is the requirement that an airport have a rate structure that makes the airport as self-sustaining as possible under the circumstances existing at the airport. 49 U.S.C. 47101(a)(13). The reason for this requirement is to minimize an airport's reliance on Federal funds, and also to minimize the need for the airport to be supported by local taxation. Many of the OIG audits of airport revenue have found instances of a rate structure in which the airport apparently could have charged more for the non-aeronautical use of property than it has. Several of these findings related specifically to the use of property for community-relations purposes, such as for parks. In another case, the OIG found that the airport operator did not charge a sufficient rate for the use of airport property for a local public bus terminal.

In general, the FAA interprets the self-sustaining assurance to require that a sponsor charge a fair-market commercial rate for non-aeronautical leases and activities on an airport. The FAA has not insisted on the airport's standard commercial rate for uses of property for which it is unreasonable to expect a commercial rent, and has permitted temporary uses of property at below-market rates pending future commercial use.

Notice of Proposed Policy

On February 26, 1996, the FAA published a Notice of Proposed Policy entitled ''Policy and Procedures Concerning the Use of Airport Revenue'' (61 FR 7134). The period for public comment closed on April 26, 1996. The FAA received comments from 34 commenters on all aspects of the proposed policy. Comments were received from various nonprofit and trade organizations including the Air Transport Association and International Air Transport Association, the American Association of Airport Executives (AAAE) and the Airports Council International-North America (ACI–NA), and the Aircraft Owners and Pilots Association; from individual airport operators and state and local governments; and from an automobile rental firm. The comments will be addressed in the final policy statement to be issued in this docket.

The February notice listed several examples of uses of airport revenue that respectively are or are not considered appropriate expenditures under the terms of section 47107(b). The lists were not exhaustive, however, and not all possible uses of airport revenue were included. Many of the commenters submitted comments on issues that they believed should be included in the final policy, but which were not addressed in detail in the February proposal. In consideration of the comments, the FAA believes that several of these issues are sufficiently significant that supplemental guidance should be proposed for public comment before the adoption of a final policy. In summary, these issues are (1) The use of airport

property and funds for community or charitable purposes; (2) the extent to which airport funds may be used for marketing and promotional activities; (3) guidance on the accounting and cost allocation practices that the FAA considers acceptable for purposes of compliance with the revenue retention requirement; and (4) the use of airport property for public transportation facilities. This notice proposes to add new language to the policy statement published in the February notice to address each of these issues. Each issue is discussed separately below.

As with the practices specifically discussed in the proposed policy published in February, the four practices discussed below are not new requirements, but rather are an articulation of the FAA's proposed implementation of a statute that has been in effect since 1982.

It should be noted that the use of airport property for community purposes and public transit at less-than-market rates generally involves the self-sustaining requirement rather than the revenue retention requirement. The revenue retention requirement and the self-sustaining requirement often arise in the same circumstances at an airport, and both requirements are cited frequently in audits of airport revenue by the Office of the DOT Inspector General (OIG). In order to provide comprehensive guidance on the use of airport revenue and property consistent with the airport's grant assurances, the FAA is proposing to include more specific guidance on the self-sustaining requirement in the final revenue diversion policy to the extent necessary to address the use of airport property for community ''good-will'' and public transit purposes.

1. Use of Airport Property for Community Charitable Purposes; Donation of Airport Funds for Community Charitable Purposes

Discussion of Comments.

The OIG has found either revenue diversion or failure to obtain fair rental value for airport property, or both, in 38 audits. In several of those cases the OIG has cited the practice of leasing airport property for charitable or community purposes, such as a park or ball field, at no cost or at a below-market rental rate. The OIG considers this practice to be a violation of the grant assurance obligating the airport to maintain a fee and rental structure which will make the airport as self-sustaining as possible under the circumstances. Where the property is made available to an agency of the sponsor, such as a parks department, the below-market lease could also be considered a violation of the revenue retention requirement, since the sponsor is choosing to subsidize its own non-aeronautical activities with airport resources and could modify the arrangement at any time.

Similarly, in an audit of revenues at airports operated by the City of Los Angeles, the OIG found the donation of airport funds (as opposed to no-cost use of land) to non-profit and community groups to be an unlawful diversion of airport revenue.

The February notice of proposed policy does not discuss an exception for community-purpose use of property, but in practice the FAA has in limited circumstances permitted use of property at less than fair market rental without finding a violation of the self-sustaining or revenue use requirements. For example, in Arlington, Washington, the FAA permitted the City of Arlington to maintain a park on airport property for which there was no current commercial demand, if the property remained available for commercial use, permanent improvements for the park were not made, and no airport funds were used for the park. In the comments on the proposed policy, a substantial number of commenters requested a policy permitting practices of the kind found by the OIG at Los Angeles airports. Specifically, commenters used various terms to argue that the policy should permit: Use of airport land for non-profit, public service agencies for a nominal fee; de minimis support for a community purpose; use of property which is not otherwise productive at less than FMV for local government, parks and recreation, or other community purposes; use of airport property by community groups, with limits; de minimis community participation expenditures; goodwill community events; community involvement; minor community goodwill expenses, etc. Supporting commenters argue that an airport operator needs some flexibility to maintain positive relations with surrounding communities, in consideration of the adverse impacts of the airport (e.g., noise, commercial zoning), to ensure that the airport is accepted as much as possible and that present and future airport development is not restricted by local political action.

On the basis of the substantial number of similar comments received on this issue, and the fact that similar practices have been found in several OIG audits, the FAA believes that some form of below-market contribution of the use of property for community use is a common and long-standing practice at U.S. airports. In consideration of the apparent prevalence of this practice and the comments received on the issue, and of the FAA's past practice, the FAA is proposing to adopt a policy that would permit the limited use of airport property for certain community-related purposes as a legitimate cost of operating the airport.

In specifying the permissible use of airport property for 'community' purposes and appropriate limits on such use to maintain consistency with the requirements of 49 U.S.C. 47107(b) or 47101(a)(13), the FAA has considered the following issues raised by the OIG audits and the public comments received:

Should the airport's need to ''be a good neighbor'' to the local community be considered a ''circumstance existing at the airport'' under section 47107(a)(13(A) that would justify permitting use of airport land for public purposes, at below-market or zero rent, by local governments and non-profit organizations?

How should the commercial desirability of the property, or the availability of the property for unrestricted development, affect the determination of whether its lease at below-fair-market rent is consistent with the self-sustaining requirement? I.e., should it be easier to find justifying circumstances for the below-market lease of property that is subject to some airport-related impairment on use? Examples of impairments of commercial land use could be, for example, part 77 surfaces close to the surface, location of the land in a runway protection zone, or location of the land within a noise contour that is not compatible with the prevailing land uses in the area.

Should expenditure of airport funds for purposes of community goodwill be considered an ''operating cost of the airport'' for purposes of section 47107(b)?

If so, should some limit be established on ''community goodwill'' expenditures? E.g., ACI–NA and AAAE have proposed a ''safe harbor'' for community participation expenditures at a de minimis level.

Proposed Policy

The FAA proposes to recognize that making airport property available for general, public community purposes such as parks and recreation areas, 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, below-market use of airport land for community purposes will be considered consistent with the assurance if the community use of the property can be justified as benefiting the airport and the property involved is not expected to produce substantial income at the time the community use is contemplated. Benefit to the airport can be tangible, in the form of action to maintain the condition or security of the airport property used, or intangible, such as the contribution to good relations with surrounding communities. The greater the difference between the fair rental value of the property and the actual amount of the lease, the greater the burden of showing an airport-related benefit. Some indications that the property would not be expected to produce commercial income at the time would be that (1) The property is subject to airport-related restrictions on use and structures, (2) the property is subject to terrain, access limitations, or other factors that make it unsuitable for commercial use, or (3) there is no apparent commercial demand for the property due to general market conditions in the area. In any event the above conditions would be considered in determining the fair rental value of the property in question.

The use of airport *funds* to support community activities and participation in community events would not be considered an airport cost unless the expenditure is directly related to the operation of the airport. For example, expenditure to support participation in the Airport's Federally approved disadvantaged business enterprise program would be considered permissible as supporting a use directly related to the operation of the airport.

Use of airport property for community purposes by other departments of the sponsoring government agency with park, recreational, or similar responsibilities could meet the test of this policy, but would be subject to special scrutiny for evidence that the use was beneficial to the airport. This exception would not apply where the sponsor was using airport property simply as a source of inexpensive land for the sponsor's general governmental purposes.

II. Use of Airport Revenue for Economic Development, Airport Marketing, and Airport Promotion

Discussion

Many if not most sponsors of commercial airports engage in some form of promotional effort, to encourage use of the airport and increase the level of scheduled service for passengers and cargo shippers. Congress, in the FY 94 Authorization Act, effectively affirmed the legitimacy of some promotion for airport purposes by expressly prohibiting ''use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;'' and the notice of proposed policy reflects this distinction.

A number of commenters on the notice of proposed policy expressed the opinion that some kinds of promotion should be considered a legitimate use of airport revenue. ACI–NA/AAAE requested that FAA establish a ''safe harbor'' for certain promotional and marketing activities, perhaps based on a percentage of costs. Specific issues raised by the audits and the comments are:

What kinds of promotional and marketing activities are and are not considered legitimate operating costs of the airport under section 47107(b)?

Should the amount of expenditures on legitimate promotional and marketing activities be limited, as a matter of policy?

Proposed Policy

The FAA proposes to adopt a policy that expenditures for the promotion of an airport and marketing of the general services available at the airport are legitimate costs of airport operation. Promotion and marketing of the community or region, or promotional/marketing expenditures directed toward regional economic development rather than specifically toward promotion of the airport would not be considered an airport cost. Under the policy proposed, procurement of air transportation or air service by payment or direct subsidy, as opposed to promotional activities to encourage such service, would be considered regional economic promotion and would not be considered a cost of operating the airport. The FAA understands that the purpose of such a subsidy is essentially the same as the purpose of other promotional activities directed toward air service development. However, a distinction may be made between encouraging use of the airport, through advertising and other promotional activities or even through fee incentives, and simply buying increased use of the airport by paying an air carrier to operate aircraft. The FAA proposes to clarify in the final policy that this latter activity is ineligible for the use of airport revenues, because it cannot be considered a capital or operating cost of the airport.

Direct payments to carriers to provide service from a community's general funds or from a local chamber of commerce, for example, would not involve airport revenue and would not be subject to the revenue retention requirement.

The policy would not define specific limits on spending for promotional purpso9es, but would state that the FAA assumes that any expenditures for promotional and marketing costs would be reasonable in relation to the airport's financial situation. Disproportionately high costs for promotion and marketing could be reviewed to see if the expenditures actually qualified as ''airport costs'' under section 47107(b). The FAA could also consider whether excessive promotional expenditures should be taken into account in the award of discretionary grants.

Generally, the following would be considered costs of operating the airport:

(1) Costs of activities directed toward promoting public and industry awareness and use of airport facilities and services.

(2) Salary and expenses of persons engaged in efforts to promote air service at the airport.

The following practices would not be considered costs of operating the airport under section 47107(b):

(1) Expenditures for promotion of general economic development that is not specifically related to the airport.

(2) Direct subsidy of airline operations. For this purpose direct subsidies would be considered to be payments of airport funds to carriers for air service, and would not include waivers of fees or discounted landing or other fees during a promotional period or support for airline expenditures for advertising or marketing of service in specific markets.

The issue concerning direct subsidies to air carriers is one of several issues currently being addressed in a formal investigation, ''Investigation into Lehigh-Northampton Airport Authority's Air Service Development Program,'' FAA Docket No. 13–93–30, being conducted by the FAA under the procedures set forth in 14 CFR part 13, subpart F.

Formal complaints filed by Delta Air Lines, Inc., Northwest Airlines, Inc., United Air Lines, Inc., USAir, Inc., Atlantic Coast Airlines, Inc., Allegheny Airlines, Inc., Piedmont Airlines, Inc., and Midway Airlines, Inc., allege that the subsidization by the Authority of certain air service, in exchange for air carrier's agreement to provide service on certain schedules and at certain fares, constitutes unlawful diversion of airport revenue in violation of Federal law. The Authority asserts that it is traditional

and accepted industry practice for airport sponsors to expend airport revenues for air service marketing and promotion purposes, including direct subsidies of airline operations, and to pass some or all of those costs through to the airlines by allocation to various cost centers. It also argues that providing start-up carrier service reflects a legitimate business judgment by an airport operator to enhance air service and represents an appropriate airport operating cost.

To the extent that the supplemental notice of proposed policy would affect the Subpart F investigation, any issues considering those effects and the question of retroactive application of the policy would best be addressed within the context of the formal investigation.

III. Principles for Allocation of Indirect Costs

Discussion

The Notice of Proposed Policy did not discuss acceptable principles of indirect cost allocation, but several commenters requested guidance on cost allocation. Specifically, guidance was requested on approval of indirect sponsor charges calculated according to a federally approved cost allocation plan; allocation of shared costs; and the use of generally accepted accounting principles in lieu of Office of Management and Budget (OMB) Circular A–87, as recommended by the OIG.

Capital and operating costs of the airport under section 4710(b) may include indirect costs allocated to the airport. Local governments have great flexibility under generally accepted accounting principles (GAAP) to develop a plan for allocation of indirect costs among government departments, and the propriety of particular allocations has been a subject of OIG audits of airport revenue.

In several audits, the OIG has recommended that the FAA require that sponsors comply with OMB Circular A–87 in the allocation of indirect costs of airport operation. In response, the FAA has noted that A–87 applies by its terms only to the expenditure of funds on federally funded projects, and sponsors are under no legal obligation to use A–87 for cost allocation involving locally generated funds. FAA has agreed with the OIG that cost allocation by a sponsor should be applied consistently, and in compliance with the GAAP that apply to local government enterprise funds.

A–87 is apparently the only set of guidelines that provides specific guidance on indirect cost allocation for local government accounting systems. In the Denver audit, the OIG listed several principles derived from A–87 that the OIG believes ought to apply to the allocation of indirect costs by an airport. First, the general costs of government, such as costs of the city council, may not be allocated to the airport. Second, each item of cost must be treated consistently either as a direct or an indirect cost. Third, a local cost allocation plan must provide that all users of a service must be billed equally. This last is consistent with FAA Order 5190A, § 4–20(c)(ii), which states:

> If an indirect charge is levied against the airport in support of capital or operating expenses, the indirect charge must also be levied against other governmental cost centers in accordance with generally accepted accounting procedures and practices.

While the FAA continues to believe that the FAA cannot require A–87 in its entirety as a strict guide to the allowability of expenditures for capital and operating costs of an airport, we do believe the specific principles identified by the OIG are an appropriate construction of the revenue retention requirement.

Proposed Policy

The FAA proposes to make clear that allocation of indirect costs is allowable under 49 U.S.C. 47107(b), and that no particular method of cost allocation will be required, including OMB Circular A–87. However, it remains important that only capital and operating costs of the airport, airport system, and facilities directly and substantially related to air transportation may be allocated indirectly to the airport. To ensure that indirect costs are limited to allowable capital and operating costs, the FAA proposes to apply certain general principles and prohibitions to the allocation of costs. The proposed guidance would not limit significantly (if at all) the development of local cost allocation plans under OMB Circular A–87 or other state, local, or Federal cost allocation guidance, or interfere with the application of GAAP to airport accounting and cost allocation.

FAA would expect that a Federally approved cost allocation plan that complied with OMB Circular A–87 or other Federal guidance and was consistent with GAAP would be reasonable and transparent, and would generally meet the requirements of section 47107(b). However, the use of a Federally approved cost allocation plan does not rule out the possibility that a particular cost item allowed under that guidance would be in violation of the airport revenue retention requirement if allocated to the airport. For example, a local allocation plan may allocate general costs of government to various sponsor departments. This may not be inherently improper from an accounting standpoint, but would be considered by the FAA to be a diversion of airport revenue for general, non-airport purposes. Even under a plan developed in accordance with A–87, the calculation of depreciation costs or the allowance of contributions to or membership fees in charitable organizations could be inconsistent with the February 1996 notice of proposed policy and this supplemental notice.

The FAA proposes to require specifically that indirect cost allocations be applied consistently across departments to the sponsoring government agency, and not unfairly burden the airport account. Allocation of costs to comparable users, such as proprietary or enterprise accounts, must be applied in the same manner. The general sponsor cost allocation plan may not result in an overallocation to proprietary or enterprise accounts.

Also, the allocation of the general costs of the sponsoring government could not be allocated to the airport; however, this would not affect direct or indirect billing for actual services provided to the airport by local government.

IV. Use of Airport Land for Public Transit Facilities

Many commercial airports have some facility for the accommodation of public transit passengers, ranging from curbside terminal bus stops to dedicated airport stations for local mass transit systems. These on-airport facilities that are owned or operated by the airport are eligible for the use of airport revenue under section 47107(b). Similarly, the capital costs of such on-airport facilities may be eligible for the funds from Federal airport grants and passenger facility charges as part of an airport development project. The public transit systems at issue are publicly owned, not private, and are often subsidized by public funds. Terminal facilities at the airport, whether a curbside bus stop or a metro station, are generally provided only for the use of air passengers and airport visitors and employees traveling to and from the airport.

Public transit facilities are not aeronautical. As a result, the general rule of interpretation of the self-sustaining assurance would require the sponsor to charge commercial rates for the use of airport property by local transit systems. However, in determining the sponsor's obligation to develop a rate structure under the self-sustaining requirement, the FAA does

not believe that public transit facilities can be grouped either with commercial business enterprises or with non-aeronautical uses of the airport that have no direct benefit for air travel. Public transit facilities provide benefits to the airport by maximizing public access, lessening ground traffic congestion, and improving air quality. Therefore, the FAA believes that public transit facilities are more appropriately analogized to public roadways, which are also public facilities for transporting passengers, visitors, and employees to and from the airport.

Proposed Policy

Accordingly, the FAA proposes to consider the use of airport property for a public transit terminal, transit right-of-way, or related facilities at less than fair rental value to be consistent with the self-sustaining assurance. The exception would apply only to publicly-owned transit systems, and only to facilities necessary for the transportation of air passengers, airport visitors, and airport employees to and from the airport. For example, a maintenance/repair facility for transit buses would not need to be located at the airport, and a commercial lease rate would be required for any airport land used for this purpose.

In some cases the local public transit system may be owned and operated by another department of the sponsoring government agency. The FAA believes the same policy should apply to sponsor-owned transit systems as to systems owned by other jurisdictions, and a sponsor-owned transit facility located at the airport for the use of airport passengers, visitors, and employees, at a below-market lease rate, would not represent a diversion of airport revenue by the sponsor.

Note that a below-market rate is optional, not required; the policy would not prevent the sponsor from charging market rates. However, sponsors would have the freedom to charge below-market rates in order to derive environmental, mobility, and other benefits achieved through public transit to and from airports. Comments are requested on whether some compensation for the use of airport property should be required, or whether a lease at no cost or only nominal cost would be considered consistent with the self-sustaining requirement.

Policy Statement Concerning Airport Revenue

For the reasons discussed above, the Federal Aviation Administration is modifying the proposed policy concerning the use of airport revenue, as published in the Federal Register on February 26, 1996, as follows:

Policies and Procedures Concerning the Use of Airport Revenue

* * * * *

VII. Uses of Airport Revenue

A. 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, as discussed in paragraph VII.B.

2. Costs of activities directed toward promoting public and industry awareness of airport facilities and services, and salary and expenses of employees engaged in efforts to promote air service at the airport.

3. The repayment of the airport owner (which may or may not be the sponsor) of funds contributed by the owner for capital and operating costs of the airport and not heretofore reimbursed.

4. 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. Examples of grandfathered airport sponsors may include, but are not limited to, 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:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

B. Allocation of Indirect Costs

Indirect costs of sponsor services may be allocated to the airport, but the allocation must result in an allocation to the airport only of those costs which would otherwise be allowable under 49 U.S.C. 47107(b).

In determining whether an indirect cost allocation is allowable, the following principles apply:

1. Each allocation of cost and each procedure or plan for cost allocation should be transparent and justifiable and should be a matter of public record available to airport users and the general public. Allocation of costs is also expected to be consistent with generally accepted accounting principles (GAAP) applicable to local government and to enterprise funds, although GAAP guidance on cost allocation is limited.

2. Allocation of costs as allowed under OMB Circular A–87 or a

Federally approved local cost allocation plan will be considered to result in a reasonable and transparent cost allocation, but may still need to be reviewed to assure that allocation of specific cost items meets the special revenue retention requirements applicable to airport revenue under 49 U.S.C. 47107(b).

3. Each item of cost must be treated consistently either as a direct or an indirect cost, and the method of allocation must not permit a cost item to be charged both directly and indirectly.

4. A charge to the airport under a local cost allocation plan must be charged to all comparable users of a service equally.

5. The general costs of government, such as costs of the city council, may not be allocated to the airport.

C. Permitted Uses of Airport Property

Making airport property available at less than fair market rental for public 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 (other than to the sponsor itself) will not be considered a violation of 49 U.S.C. 47107(b) or 47107(a)(13), which requires an airport proprietor to maintain an airport rate structure that makes the airport as self-sustaining as possible. 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 community use of the property can be justified as benefiting the airport, and

2. The property involved would not reasonably be expected to produce substantial income at the time the community use is contemplated. The greater the difference between the fair rental value of the property and the actual amount of the lease, the greater the burden of showing an airport-related benefit.

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) 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 related to the transportation of air passengers and airport visitors and employees to and from the airport.

D. Consideration of Lawful Diversion of Revenues in Awarding Discretionary Grants

Airport owners or operators who lawfully divert airport revenue in accordance with the ''grandfather'' provision should be aware that 49 U.S.C. 47115(f) requires the Secretary of Transportation to consider such usage as a factor militating against the approval of an application for discretionary funds when, in the airport's fiscal year preceding the date of application for discretionary funds, the Secretary finds that the amount of revenues used by the airport for purposes other than capital or operating costs 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.

VIII. Prohibited Uses of Airport Revenue

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

A. Direct or indirect payments, other than payments that reflect the value of services and facilities provided to the airport, that are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government.

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 are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government;

D. Payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates;

E. Loans of airport funds to a state or local agency at less than the prevailing rate of interest.

F. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than the amount that would be charged a commercial tenant, consistent with Paragraph VII.C. of this policy.

G. Impact fees assessed by a nonsponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities;

H. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses of airport property, unless the expenditure is directly to the operation or marketing of the airport;

I. Direct subsidy of air carrier operations.

J. Indirect payment for the general costs of government (but not including billing for specific services provided to the airport).

Issued in Washington, DC, on December 11, 1996.

Susan L. Kurland,

Associate Administrator for Airport.

[FR Doc. 96–32019 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–13–N

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA).

ACTION: Correction of Meeting Date in ''Date'' Category.

SUMMARY: Notice of the meeting of the Intelligent Transportation Society of America Board of Directors was published in the Federal Register on December 10, 1996, page 65101. The meeting date listed in the ''Summary'' category is correct. The ''Date'' category should read: ''The Board of Directors of ITS AMERICA will meet on Thursday, January 16, 1997, from 1 p.m.–5 p.m. [Eastern Standard Time].'' Issued on: December 13, 1996.

Jeffrey Lindley,

Deputy Director, ITS Joint Program Office.

[FR Doc. 96–32086 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–22–P

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3410

Applicant: CSX Transportation, Incorporated, Mr. E.G. Peterson, P.E.,