

Environmental Impact Statement (FEIS) as the preferred alternative. The FAA issued the FEIS on April 19, 1999. The FEIS analyzed two alternatives in detail. The first or No Action alternative would require physical replacement of the Baltimore and Dulles TRACONs, but would not consolidate the four facilities. The second or preferred alternative would provide full consolidation at one of two possible locations. The FEIS identified the preferred location as Vint Hill Farms.

**FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE RECORD OF DECISION CONTACT:** Mr. Joseph Champley, Project Support Specialist, Federal Aviation Administration, (800) 762-9531, Email: joe.champley@faa.gov.

The Record of Decision can be viewed on the Internet at <http://www.faa.gov/ats/potomac>.

Dated: June 3, 1999 in Washington, DC.

**John Mayrhofer,**

*Director, TRACON Development Program.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Factors Affecting Award of Airport Improvement Program (AIP) Discretionary Funding

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) reiterates four factors that may militate against a decision by the FAA to award AIP discretionary funding to an airport sponsor. These factors are: revenue diversion; delinquent submissions of financial reports; unsatisfactory progress on existing grant agreements; and use of AIP entitlements funds on low priority development as calculated under the FAA's National Priority System (NPS) equation.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry L. Molar, Manager, Airports Financial Assistance Division, APP-500, on (202) 267-3831.

**SUPPLEMENTARY INFORMATION:** The FAA manages the AIP in accordance with statutory direction and agency policies and criteria. Decisions to award discretionary grants are made on the basis of a number of factors, including project evaluation under the NPS. The Congress has directed that FAA take certain additional factors into consideration. The FAA hereby

provides notice and explanation of those factors, and the manner in which the FAA will consider them in making decisions on discretionary grants.

#### 1. Improper Diversion of Airport Revenue

Airport sponsors receiving federal grants under the Airport Improvement Program (AIP) are subject to a number of statutory conditions, one of which restricts the use of airport revenue. The FAA published a notice of final policy and procedures concerning the use of airport revenues (64 FR 7696). The Notice defines proper and improper uses of airport revenue and describes actions the FAA may take to address improper revenue use.

It is the intent of the FAA to generally withhold AIP discretionary funding to those airports requesting such funding that are being investigated by the FAA for misuse of airport generated revenue. Airports qualifying under Title 49 U.S.C. 47107(b)(2) are exempted from this policy. This provision recognizes the rights of "grandfathered" airport sponsors to use airport revenues for other purposes. However, as discussed below, payments permitted under the "grandfather" provision may be considered a militating factor against the award of discretionary grants in certain circumstances.

##### General Rule

Title 49 U.S.C., Sections 47107(b) and 47133; generally requires airport revenues to be used for the capital or operating costs of the airport, the local airport system, or other facilities owned or operated by the airport sponsor and directly and substantially related to the actual air transportation of persons or property. If the FAA finds that an airport is not complying with this statute, after providing notice and an opportunity for hearing, and the sponsor does not take satisfactory corrective action, various enforcement actions are mandated or authorized. The enforcement actions affecting AIP funding that the FAA is authorized or required to take include any of the following, or combination thereof: withholding of future AIP entitlement and discretionary grants (49 U.S.C. 47106(d), 47111(e)); withholding approval of the modification of existing grant agreements that would increase the amount of AIP funds available (section 47111(e)); and withholding payments under existing grants (section 47111(d)).

##### Grandfather Provision

Under the "grandfather provision" of the revenue use requirement, sections

47107(b) and 47133(b), an airport operator may use airport revenues for local purposes other than those proscribed in sections 47107 and 47133 if a provision of law controlling the airport operator's financing enacted on or before September 2, 1982 or a covenant or assurance in an airport operator's debt obligation issued on or before September 2, 1982 provides for the use of airport revenues from any facility of the airport operator to support general debt obligations or other facilities of the airport operator. The statutory revenue-use provisions also permit local taxes on aviation fuel in effect on December 30, 1997 to be used for any local purpose.

Thus, the use of airport revenue for local purposes under these exceptions does not preclude the award of AIP grants to an airport operator. However, under 49 U.S.C. § 47115(f), the FAA must, in certain circumstances, consider as a factor militating against the distribution of discretionary AIP funding, the use of airport revenue for local purposes under the "grandfather provision." This militating factor applies only if the airport revenue so used in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of revenues used in the airport's first fiscal year ending after August 23, 1994, and adjusted for changes in the Consumer Price Index. In addition, the airport's failure to provide information needed by the FAA to determine whether Section 47115(f) applied to a specific grant application would prevent the FAA from making an evaluation required by Section 47115(f), and thus, would prevent the FAA from considering an application for discretionary funds.

#### 2. Annual Financial Reports

Section 111(c) of the Federal Aviation Administration Authorization Act of 1994 (the 1994 Act) requires the Secretary of Transportation to submit to the Congress, and to make available to the public, in annual report listing in detail certain financial information requiring individual airport revenues and expenditures. The data is derived from reports by airport owners or operators, also required by Section 111(a)(19) of the 1994 Act. Under the authority of Assurance 26 of the Airport Sponsor Assurances, airport sponsors are required to submit annual reports. The FAA's September 10, 1998, Advisory Circular (AC) titled *Guide for Airport Financial Reports Filed by Airport Sponsors* specifies the report format and due dates.

Failure of an airport sponsor to file airport financial reports by the due date will cause FAA to withhold award of AIP discretionary funds. The sponsor will not be considered for discretionary funds until it provides acceptable corrective action and is determined by the FAA to be in compliance with the reporting requirements. If the FAA makes a determination that the sponsor is in noncompliance with Assurance 26, it may withhold all sources of AIP funding (both discretionary and entitlement). The FAA will suspend processing of discretionary grants (grants for funds not apportioned under Section 47111(e)) immediately upon determining that a sponsor's airport financial reports are overdue.

### 3. Progress on Existing Grant Agreements

As a general policy, the FAA encourages sponsors to take construction bids prior to submitting an application of AIP grants. Bid-based grants more accurately reflect actual project costs, allow for more efficient management of AIP obligations, and help to ensure sponsors proceed timely with projects. When AIP funds are obligated by a grant, airport sponsors are encouraged, to the extent practicable, to make timely AIP draw downs as they incur costs leading to completion of their projects. FAA financially closes AIP projects as soon as possible following physical completion of the project. Close adherence to this policy helps to ensure that AIP funds do not remain idle after they are obligated in a grant, that a sponsor complete projects in a timely manner, and that the need to amend grants to accommodate higher costs is minimized. This policy has been developed and applied by the FAA, prior to the advent of the AIP, to foster effective financial management of federal grant funds.

The airport sponsor's management of past AIP grants can influence FAA's consideration of AIP discretionary funds for proposed projects. Efficient and expeditious implementation by airport sponsors of past grant is encouraged. Factors which may militate against the distribution of discretionary funds include: failure to financially close a physically completed project in a timely manner; inability to commence or complete work under an approved grant in a timely manner; and, having an excessive number of open, uncompleted grants.

The FAA understands that there may be compelling that justify relaxation of the general policy in light of specific local factors. FAA will take these factors into consideration when evaluating

requests that contemplate the use of discretionary funds, and in accordance with FAA policy, thoroughly document exceptions to this general rule.

### 4. Sponsor Use of Entitlement Funds

The FAA encourages airport sponsors to use entitlement funds on the "highest priority" work at the airport as calculated under the FAA's National Priority System (NPS) equation. A detailed discussion of the NPS was published in the **Federal Register** Notice dated August 25, 1997, entitled *Revisions to the Airport Capital Improvement Plan (ACIP) National Priority System*. For purposes of determining whether sponsor entitlements are being used on high priority projects, the FAA will calculate the priorities of sponsor work items from the NPS equation. This policy helps ensure that AIP funds in the aggregate are used for projects that contribute most to the safety, security, capacity, and efficiency of the Nation's system of airports. Conversely, if sponsors use entitlement funds for lower priority projects and FAA agrees to use discretionary funds for the highest priority projects, the aggregate result of AIP investments is likely to provide less benefits to the national system than under FAA's policy.

Therefore, if the FAA determines that an airport sponsor is using its entitlement funds on low priority rated projects while requesting discretionary funds for higher priority rated work, the FAA may withhold discretionary funds requested by the sponsor.

As with a sponsor's rate of progress on existing grants, the FAA understands that there may be legitimate circumstances for a sponsor to use its entitlement funds for lower priority work. In addition, the FAA is fully cognizant that the NPS equation cannot always demonstrate the total benefit of a project to the airport or the national system. Consequently, the FAA will thoroughly evaluate a sponsor's justification prior to denying a request for discretionary funding on the basis of the sponsor's use of entitlements for lower priority projects. In accordance with FAA policy, such exceptions must be documented by the airport sponsor and submitted to FAA. Issued in Washington, DC on May 25, 1999.

**Paul L. Galis,**

*Director, Office of Airport Planning and Programming.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Deadline for Submission of Application Under the Airport Improvement Program (AIP) for Fiscal Year 1999 for Sponsor Entitlement and Cargo Funds

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces July 12, 1999, as the deadline for each airport sponsor to have on file with the FAA an acceptable fiscal year 1999 grant application for funds apportioned to it under the AIP.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP-520, on (202) 267-8809.

**SUPPLEMENTARY INFORMATION:** Section 47105(f) of title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). Notification of the sponsor's intent to apply during fiscal year 1999 for any of its available entitlement funds including those unused from prior years, shall be in the form of a project application submitted to the cognizant FAA Airports office no later than July 12, 1999.

This notice is promulgated to expedite and prioritize grants prior to the August 6, 1999, AIP expiration date as established by Public Law 106-31 (1999 Emergency Supplemental Appropriations Act). Absent an acceptable application by July 12, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(g), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds.

In prior fiscal years, FAA has had sufficient program flexibility to permit sponsors to provide notice later than the deadline date, or to use entitlement funds later in a fiscal year in spite of filing no notice to that effect. In FY 1999, however, FAA must make all discretionary grant awards prior to August 7, 1999, including discretionary grants of entitlement funds that are available to, but will not be used by, the airport sponsors to which they have been apportioned. Airport sponsors that