

with the Department proposal that common ownership be required, but urge that the system proprietor be given wide latitude to blend rates.

Air carriers supported the proposed policy, arguing that while cross-subsidization has at times been troubling, airlines have generally been able to resolve issues at the local level. Carriers stated that the requirement of common ownership should not be eliminated; and commented that it is ironic that airports are interested in subsidizing other airports and at the same time claim insufficient funding to meet their own needs.

The Department has retained the policy as proposed, but have added the clarification that an airport designated by the FAA as a reliever will be presumed to confer a reasonable benefit on users of the primary airport. The Department continues to believe that the best means to assure that benefits of cross-subsidy are commensurate with costs is where cross-subsidy is the result of agreement. In the absence of such an agreement or designation by the FAA as a reliever in the NPIAS, the Department is reluctant to presume that benefit is commensurate, and believe it is reasonable to require that the subsidy reflect a showing of actual benefits.

The requirement for common ownership is retained. The basis for a reasonable fee is the compensation of the airport proprietor for the costs of facilities and services it provides; the proprietor is not providing facilities owned by another sponsor.

The analogy to the transfer of entitlement funds argued by airport commenters is not persuasive. Entitlement funds are Federal funds provided directly to the airport under special criteria for grants, and are not subject to the same standard of reasonableness that applies by statute to any cross-subsidy charged to aeronautical users.

11. Unjust Discrimination: Peak Pricing

Airports supported the recognition in the proposed policy that peak pricing is not per se impermissible; peak pricing can be an effective means of improving efficient use of existing infrastructure. FTC staff also argued that peak pricing would promote economic efficiency and avoid overbuilding of airport assets, and urged that rates during peak periods be permitted to reflect opportunity costs of using scarce resources during peak times.

ATA and the International Air Transport Association (IATA) urged that all references to peak pricing be eliminated; in light of the already complex issues surrounding rates and

charges, the Department should not further complicate matters by bringing in extraneous matters in this policy statement. The Regional Airline Association (RAA) commented that peak pricing provides a cloak for unjust discrimination against smaller aircraft operators, since smaller aircraft are less able to absorb the price differential on a per-seat basis; commuter carriers are especially affected because they cannot practically use reliever airports and must schedule during peak times to meet connecting banks of jet operators; peak hour pricing will not expand capacity, and airport operators favor peak pricing because expanding capacity involves facing difficult political and environmental issues.

The National Air Transport Association (NATA) expressed concern that peak-hour pricing language will be used by airports to justify excessive fees to block or severely limit access by general aviation and on-demand charter operators.

The Aircraft Owners and Pilots Association (AOPA) objected to peak pricing, which would only serve to limit and ration capacity. Airline scheduling practices would remain unchanged, with peak prices being absorbed by the airlines system-wide. Noncommercial general aviation operations could be priced out, even though general aviation does not contribute to congestion at most airports; general aviation represents 5 to 10% of total flight operations at large hub airports and in many instances is able to use shorter parallel runways without affecting the long runways used by airlines.

The National Business Aircraft Association (NBAA) also opposed peak pricing, which it argued should not be used as a substitute for capacity enhancement, and should not be imposed with discriminatory impact on small aircraft operators.

The Department has adopted the policy statement essentially as proposed, although the term "maximize" efficient utilization of the airport has been changed to "enhance" efficient utilization, a more realistic standard. The peak pricing concept stated in the policy is adopted from the Department's decision in the Massport PACE decision (Order and Opinion, December 22, 1988), and represents no change in existing Department policy. Peak pricing is specifically included in the policy statement to clarify that the new policy language on unjust discrimination does not affect the existing policy on peak pricing.

12. Unjust Discrimination: Charging Differential Based on Status as Nonsignatory Carrier

Airports argue that existing practices and policy recognize an airport proprietor's authority to establish reasonable classifications of carriers, for example signatory and non-signatory carriers, and to charge differential rates accordingly. This practice should not be overturned, even if the premiums assessed result in a rate that exceeds allocated costs.

The Department acknowledges the existing practice, and the final policy statement clarifies that reasonable distinctions, such as between signatory and non-signatory carriers (i.e., carriers that respectively have and have not entered into a use agreement with the airport proprietor), are permitted. However, the limit on recovery of total costs would continue to apply.

13. Financially Self-sustaining: Requirement That General Aviation Airports be Self-sustaining

General aviation commenters expressed concern that the proposed policy did not recognize that commercial circumstances at many airports would not support a rate structure that would both make the airport self-sustaining and permit commercial operators at the airport to earn a profit; the policy should not require proprietors of such airports to adopt unreasonably high fees.

The Department agrees that the requested change is consistent with the intent of the proposed policy. The final policy statement includes language to clarify that Federal law does not require each obligated airport to be self-sustaining, and that the Department recognizes that some airports may not be able to achieve a self-sustaining condition.

14. Financially Self-sustaining: Generation of Surpluses

In general, airport comments supported the approach of the policy statement and endorsed the treatment of § 110 of the FAA Authorization Act as a matter under revenue generation, rather than as a matter relating to the reasonableness of fees. Airports note that some other provisions of the policy, for example the proposed historic cost requirement and limitation on rate of return, could hinder an airport in becoming as financially self-sustaining as possible. ACI-NA urged that the policy be modified to recognize that some airports may never be able to achieve self-sustaining status and that some aeronautical activities may be