

beneficial to the public even though they do not produce enough revenue to pay fair market value. AAAE stated that the requirement to make the airport as self-sustaining as possible should be treated as the paramount principle in the review of airport fees; the remaining principles and guidance would follow from that statutory directive.

Air carriers found the statement of the self-sustaining principle in the proposed policy to be consistent with existing law, but urged that the requirement to be self-sustaining be defined in a manner that prohibited airports from accumulating massive surpluses.

Several general aviation commenters stated that the requirement to be self-sustaining should be clarified so that airport proprietors are not compelled to adopt unrealistic fee schedules that preclude aviation businesses from operating profitably.

The Department has retained the policy as proposed, but have modified the statement to clarify that an airport must only be as financially self-sustaining *as possible*; that this requirement does not permit an airport proprietor to establish fees that exceed costs associated with aeronautical users; and that an airport proprietor's decision to charge commercially feasible rates below what might be required to break even does not in itself violate the requirement to be as self-sustaining as possible. Language from § 110 of the 1994 FAA Authorization Act regarding the policy on accumulation of surplus, which was included under the use of revenue section of the proposal, has been moved under the self-sustaining principle in the final policy statement.

The Department does not agree with the AAAE comment that the requirement for an airport to be as self-sustaining as possible should be the primary principle for determination of airport fees, and the policy retains the general structure and emphasis of the proposed policy.

#### 15. Use of Airport Revenues: General Approach.

Airports commented that discussion of the use of airport revenue should expressly refer to the grandfather provision of 49 U.S.C. 47107(b)(2); also, proposed paragraph 5.6 should be modified so that actions listed there are not considered to be revenue diversion per se, but only to warrant FAA inquiry about whether diversion is taking place. Airports further requested that the policy alluded to in the preamble—that FAA will consider accumulation of surpluses in awarding discretionary grants—should not be implemented; that policy is not required by § 507(3) of

the AAIA and would penalize airports for preserving a sound financial position.

The City of Los Angeles Department of Airports commented that paragraph 5.6 should be clarified to permit airport revenue to be used to directly or indirectly influence use of the airport system, e.g., for promotional activity.

AAAE commented that the detailed discussion of permissible and impermissible uses of airport revenues should be deleted from the policy statement on rates and charges, on the grounds that Congress mandated a separate policy statement; existing paragraphs should be replaced with a simple statement referring to applicable law and a separate FAA policy statement on revenue use. AAAE further requested that the policies and procedures on revenue diversion should be issued through notice and comment rulemaking, in keeping with the severity of potential penalties.

Air carriers generally supported the proposal. IATA commented that paragraph 5.6 should be modified to state that listed practices are to be regarded as a minimum, and that more practices may be added.

The Department agrees with the AAAE recommendation to state agency policy on use of revenue in a separate document dedicated to revenue diversion policy, and not in the statement on airport fees. Accordingly, much of the language in the proposal has been deleted from the final policy statement. The policy does retain a basic statement of the revenue use requirement and a reference to the statute, and also the statement that the FAA may inquire into a progressive accumulation of surplus. As noted previously, language from § 110 of the 1994 FAA Authorization Act regarding policy on accumulation of surplus, which was included under the use of revenue section of the proposal, has been moved under the self-sustaining principle in the final policy statement.

FAA is issuing a separate policy statement on policies and procedures for enforcement against illegal revenue diversion, as required by § 112 of the 1994 FAA Authorization Act. That statement includes the practices that the Department considers to be diversion of revenue, including the four practices listed in § 112. The Department interprets § 112 as requiring the agency to define the listed practices as diversion, if not otherwise grandfathered, and not merely as a basis for inquiry as suggested by airport commenters. The revenue diversion policy statement includes a separate discussion of the "grandfather

provision" of § 511(a)(12) of the AAIA. The statement also indicates that FAA's policy will continue to be to consider accumulation of surplus funds as one factor militating against award of discretionary grants.

#### 16. Use of Airport Revenues: Policy on Accumulation of Surpluses

Airports commented that the provision that accumulation of reserves may warrant FAA inquiry should be deleted, as should the provision encouraging conversion of airport surplus into airport improvements, because accumulated surpluses provide tangible benefits to airports. As noted, AAAE requested deletion of the entire discussion of the use of airport revenue.

Air carriers argued that an admonition that accumulation of surplus may warrant an inquiry is not strong enough; the provision should be modified to state that accumulation of surplus *shall* trigger an investigation; encouragement of the use of accumulated surpluses to fund non-AIP eligible projects will exacerbate the tendency of airport proprietors to seek excessive revenues for questionable purposes.

The policy adopted includes the language in the proposal, which reflects existing FAA practice and represents a reasonable balance between the airport's interest in maintaining appropriate reserves and the Government's interest in preventing unnecessary accumulation of surplus funds.

#### Policy Statement Regarding Airport Fees

For the reasons discussed above, the Department adopts the following statement of policy for airport fees charged to aeronautical users:

#### Policy Regarding the Establishment of Airport Rates and Charges

##### Introduction

It is the fundamental position of the Department that the issue of rates and charges is best addressed at the local level by agreement between users and airports. By providing guidance on standards applicable to airport fees imposed for aeronautical use of the airport, the Department intends to facilitate direct negotiation between the proprietor and aeronautical users and to minimize the need to seek direct Federal intervention to resolve differences over airport fees.

##### Applicability of the Policy

##### A. Scope of Policy

Under the terms of grant agreements administered by the FAA for airport improvement, all aeronautical users are