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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. FAA–2013–0988]

Policy and Procedures Concerning the Use of Airport Revenue; Proceeds From Taxes on Aviation Fuel

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final Policy Amendment.

SUMMARY: This action adopts an amendment to the FAA *Policy and Procedures Concerning the Use of Airport Revenue* published in the Federal Register at 64 FR 7696 on February 16, 1999 (“Revenue Use Policy”). This action confirms FAA’s long-standing policy on Federal requirements for the use of proceeds from taxes on aviation fuel. Under Federal law, airport operators that have accepted Federal assistance generally may use airport revenues only for airport-related purposes. Local taxes on aviation fuel are subject to airport revenue use requirements. State taxes on aviation fuel (imposed by either an airport sponsor or a non-sponsor) are subject to use either for a State aviation program or for airport-related purposes. The statutory revenue use requirements apply to certain State and local government taxes on aviation fuel, as well as to revenues received directly by an airport operator. This document formally adopts, through an amendment to the Revenue Use Policy, FAA’s interpretation of the Federal requirements for use of revenue derived from taxes on aviation fuel.

DATES: This document is effective [INSERT DATE 30 days from Date of Publication].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this Policy and all other documents in docket FAA 2013-0988 using the Internet by: (1) Searching the Federal eRulemaking portal at <http://www.regulations.gov/search>; (2) Visiting FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/policy_guidance/; or (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Airport Compliance and Management Analysis, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-3085. Please make sure to identify the docket number, notice number, or amendment number of this proceeding.

Authority for the Policy Amendment. This Policy Amendment is published under the authority described in Subtitle VII, part B, chapter 471, section 47122, and the Federal Aviation Administration Authorization Act of 1994, § 112(a), Pub. L. 103-305, 49 U.S.C. § 47107(l)(1) (Aug. 23, 1994).

Background

On November 21, 2013, FAA published a proposed amendment to its policy on Federal requirements for the use of proceeds from taxes on aviation fuel. (78 FR 69789, November 21, 2013). This action finalizes the amendment of FAA's Revenue Use Policy. Under Federal law, airport operators that have accepted Federal assistance generally may use airport revenues only for airport-related purposes. The revenue use requirements apply to the proceeds from certain State and local government taxes on aviation fuel, as well as to revenues received

directly by an airport operator. This document formally adopts FAA's interpretation of the Federal requirements for use of revenues derived from taxes on aviation fuel. Briefly, an airport operator or State government submitting an application under the Airport Improvement Program must provide assurance that revenues from State and local government taxes on aviation fuel will be used for certain aviation-related purposes. These purposes include airport capital and operating costs, and State aviation programs. The policy amendment applies prospectively to use of proceeds from both new taxes and to existing taxes that do not qualify for grandfathering from revenue use requirements. For existing taxes that do not qualify for grandfathering (which are State or local taxes on aviation fuel in effect on December 30, 1987), the FAA will allow for an up to three-year transition period from the effective date of this document.

The FAA invited public comment on the policy interpretation question, in part due to the interests of sellers and consumers of aviation fuel, and of State and local government taxing authorities on limits on the use of proceeds from taxes touching aviation fuel. The notice also solicited comments about whether there are other reasonable interpretations of the statute as it relates to local taxes that were not enumerated in the published notice of proposed clarification that should have been considered by the FAA.

The comment period for the notice of proposed clarification closed on January 21, 2014. The FAA extended the comment period for thirty days until March 3, 2014 (79 FR 5318, January 31, 2014) in order to provide the public additional time to submit comments on the proposed Policy amendment.

Executive Order 13132 (Federalism)

Executive Order 13132 establishes certain principles and criteria that apply to regulations, legislative comments, and other policy statements that have a substantial direct effect on States, or on the relationship between the national government and the States or on the responsibilities among the various levels of government. Because States have flexibility in designing general sales taxes subject to the limited restriction on the use of aviation fuel tax proceeds, State decisions will ultimately influence, regulate, and control implementation of taxes, including those touching aviation fuel.

While this final policy amendment does not impose substantial direct requirement costs on State and local governments, this amendment may have Federalism implications due to effects on the use of the proceeds for taxes assessed on aviation fuel. FAA believes that the Federalism implications (if any) are substantially mitigated because the plain language of the statute at issue, 49 U.S.C. 47133, and the detailed legislative history, reflect strong Congressional intent that aviation fuel taxes be used for airport purposes and State aviation programs.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, FAA engaged in efforts to consult with and work cooperatively with States, local governments, and political subdivisions, including participating in conference calls with representatives from the National Governors Association, US Conference of Mayors, National Conference of State Legislatures, National League of Cities, and National Association of State Aviation Officials. In addition, FAA reached out to certain states on an individual basis and interested trade groups including Airlines for America; American Association of Airport Executives; and Airports Council International - North America. Furthermore, we published the proposed amendment for notice and comment, and received comments from Kentucky, Iowa, and Georgia. This notice responds to these comments.

Through consultation, meetings and teleconferences as part of a robust public engagement process, FAA has balanced the States' interests in meeting its taxing obligations, and Congress' intent to ensure that taxes on aviation fuel are expended for airport purposes. By doing so, the FAA has complied with the requirements of Executive Order 13132.

Comments Received on the Proposed Policy Amendment

The FAA received 25 substantive comments on the proposals, from airport operators; industry and nonprofit associations representing airports, air carriers, business aviation and airport service businesses; an air carrier; State government agencies; and private citizens. This summary of comments reflects the major issues raised and does not restate each comment received. The FAA considered all comments received even if not specifically identified and responded to in this notice.

A majority of commenters supported the general purpose of the policy (and the underlying statutes): using airport revenue for airport purposes and using State and local aviation fuel tax revenue for airport purposes or State aviation programs. Commenters representing airlines and airport users all supported the FAA's proposed amendment of the Revenue Use Policy regarding 49 U.S.C. § 47107(b) and § 47133. An air carrier expressed the position that there is no ambiguity in the 1987 amendment to section 47107, and maintained that there are no other possible correct interpretations of these statutes.

The comments requesting a change in the proposed policy tended to focus on several issues:

1. The unfairness of holding airport operators responsible for the actions of State and local government taxing authorities, particularly non-sponsor governments.
2. The intent of § 47133 to require compliance by non-sponsor State and local governments.

3. Defining the portion of general sales taxes collected on aviation fuel as an 'aviation fuel tax,' and the administrative burden of identifying the aviation fuel component of general taxes.
4. Time allowed before full compliance with § 47133 is required.
5. Clarifying that "noise mitigation" refers only to mitigation of aircraft noise.
6. How FAA will enforce § 47133 with respect to jurisdictions that are not parties to an AIP grant agreement.
7. The proposal requires a federalism analysis under Executive Order 13132.
8. Suggestions for editorial changes to the proposed policy language.

1. Comment: Airport operators should not be held responsible for State and local taxes outside of the airport operator's control.

The majority of commenters, including all of the airport and government commenters, argued that proposed new paragraph IV.D.2 would unfairly hold airport operators responsible for the imposition of taxes over which they had no control. Airport operators are typically local governments, either cities or counties, or public airport authorities. These local entities contend that they have no control over State and local taxes, and therefore have no ability to eliminate a State or local tax that is not in compliance with Federal requirements for use of airport revenue. These commenters state that in many cases, an airport operator does not have control over local taxes, if the airport is located in a different jurisdiction than the operating government entity. They note that port authorities and airport authorities may not have any taxing power, and therefore have no ability to control even local taxes on the airport.

Beyond the complaint that this provision is unfair, the Airport Council International – North America (ACI-NA) raised additional objections to paragraph IV.D.2. First, 49 U.S.C. § 47107(b) requires an airport sponsor to provide an assurance that the airport will remain in compliance with revenue use requirements. However, no local airport sponsor could actually provide that

assurance because the airport sponsor has no ability to prevent a noncomplying State tax. Airport sponsors would find it impossible to provide assurance that other government agencies would comply with the revenue use statutes for the life of an AIP grant. Further, sponsors should not be required to agree to a condition that would subject the airport to sanctions with no ability to correct the noncomplying condition. Second, ACI-NA argues that holding airport sponsors responsible for State taxes is a federalism issue, as “an attempt to change the relationships” between Federal, and State and local governments. ACI-NA commented that the proposal does not comply with Executive Order 13132 on federalism, because the agency did not conduct a federalism analysis on the impacts on State taxing authority and the relationship between State and local governments and airport sponsors. The American Association of Airport Executives (AAAE) also suggested that the proposal may be in violation of the reservation of State powers in the U.S. Constitution, and urged FAA to conduct a federalism analysis of this proposal because of the impact on State and local government relations.

Response: Upon entering into an AIP grant agreement, an airport sponsor does in fact provide assurances that local taxes on aviation fuel will be in compliance with §§ 47107(b) and 47133, as required by Congress. The grant assurances provided by airport sponsors include Grant Assurance 25, which provides, in relevant part: “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 facilities which are owned and 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...” Moreover, airport sponsors often can have influence on the taxation of aviation activities in their States and localities, and the FAA expects airport sponsors to use the influence they have to shape State and non-sponsor local taxation to conform to these Federal laws.

However, the FAA agrees with the majority of commenters that it would be unfair to penalize airport sponsors for taxes imposed by another entity. Thus, the FAA is revising paragraph IV.D.2 to acknowledge the differences in taxes that are

and are not controlled by the airport sponsor, for purposes of grant compliance. For taxes within the airport sponsor's direct control, the airport sponsor must comply with the revenue use requirements of §§ 47107(b) and 47133. Further, in instances of unlawful revenue diversion where the sponsor is in control of the taxes, an airport sponsor can also be subject to administrative action in which the Secretary may withhold amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to Title 49. [See 49 U.S.C. § 47107(n)(3).]

For taxes imposed by non-sponsor State and local governments, the airport sponsor will be expected to advise those entities of Federal requirements for use of aviation fuel tax revenues, and to take action reasonably within the sponsor's power to tailor State and local taxation to conform to the requirements of §§ 47107(b) and 47133. If a noncompliant tax is adopted by a non-sponsor State or local government, notwithstanding the airport sponsor's advice and efforts, the FAA would not take enforcement action against the airport sponsor out of fairness to the sponsor who is not responsible for the noncompliance. However, the FAA will pursue enforcement action pursuant to 49 U.S.C. § 46301 or § 47111 (f) against a non-sponsor State or local government that violates the Revenue Use Policy or the limitations in 49 U.S.C. § 47133. This is similar to the approach that the FAA has taken to compliance with the obligation in grant assurance No. 21 to maintain compatible land use around the airport.

Accordingly, as revised, paragraph IV.D.2 will state that assurance 25 will be considered an enforceable commitment with respect to taxes on aviation fuel imposed by the airport operator or owner itself; for taxes imposed by non-sponsor State and local jurisdictions, an airport sponsor will be expected to inform taxing authorities of Federal requirements and take reasonable action within the sponsor's power to influence State and local tax laws to conform to those requirements.

The comments on federalism and federalism analysis are discussed separately under Comment 7. With respect to the comment that the proposal raises issues regarding the 10th Amendment of the U.S. Constitution, the FAA appropriately presumes the constitutionality of the statutes implemented by this policy.

2. Comment: FAA should not enforce compliance by State and local governments that are not airport sponsors.

The Georgia Department of Law, on behalf of the Georgia Department of Transportation and the Georgia Department of Revenue (GDOT/GDOR), filed comments objecting to several elements of the proposed policy. GDOT/GDOR commented that applying sanctions for violation of §§ 47107 and 47133 to entities that are not airport sponsors is “unprecedented and illogical.” (The FAA notes that sanctions would apply to non-sponsors under § 47133 and § 47111(f), whereas § 47107 is binding only on parties that have signed a grant agreement with FAA.) GDOT/GDOR bases its argument primarily on the observation that most FAA policy statements on revenue use and revenue diversion refer to airport sponsors, and do not mention non-sponsor entities.

Response: It is true that FAA published policy on revenue use refers to airport sponsors, but that fact alone does not deal with the breadth of § 47133, which imposes a federal statutory obligation on certain non-sponsors. Also, contrary to GDOT/GDOR’s comments, the FAA has not been silent on this issue. In the few circumstances involving the issue of a non-sponsor imposing a tax on aviation fuel, the FAA has communicated a consistent message that compliance with § 47133 is required. The FAA letters to non-sponsors describing this obligation are cited in the notice of proposed policy at 78 FR 69790-69691. Copies of FAA’s letters are posted in Docket No. FAA-2013-0988. The Federal Register Notice also explained why FAA believed that there were “compelling reasons” for its past interpretations that support the adoption of an amendment to the Revenue Use Policy. 78 FR at 69792.

GDOT/GDOR argue that imposing sanctions (and therefore compliance) on non-sponsor governments is both unfair and contrary to the logical enforcement of the

former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47101, et seq. However, as noted, § 47133 imposes an obligation on entities that are not airport sponsors. First, the language of § 47133 (a) imposes a limitation on the use of local taxes on aviation fuel, regardless of whether the tax is imposed by a sponsor or non-sponsor. Second, § 47133 (c) limits the use of State-imposed taxes on aviation fuel to State aviation programs. Uses of tax revenues beyond these permissible uses are a violation of Section 47133. Therefore, the obligation to enforce compliance with the statute, using available sanctions for noncompliance, is not only logical but is required as part of the FAA's statutory responsibility for implementation of the AAIA.

GDOT/GDOR's posits that there should be no sanction on a non-sponsor government for violation of § 47133. But that would be contrary to the language of §47133 which makes no distinction between sponsor or non-sponsor entities for purposes of the limitation on the use of aviation tax revenues. Moreover, FAA's civil penalty enforcement authority in 49 U.S.C. § 46301 specifically authorizes the imposition of civil penalties for a violation of § 47133 and does not exclude non-sponsors from its coverage. GDOT/GDOR's interpretation would effectively mean that non-sponsor governments are allowed to disregard the requirements of § 47133 and render the statutory requirement virtually meaningless.

Importantly, Congress did not limit FAA's enforcement authority in 49 U.S.C. § 47111 (f) to just airport sponsors, but rather permitted judicial enforcement to restrain "any violation" of chapter 471—that includes the requirements of § 47133—by *any person* for a violation. "Any violation" encompasses violations by non-sponsors as well as airport sponsors. This expansive authority is based on the plain language of section, 47111(f), and supported by a review of the legislative history and prior versions of the law under consideration. These prior versions limited enforcement to the airport sponsor. See 140 Cong. Rec. S7139-02, 1994 WL 27189 (noting that under the bill, "such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining such *airport sponsor* from further violation of such section or assurance and requiring their obedience thereto.") However, Congress ultimately expanded

this authority by explicitly stating in section 47111(f) that “such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining *any person* from further violation.” (emphasis added)

Given that the FAA interprets section 47111 and 47133 to obligate non-sponsor State and local governments to use proceeds from aviation fuel taxes for certain purposes, the FAA does not agree that the same sanctions that apply to other aviation statutes would not apply to § 47133. Congress expressly provided for such sanctions by including § 47133 in the statutory provisions that can be enforced by civil penalty in 49 U.S.C. § 46301. In addition as noted, compliance with § 47133 by non-sponsor State and local governments may be enforced by application to the U.S. district court for judicial enforcement under 49 U.S.C. § 47111(f).

3. Comment: Defining the taxes on aviation fuel collected as part of a general sales tax is not supported by legislation and would be an administrative burden to State and local governments.

The American Association of Airport Executives (AAAE) commented that applying the revenue use requirements to generally applicable taxes, such as sales taxes and taxes on all fuel products, is not supported by the legislative history and incorrectly interprets §§ 47107(b) and 47133. Both AAAE and GDOT/GDOR commented that it would be difficult and costly for State and local governments and taxpayers to segregate revenues collected on aviation fuel from the rest of a general tax collection. The Franklin-Hart Airport Authority, Georgia, expressed concern that redirecting some local taxes on aviation fuel to the airport could lead those jurisdictions to reduce other, non-tax support for the airport. The comment suggested that for that reason the proposed policy could be a hardship for the airport, but did not assert that the proposed amendment was incorrect. One individual commented that an airport receives the same general benefit as other taxpayers, and that general taxes on aviation fuel sales should be retained by State and local governments to pay for these general community services.

Response: AAEE and one individual were the only commenters that specifically objected to the proposed amendment that general taxes collected on aviation fuel sales are “taxes on aviation fuel.” The FAA’s rationale for clarifying that general sales taxes also collected on aviation fuels constitute “taxes on aviation fuel” is based on the plain reading of the statute. The Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. Law No. 100-223, amended the airport grant revenue assurance provision to include, within the scope of revenue retention, “any” taxes on aviation fuel. The 1994 recodification, which removed the word “any” from the statutory text as recodified in 49 U.S.C. 47107(b), did not make any substantive changes in the law. See Pub. L. No. 103-272, 108 Stat. 1378:

Certain general and permanent laws of the United States, related to transportation, are revised, codified, and enacted by subsections (c)–(e) of this section without substantive change as subtitles II, III, and V–X of title 49, United States Code, “Transportation”. Those laws may be cited as “49 U.S.C. -- ----”. Section 1.(a)

Additionally, determining that the statute did not include general taxes would permit States to tax aviation fuel as “general” taxes without limit, and would be inconsistent with the purposes of the revenue use statutes. The FAA continues to believe that applying the requirements of §§ 47107(b) and 47133 to the portion of general taxes collected on aviation fuel sales, in addition to aviation-specific fuel taxes, is the most reasonable interpretation of those statutes, and most consistent with the congressional intent of the legislation on use of aviation fuel tax revenues. AAEE, which does not represent local governments but whose membership, representing airports and organizations that support the airport industry, has an interest in this issue , and GDOT/GDOR commented on the burden of reporting fuel sales as separate from other items taxed under the same ordinance.

As explained more fully below, the FAA would permit a State a reasonable amount of time to bring itself into compliance through an “action plan,” which takes account of the State’s legislative schedule, if necessary. And while we appreciate that there could be some additional work required to track the amount of “general” tax revenue attributable to aviation fuel, the FAA is charged with implementing §

47133, which does not carve out an exception for revenue generated through a general tax. We believe that the FAA's acceptance that a State will require time to bring itself into compliance will afford the State sufficient time to develop a mechanism for administering taxes in accordance with this policy.

With respect to the comment that aviation fuel tax revenues should support general government services, the FAA notes, first, that general sales taxes of all other products and services at an airport other than aviation fuel sales do go to support State and local general programs. Also, where non-sponsor State and local governments provide services directly to the airport, those jurisdictions can charge for those services and be reimbursed from airport funds.

4. *Comment: The FAA should clarify the time line allowed for jurisdictions imposing taxes that affect aviation fuel to come into compliance with the policy.*

GDOT/GDOR requested a more definitive time for Georgia state agencies and local jurisdictions to comply with the announced policy, and specifically requested that the FAA provide at least 180 days from the final policy effective date. GDOT/GDOR based this request on the time required to set up tracking systems for aviation fuel sales, and to amend State laws that mandate use of tax proceeds in a manner inconsistent with the FAA policy. Airlines for America and the Air Line Pilots Association filed joint comments urging that FAA limit any grace period before compliance is required to 60 days, and that if jurisdictions require more time, they can stop collecting the taxes until the tax law is brought into compliance.

Response: The notice of proposed policy amendment stated that FAA would allow a reasonable time for noncomplying tax laws to be brought into compliance with federal law. By this notice FAA is announcing a formal amendment to its Revenue Use Policy; the policy underlying this amendment may not have been followed previously by affected State and local government non-sponsors—despite the existence of DOT/FAA's legal opinions on this subject. The amendment we adopt today is a final decision and amends FAA's Policy and Procedure Concerning the Use of Airport Revenue as set forth below. The amendment binds the FAA and the Secretary of Transportation, as well as airport sponsors and non-airport

sponsors (including a State, a political subdivision of a State, and a political authority of at least 2 States) covered by this Policy.

Therefore, after considering on this matter, the comments we have received and the potential difficulties with requiring immediate compliance, FAA has concluded that there is a need for all affected entities to have sufficient time to come into compliance with the final policy announced today. GDOT/GDOR itself requested additional time to come into compliance with the policy. While comments were limited to agencies of the State of Georgia and a few local jurisdictions in Georgia, the FAA understands that other States may have laws that require, or at least allow, proceeds of general taxes on aviation fuel to be used for purposes other than airports or State aviation programs.

The FAA further understands that changes to bring State and local taxes into compliance may require State legislation. The Georgia legislature meets each year from January through March. Accordingly, in Georgia, the State and local taxes at issue could not practically be amended until early 2015. A legislative season from January to March or April is common to many other States as well. On this basis, the FAA believes that State and local officials should prepare an action plan to initiate the process to amend any non-compliant State laws and local ordinances as necessary to conform to federal law on use of aviation fuel tax revenues. The action plan should detail the process necessary to develop reporting requirements and tracking systems for discrete information on aviation fuel tax revenues. The plan may include a reasonable transition period, not to exceed three years, during which the FAA would agree, in an exercise of its prosecutorial discretion, not to enforce the revenue use requirement against a non-sponsor State or local government. State and local governments should submit an action plan to the FAA within a year of the effective date of this notice.

Initiation of an action plan would provide State and local governments sufficient time to plan for restructuring of general revenues to adapt to the dedication of aviation fuel tax revenue to airports and State aviation programs within a reasonable transition period, not to exceed three years from the effective date of this notice. Demonstration of an action plan detailing (1) a commitment to

undertake the legislative process; and (2) the timeframe for action within the three year period, will demonstrate voluntary compliance with federal obligations.

5. *Comment: The policy should make clear that “noise mitigation” refers only to mitigation of aircraft noise.*

The National Association of State Aviation Officials commented that the reference to off-airport noise mitigation, as an acceptable use of aviation fuel tax proceeds, should be revised to clarify that this refers only to noise related to aircraft operation.

Response: The definition of “noise mitigation” was not the subject of the proposed amendment. While the phrase “noise mitigation” in Section 47133 commonly refers to aircraft noise, we decline here to reach whether the statute precludes consideration of other sources of noise for mitigation purposes. In addition, we note that the statute provides for use of airport revenues on and off airport for noise mitigation purposes.

6. *Comment: FAA should clarify how it will require non-airport sponsors to comply with the policy.*

The Iowa Public Airports Association requested clarification on how parties that have not entered into a grant agreement with the FAA would be required to comply with the federal requirements for use of aviation fuel tax revenues.

Response: The preamble of the notice of proposed policy noted that there are two means of enforcing compliance with § 47133 by non-sponsor State and local governments: civil penalties, under 49 U.S.C. § 46301(a), and application to the U.S. district court for judicial enforcement under 49 U.S.C. § 47111(f). While not an issue in Iowa, States that have entered into block grant agreements with the FAA under 49 U.S.C. § 47128 could also be subject to action for breach of that agreement. The FAA agrees that the agency’s enforcement process should be described in the policy statement itself. Accordingly, new language has been added to Section IX.E., *Sanctions for Noncompliance*, for this purpose.

7. *Comment: The proposal affects the relationship between federal, State and local governments, and therefore requires a federalism analysis under Executive Order 13132.*

ACI-NA and AAAE commented that the proposal does not comply with Executive Order 13132 on federalism, because the proposed policy is not required by statute, and because the agency did not conduct a federalism analysis on the impacts on State taxing authority and the relationship between State and local governments and airport sponsors.

Response: First, to the extent the comment referred to paragraph IV.D.2 of the proposed policy, holding airport sponsors responsible for taxation beyond their control, that issue is resolved by the changes to paragraph IV.D.2 in the final policy.

Second, the FAA does not agree that the proposed policy is not required by statute. In the notice of proposed policy, the FAA analyzed each of the key terms of the statute with reference to the legislative intent of the revenue use legislation, to the meaning of the statute as a whole, and to the consistent use of terminology throughout the AAIA. Several commenters not only supported the FAA amendment, but commented that no other interpretation of the statute was reasonably possible. Even if an alternative interpretation of certain terms were theoretically permissible, a policy interpreting the statute in a manner that substantially undermined the legislative purpose of the statute is not a viable option for the agency. Accordingly, the FAA believes that the policy as adopted correctly implements the revenue use legislation adopted by Congress. The policy is, therefore, required by statute for purposes of the executive order. Because this policy simply implements the explicit mandate set forth in section 47133, the requirements of Executive Order 13132 and DOT's Guidance on Federalism (July 21, 1988), are not triggered.

Thus, although a federalism analysis of this policy is not required by Executive Order 13132, the FAA did engage in efforts to consult with and work cooperatively with States, local governments, political subdivisions, and interested trade groups. Through consultation, meetings and teleconferences as part of a robust public engagement process, FAA has balanced the States' interests in meeting its taxing obligations, and Congress' intent to ensure that taxes on aviation fuel are expended

for airport purposes or for State aviation programs consistent with the mandate set forth in 49 U.S.C. 47133.

In addition to that engagement process, the FAA also published the policy amendment for notice and comment in the Federal Register, soliciting comment from State and local governments, as well as other interested parties. The only cost information submitted by any commenter was received from the Franklin-Hart Airport Authority, which expressed concern that redirecting some local taxes on aviation fuel to the airport could lead those jurisdictions to reduce other, non-tax support for the airport. However, the anticipated cost would result not from the agency's policy itself, but from the expected actions of local governments in reducing voluntary support for the airport.

For the above reasons, the FAA finds that further analysis of the adopted policy for federalism issues is not required by Executive Order 13132.

8. *Comment: The final policy should include certain grammatical and style changes.*

Response: Delta Airlines and Airlines For America recommended certain edits for grammar and clarity:

Paragraph II.B.2: Clarify the phrase "on or off the airport."

Paragraph IV.D.1: Clarify that only State aviation fuel taxes may be used for State aviation programs.

Paragraph IV.D.4.b: Clarify that §§ 47107(b) and 47133 apply to taxes on the use of aviation fuel.

In each case the proposed edits more accurately describe the requirements of §§ 47107(b) and 47133 as stated in prior FAA policy, and do not make any substantive change in the policy proposed in the notice. Accordingly, the FAA has made the requested edits in the final policy.

Final Policy

For the reasons set out above, the FAA amends the Policy and Procedure Concerning the Use of Airport Revenue, published in the Federal Register at 64 FR 7696 on February 16, 1999, as follows:

1. Section II, Definitions, paragraph B.2, is revised to read:

State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered subject to the revenue-use requirements in 49 U.S.C. §§ 47107 (b) and 47133. However, revenues from a State tax on aviation fuel may be used to support a State aviation program, and airport revenues may be used on or off the airport for a noise mitigation purpose.

2. In Section IV, Statutory Requirements for the Use of Airport Revenue, renumber paragraphs D and E as paragraphs E and F, and add a new paragraph D to read as follows:

D. Use of Proceeds from Taxes on Aviation Fuel.

1. Federal law limits use of the proceeds from a State or local government tax on aviation fuel to the purposes permitted in those sections, as described in IV.A. of this Policy. Proceeds from a tax on aviation fuel may be used for any purpose for which other airport revenues may be used, and proceeds from a State tax may also be used for a State aviation program.

2. Airport sponsors that are subject to an AIP grant agreement have agreed, as a condition of receiving a grant, that the proceeds from a State or local government tax on aviation fuel will be used only for the purposes listed in paragraph 1. This assurance is considered an enforceable commitment with respect to taxes on aviation fuel imposed by the airport operator. For taxes on aviation fuel imposed by non-sponsor State government and other local jurisdictions, airport sponsors are expected to inform taxing authorities of Federal requirements for use of aviation fuel tax revenues and to take reasonable action within their power to influence State and local tax laws to conform to those requirements.

3. The Federal limits on use of aviation fuel tax proceeds apply at an airport that is the subject of Federal assistance (as defined in Section II.b.2 of this Policy), whether or not the airport is currently subject to the terms of an AIP grant agreement, and regardless of the State or local jurisdiction imposing the tax.

4. The limits on use of aviation fuel tax revenues established by section 47107(b) and section 47133:

- a. Apply to any tax imposed on aviation fuel by either a State government or a local government taxing authority whether or not acting as a sponsor or airport owner or operator;
- b. Apply to any tax on aviation fuel, whether the tax is imposed only on aviation fuel or is imposed on other products as well as aviation fuel. However, the limits on use of revenues apply only to the amounts of tax collected specifically for the sale, use, purchase or storage of aviation fuel, and not to the amounts collected for transactions involving products other than aviation fuel under the same general tax law;
- c. apply to taxes on all aviation fuel dispensed at an airport, regardless of where the taxes on the sale of fuel at the airport are collected; and
- d. apply to a new assessment or imposition of a tax on aviation fuel, even if the tax could have been imposed earlier under a statute enacted before December 30, 1987.

3. In Section IX, Monitoring and Compliance, add a new paragraph h. to E.1 to read as follows:

h. For a non-sponsor State or local government that fails to comply with requirements for use of proceeds from a tax on aviation fuel, the Secretary may assess a civil penalty as described in E.1.g, or apply to a U.S. district court for a compliance order. In addition, for a State government that participates in the State Block Grant Program under 49 U.S.C. § 47128, the FAA may have additional sanctions for violation of the State's commitments in its application for participation in the program.

Issued in Washington, DC on November 3, 2014

Randall S. Fiertz,

Director, Office of Airport Compliance and Management Analysis

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