

**SMALL BUSINESS ADMINISTRATION****Hartford District Advisory Council;  
Public Meeting**

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting from 8:30 a.m., on Monday, April 21, 1997, at 1 Science Park, New Haven, Connecticut 06511, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jo-Ann Van Vechten, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, telephone (860) 240-4670.

Dated: April 8, 1997.

**Michael P. Novelli,**

*Director, Office of Advisory Councils.*

[FR Doc. 97-10292 Filed 4-21-97; 8:45 am]

BILLING CODE 8025-01-P

**SMALL BUSINESS ADMINISTRATION****Clarksburg District Advisory Council;  
Public Meeting**

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting at 10:00 a.m. on Thursday, April 24, 1997, at Oliverio's Restaurant, Bridgeport, West Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call, Ms. Jayne Armstrong, State Director, U.S. Small Business Administration, 168 West Main Street, Clarksburg, West Virginia 26301, (304) 623-5631.

Dated: April 8, 1997.

**Michael P. Novelli,**

*Director, Office of Advisory Councils.*

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**SMALL BUSINESS ADMINISTRATION****Milwaukee Branch Office Advisory  
Council; Public Meeting**

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12:00 p.m. to 1:30 p.m., April 21, 1997, at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building

(Milwaukee & Mason), 4th Floor—The Milwaukee Room, 756 North Milwaukee Street, Milwaukee, Wisconsin, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Kimberly R. West, U.S. Small Business Administration, 310 West Wisconsin Avenue, Suite 400, Milwaukee, Wisconsin 53203, telephone (414) 297-1092.

Dated: April 8, 1997.

**Michael P. Novelli,**

*Director, Office of Advisory Councils.*

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**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****Application of Citylink Airlines, Inc.****d/b/a Citylink for Issuance of New  
Certificate Authority**

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause (Order 97-4-17) Docket OST-96-1916.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding CityLink Airlines, Inc. d/b/a CityLink fit, willing, and able, and (2) awarding it a certificate to engage in interstate scheduled air transportation of persons, property, and mail.

**DATES:** Persons wishing to file objections should do so no later than May 7, 1997.

**ADDRESSES:** Objections and answers to objections should be filed in Docket OST-96-1916 and addressed to Department of Transportation Dockets (SVC-120.30, Room PL-401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet A. Davis, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366-9721.

Dated: April 16, 1997.

**Patrick V. Murphy,**

*Deputy Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 97-10399 Filed 4-21-97; 8:45 am]

BILLING CODE 4910-62-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

[Docket No. 28895]

**Airport Privatization Pilot Program:  
Application Procedures**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed procedures; notice of public meeting.

**SUMMARY:** Section 149 of the Federal Aviation Authorization Act of 1996 establishes an airport privatization pilot program, and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. This notice identifies the issues the Department will need to consider in granting exemptions and approving the transfer of a public use airport under the program, and proposes application procedures to be used by interested public airport sponsors and private parties to apply for inclusion in the program. A public meeting will be held on the proposed procedures on Wednesday, May 21, 1997.

**DATES:** Comments must be received by June 4, 1997. The public meeting will be held on May 21, 1997 at FAA headquarters, 800 Independence Avenue SW., Washington, DC; 3rd Floor auditorium; telephone: (202) 267-8728.

Registration: 8:30 a.m.; Meeting: 9:00 a.m.-1:00 p.m. Please note: Please allow time to go through FAA building security.

**ADDRESSES:** Comments should be mailed, in quadruplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 28895, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: "Docket No. 28895." 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. 28895." 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. To request to be

included on the list of speakers at the public meeting, call Kevin Hehir AAS-310, (202) 267-8224.

#### SUPPLEMENTARY INFORMATION:

##### Introduction and Background

This proposal of application procedures to be used by applicants for an airport privatization project is being published pursuant to § 149 of the Federal Aviation Administration Authorization Act of 1996, Pub. L. No. 104-264 (October 9, 1996) (1996 Reauthorization Act), which adds a new § 47134 to Title 49 of the U.S. Code. Section 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

In addition to proposing application procedures, this notice describes the issues the FAA will consider in determining whether to approve an application for an exemption under § 47134 and other Federal requirements for airport operation. The term "public sponsor" is used in this document to mean the governmental agency or authority that currently owns or operates a public airport and proposes to sell or lease it to a private purchaser or lessee. The term "private operator" is used to refer to a private firm or firms that propose to purchase or lease a public use airport under the program; the term "applicant" means all of the parties jointly participating in the application for privatization of a particular airport.

##### *Requirements for Transfer of a Federally-Assisted Public Airport*

A request for transfer of the operation of an airport from an existing public sponsor to a new operator, whether public or private, requires FAA approval. The request for exemption under § 47134 would be considered in

conjunction with existing approval requirements and processes.

##### *Grant/Deed Conditions*

Airport sponsors receiving Federal assistance under a grant program or through donation of surplus property agree as a condition of the assistance to obtain FAA approval before transferring control or ownership of the airport to another party. For example, Assurance No. 5.b. in Airport Improvement Program (AIP) grant agreements provides that a sponsor will not sell, lease, or otherwise transfer any part of its title or other interests in the airport property subject to the grant assurances, for the duration of the term of the grant agreement, without approval by the Secretary. Assurance No. 5 further provides that the sponsor and the transferee approved by the Secretary shall insert in the contract or document transferring the sponsor's interest, and make binding upon the transferee, all of the terms, conditions and assurances contained in the sponsor's grant agreement. Similar conditions are written into the deeds of conveyance for Federal surplus property donated to an airport sponsor.

In reviewing a request for transfer, the FAA will consider whether the new owner/operator will assume the obligations of the original sponsor under existing grant agreements or deeds, and whether the new owner/operator has the powers and authority to fulfill its obligations under the assurances.

##### *Regulatory Requirements*

An operator of an airport receiving air service by aircraft with more than 30 passenger seats must hold an FAA operating certificate under 14 C.F.R. Part 139. Authority to certificate airports served by aircraft with 9 or more passenger seats was granted to the FAA in the 1996 Reauthorization Act. FAA operating certificates are not transferable; a new operator of a certificated airport must obtain a new certificate issued by the FAA.

##### *Section 47134*

Section 47134 contains specific provisions for issuance of an exemption in connection with a transfer of airport operation. These conditions supplement and to some extent overlap the factors that FAA would consider under Assurance No. 5.b., but do not replace other requirements for approval of an airport transfer. In summary, § 47134 provides that the Administrator may issue exemptions to a public sponsor and a private sponsor only if the Administrator finds that the sale or lease agreement contains provisions

satisfactory to the Administrator to ensure that:

(1) The airport will continue to be available for public use on reasonable terms and conditions without unjust discrimination;

(2) The operation of the airport will not be interrupted if the private operator experiences bankruptcy or other financial difficulty;

(3) The private operator will "maintain, improve, and modernize" airport facilities through capital investments, and submit a plan for these actions;

(4) Airport fees imposed on air carriers will not increase faster than inflation unless a higher amount is approved by at least 65 percent of the air carriers using the airport and the air carriers having at least 65 percent of the landed weight of aircraft at the airport;

(5) Fees imposed on general aviation operators will not exceed the percentage increase in fees imposed on air carriers;

(6) Safety and security will be maintained "at the highest possible levels;"

(7) Adverse effects of noise from operations at the airport will be mitigated to the same extent as at a public airport;

(8) Adverse effects on the environment from airport operations will be mitigated to the same extent as at a public airport; and

(9) Collective bargaining agreements that cover airport employees on the date of the sale or lease.

In addition, the Administrator must find that the transfer will not result in unfair and deceptive trade practices or unfair methods of competition.

##### *Number of Participating Airports*

In establishing the privatization pilot program, Congress placed limitations on the number and kind of airports eligible to participate. Paragraph 47134(d)(1) provides that if the applications of 5 airports are approved, then one must be a general aviation airport. Paragraph 47134(d)(2) provides that no more than one of the airports approved may be an airport with more than 1 percent of total passenger boardings (a large hub airport), as defined in 49 U.S.C. § 47102(10).

##### **Process for Applying for an Exemption Under Section 47134**

This part of the notice summarizes the FAA's proposed procedures for applying for an exemption under 49 U.S.C. § 47134, including the information required from applicants and the process for agency handling of requests. Final guidance on application

procedures will be issued after a review of public comments on this notice.

Substantive issues the FAA believes need to be considered in the issuance of an exemption and approval of transfer are discussed below (see section titled, Issues Considered By the FAA in Granting an Exemption Under § 47134) as further guidance for applicants.

#### *Exemption Application and Review Process: Overview*

Subject to revision after review of public comment, the FAA intends to apply the following policies to the process for filing and review of requests for privatization of a public airport:

1. A request for participation in the airport privatization pilot program will be initiated by the filing of an application for exemption under § 47134(a).

2. With the exception noted below, applications for exemption will be accepted on or after December 1, 1997, and will be handled on a first-come first-served basis until the limits of § 47134 are reached. An otherwise qualifying application for exemption will be accepted before December 1, 1997, if the sponsor has issued, on or before the date of publication of this notice, a formal solicitation or request for proposals for the sale or lease of an airport. All applications will be evaluated in the order of receipt.

3. Participation in the program is limited to five airports. The maximum of five participants in the program will be considered to have been reached based on applications under review, not exemptions granted, so that an airport with an application on file will not be in a race for inclusion in the program.

4. An application received by the FAA will be considered to be filed on the date received. Application packages will be date-stamped on receipt in Room 600 East, FAA headquarters building.

5. FAA will review the application to determine if it meets the procedural requirements stated in this notice.

6. The FAA will not accept "placeholder" applications filed before the applicant has sufficient information on the proposed transfer. If an application cannot reasonably be brought into compliance with the requirements of § 47134 and other applicable Federal statutes with current information, the FAA will notify the applicant that the application is rejected and that the application is no longer on file. The applicant may file a new application at any time, and receive a new "on file" date at that time.

7. If the application does meet the procedural requirements described in this notice, the applicant will be

notified that the application is "accepted for review." The FAA may request additional information before accepting the application for review, but the original filing date will remain in effect.

8. The FAA proposes to publish in the **Federal Register** a notice that an application has been received under 49 U.S.C. § 47134, and that the FAA has accepted the application for review. The FAA will establish a docket and accept public comment on the application for a defined period.

9. Selection as one of the 5 airports eligible to participate in the program will be evidenced by the issuance of an exemption under § 47134(b). If an application is approved, an exemption will be issued after the execution of all documents necessary to fulfill the requirements of § 47134 and other laws and regulations within the FAA's jurisdiction (e.g., issuance of a Part 139 certificate to the private operator; FAA approval of a security program under Part 107; and possibly a 3-way agreement between the public sponsor, the private operator, and the FAA).

10. FAA representatives will be available to meet with parties interested in an airport privatization project both before and after the filing of an application for exemption to discuss the Federal statutory requirements and policies that apply to applications under § 47134.

#### *Filing an Application*

1. Applicants must submit a complete application package containing the information described under "Form and Content of Applications" in this notice to: Susan L. Kurland, Associate Administrator for Airports, ARP-1, Room 600 East, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

2. Applications may be delivered or mailed, but will not be considered to be "on file" with the FAA until received and date-time stamped in the Office of the Associate Administrator for Airports, Room 600 East.

#### *Form and Content of Applications*

1. There is no required form for an application. However, the application package must be submitted with a cover letter, signed jointly by appropriate officials of the current public sponsor and the private operator proposing to buy or lease the airport, requesting an exemption pursuant to 49 U.S.C. § 47134 for the purpose of the privatization of an airport. Officials signing for the public sponsor must provide evidence of their authority to file the application.

2. The following statements and information must be included in an application. The FAA realizes that some documents, figures, and other information will not be available until shortly before the execution of the transfer transaction. The agency assumes that the application would be filed after the public sponsor has selected a private operator and reached sufficient agreement with the operator on the terms of the transaction to represent those terms in an application. The FAA will not require that all information listed below be provided at the time of the application, however. For each item below for which information is not available, the applicant may substitute a description of the expected response and the date by which the final information will be available. Information not provided with the application should be submitted to the FAA as soon as it becomes available.

#### **The Application**

##### *Part I. Parties to the Transaction*

A. Name of the airport proposed for sale or lease.

B. Name and address of the public sponsor of the airport; name, address, telephone number and fax number of the person to contact about the application.

C. Name and address of the private operator proposing to purchase or lease the airport; name, address, telephone number and fax number of the person to contact about the application.

D. If the private operator proposing to purchase or lease the airport is a partnership, joint venture, or other consortium of multiple interests, the name and address of each of the participating members.

E. Citizenship of the private operator and/or each member of the private operator consortium, and percentage of interest of each such member.

##### *Part II. Airport Property*

A. A description of the airport property to be transferred. Applicants should describe property in sufficient detail to identify the parcels of property and facilities to be transferred; a map and a legal description of the property may be included but are not required.

B. A history of the acquisition of existing airport property: applicants should include information on grants, types of deeds, the dates and means of conveyance (e.g. Surplus Property Act), other Federal conveyance of donated property, parcels purchased with Federal funds and parcels purchased with only local funds.

*Part III. Terms of the Transfer*

A. A detailed description of the terms of the transfer, other than financial, including:

The form of the transaction (sale, lease, other);

Term of the lease or other transfer agreement;

Description of any rights, authority, or interests retained by the public sponsor, including reversion of title to facilities;

If the private operator is a consortium, a description of the respective rights and responsibilities of each member;

B. Financial terms of the transaction: Amounts and timing of payments to public sponsor.

Amounts of payments to sponsor to be used, respectively, for airport purposes (including recoupment of public sponsor investments not previously recovered) and other purposes.

Financing arrangements of the private operator for purchase payment or initial lease payment.

Other relevant financial terms of the transfer.

C. Copies of all documents executed as part of the transfer, to be provided as they are executed or are in sufficiently final form to indicate the substantive nature of the expected final document.

D. If applicable, a request for confidentiality of any particular document or information submitted, with supporting information.

*Part IV. Qualifications of the Private Operator*

A. Complete description of airport operations experience. If the private operator is a newly formed entity, describe the experience of the constituent members and the proposed management structure to integrate operational functions.

B. Financial resources for operating/capital expenses of the airport.

C. Timing/details of application for Part 139 certificate, if applicable.

D. Plan for compliance with Part 107, if applicable.

E. Affiliations with air carriers or other persons engaged in aeronautical business activity at an airport (other than airport management).

*Part V. Requests for Exemption*

A. Describe the specific exemption requested by the public sponsor under 49 U.S.C. § 47134(b)(1), from the prohibition on use of airport revenue for general purposes, including the amount of funds involved.

B. Describe the specific exemption requested by the public sponsor under 49 U.S.C. § 47134(b)(2), from the requirement to repay Federal grant funds or return property.

C. Describe the specific exemption requested by the private operator under 49 U.S.C. § 47134(b)(3), from the prohibition on use of airport revenue for general purposes.

*Part VI. Certification of Air Carrier Approval*

A. Provide a certification that air carriers meeting the requirements of 49 U.S.C. § 47134(b)(1)(A) approve the exemption described in Part V.A. above. (See Granting Exemptions under the section titled Issues Considered by the FAA in Granting An Exemption Under § 47134 for definitions and guidance.)

B. Provide a list of all air carriers serving the airport (as described in the above mentioned section on granting exemptions), a list of the air carriers that have approved the exemption, the total landed weight of all air carrier aircraft at the airport within the preceding year, and the total landed weight of the carriers that have approved the exemption.

C. Provide a copy of each document indicating air carrier approval of or objection to the exemption requested.

*Part VII. Airport Operation and Development*

A. Provide a description of how the private operator, the public sponsor, or both will address the following issues with respect to the operation, maintenance, and development of the airport after the proposed transfer. (Factors the FAA will consider in reviewing applications are discussed in this notice under the previously mentioned section on granting exemptions below.)

1. Part 139 certification. A request for Part 139 certificate should be filed with the local FAA regional Airports Division. The exemption application needs only to reflect the private operator's intentions and the status of a certificate application, if applicable.

2. Continuing access to the airport on fair and reasonable terms and without unjust discrimination, in accordance with § 47134(c)(1).

3. Continued operation of the airport in the event of bankruptcy or other financial impairment of the private operator, in accordance with § 47134(c)(2). The application should include any provision for reversion to the public sponsor.

4. Maintenance, improvement, and modernization of the airport, in accordance with § 47134(c)(3), including the public sponsor's most recent 5-year capital improvement plan (CIP) and the 5-year CIP proposed by the private operator. Applicants should identify the sources of funds to be used

for capital development, including any continuing contributions by the public sponsor. Applicants should also include any financial security provisions, such as a letter of credit or performance bond, for the accomplishment of the maintenance, improvement, and modernization projects committed to by the private operator.

5. Compliance with the limitations on air carrier fees described in § 47134(c)(4).

6. Compliance with the limitation on general aviation fees described in § 47134(c)(5).

7. Maintenance of safety and security at the airport, in accordance with § 47134(c)(6). The application should note the applicant's contacts with the Airports District Office on Part 139 and the Office of Aviation Security on Part 107, but does not need to duplicate information filed in connection with those actions.

8. Mitigation of adverse effects of noise from airport operations, in accordance with § 47134(c)(7). The applicant should specifically describe its intentions with respect to an existing or future Part 150 noise compatibility program for the airport, with respect to the public sponsor's commitments under past records of decisions on airport development projects, and other measures the private operator intends to take in the future.

9. Mitigation of adverse effects on the environment from airport operations, in accordance with § 47134(c)(8).

10. Recognition of existing collective bargaining agreements covering employees of the public sponsor, in accordance with § 47134(c)(9).

B. The applicant's acceptance of the grant assurances contained in the public sponsor's grant agreements with the FAA. Assurance No. 25 need not be addressed.

*Part VIII. Periodic Audits*

Section 47134(k) provides that the FAA may conduct periodic audits of the financial records and operations of an airport receiving an exemption under the pilot program.

Applicants should indicate their express assent to this provision in the application.

**Issues Considered by the FAA in Granting an Exemption Under 47134***Granting Exemptions*

Section 47134(b) authorizes the Secretary, in connection with approval of an application for transfer to a private operator, to grant the following exemptions: From requirements governing use of airport revenue, to the

extent necessary to permit the sponsor to recover from the transfer, the amount approved by 65 percent of the carriers serving the airport and by carriers whose landed weight at the airport in the preceding calendar year represented 65 percent of the total landed weight at the airport;

From any statutes, regulations or grant assurances requiring repayment of Federal grants or the return of Federal property; and

From requirements governing use of airport revenue to the extent necessary to permit the airport operator to earn compensation from the operations of the airport.

The exemption authority is discretionary. The FAA will make every effort to exercise its authority under § 47134 to permit the completion of transactions negotiated in good faith in reliance on the statute and this guidance. The FAA notes that § 47134 authorizes exemptions only from the requirements on the use of airport revenue to permit the private operator to earn compensation from the airports. As discussed below, the compensation of the private operator could also be subject to limitations based on the requirement that aeronautical fees be reasonable. Reasonable fees are addressed separately under § 47134(g).

#### *65 Percent Carrier Approval*

The FAA proposes to apply the 65 percent approval requirement as follows. The FAA would consider "the carriers operating at the airport" to be (1) all air carriers, including air carriers operating under 14 CFR Part 135, that are parties to a lease, use or operating agreement with the public sponsor on the date the applicants solicit carrier certification of agreement, and (2) any other carriers that conducted at least 50 commercial operations in the calendar year preceding the application. This would not include infrequent or transient users of the airport, but would include all carriers with a substantial interest in the fees charged and facilities provided by the airport operator. The FAA proposes to define landed weight as the total landed weight at the airport, as determined from records used by the public sponsor to calculate weight-based landing fees owed by each air carrier landing at the airport in the calendar year preceding the filing of the application. An applicant that did not use landed weight to calculate weight-based landing fees could request a waiver and propose an alternate methodology.

#### *Terms and Conditions Required for Approval—General Approach*

Section 47134(c) permits the FAA to grant an exemption only upon finding that the sale or lease agreement includes provisions satisfactory to the FAA to ensure that nine separate statutory objectives will be fulfilled.

With respect to some of the objectives listed in § 47134(c), it may be appropriate to rely on provisions in the sale or lease agreement that track the general statutory language to meet the substantive requirements of the terms and conditions. For other objectives, as discussed below, it will be necessary for applicants to describe the specific measures they intend to take to meet the objective. The FAA proposes to require that the purchase or lease agreement provide that terms and conditions included in the agreement to satisfy objectives in § 47134(c) (at least those objectives relating to safety, environment, and reasonable access) are intended to create third party beneficiary rights for the United States enforceable through a civil action to obtain specific performance of the terms and conditions. The FAA will also consider the private operator's adherence to the terms and conditions agreed upon to meet the objectives of § 47134(c), in evaluating requests for discretionary AIP grants. These steps are considered to be reasonably necessary for the FAA to assure that the terms and conditions will be followed after the sale of an airport or during the life of a lease.

The FAA solicits comment on whether any additional actions would be appropriate. In particular, should the FAA conduct an independent evaluation of the qualifications of the private operator similar to the evaluation of fitness of an applicant for an air carrier economic certificate conducted by the Department under 49 U.S.C. §§ 41108, 41110. The FAA is proposing to require information on the proposed airport operator's qualifications and financial resources in the application. Commenters suggesting any other actions are requested to include the policy or legal justification for their suggestions.

#### *Terms and Conditions To Assure Public Access on Reasonable Terms Without Unjust Discrimination*

Section 47134(c)(1) requires the transfer agreement to include provisions ensuring that the airport will be available for public use on reasonable terms without unjust discrimination. The FAA has construed a corresponding

requirement in the AIP grant assurances to require the following:

- (1) that the airport be open to all members of the public for aeronautical use on reasonable terms and conditions, without unjust discrimination;
- (2) that, subject to its physical limitations, the airport be open to all commercial aviation service providers who meet the reasonable terms, conditions and minimum standards adopted by the airport proprietor, unless the airport proprietor undertakes a particular aviation service in its own name on an exclusive basis; and
- (3) that the rates, fees and charges imposed on aeronautical users of the airport will be reasonable and not unjustly discriminatory.

The FAA would construe the assurance of access on reasonable terms in the transfer agreement to encompass no less, even if the assurance were framed in the general terms of the statute. The FAA invites comment on whether more specific provisions should be required.

#### *Reasonable Rates and Charges Imposed by Airport Operator*

Other provisions in § 47134 make it clear that Congress intended the airport operator to charge only reasonable, not unjustly discriminatory fees. For example, § 47134(g) provides that an airport operator shall not be prohibited from collecting reasonable fees and charges from aircraft operators. In addition, an airport operator under this provision would be subject to the Anti-Head Tax Act, which prohibits imposition of unreasonable airport charges. Finally, § 47134 provides that consideration of the reasonableness of fees charged at an airport under § 47134 will be subject to review under 49 U.S.C. 47129, which provides expedited procedures for determining the reasonableness of airport fees. In light of this latter provision, the FAA intends to apply the Policy on Airport Rates and Charges to aeronautical fees imposed by the transferee. In addition, if § 47129's jurisdictional requirements are met, the expedited procedures mandated by § 47129 would be employed to determine the reasonableness of disputed fees.

#### *Reasonable Compensation for the Airport Operator*

Section 47134(b)(3) authorizes the FAA to exempt the private operator from statutory limitations on use of airport revenue to permit the transferee to earn compensation from the operations of the airport. No other exemptions to permit compensation are specifically mentioned in the statute.

If a transferee intends to earn compensation from the aeronautical operations of the airport, then the requirement for reasonable fees would apply to that compensation. It is well accepted that for a fee to be reasonable, the amount of compensation to the operator of a facility, in the form of rate of return or return on equity included in the fee, must also be reasonable.

The OST/FAA Policy Regarding Airport Rates and Charges (Policy) addresses the issue of compensation to private airport owners only briefly. As to fees for the use of the airfield, paragraph 2.4 of the Policy provides that "a private equity owner of an airport can include a reasonable return on investment in the airfield." 61 FR 32019. A private equity owner that has done so may not include an imputed interest charge, as well. Policy, Par. 2.4.1(a). The Policy does not further define a reasonable rate of return. For the use of aeronautical facilities other than the airfield, the Policy permits the airport owner to establish fees using any reasonable methodology. Policy, Par. 2.6, 61 FR 32020. The FAA considers Paragraph 2.6 to permit a private equity owner of the airport to earn a reasonable return on its equity investment in nonairfield aeronautical facilities.

The FAA does not propose to provide additional guidance, at this time. The FAA will apply the provisions of the policy to permit a private operator to earn, through aeronautical fees, a reasonable rate of return on the funds it invests in aeronautical facilities at the airport. The private operator would not be able to include in the aeronautical fees a rate of return on its lease payments to the public sponsor, unless agreed to by the aeronautical users. Comments are requested on the effect of this aspect of the rates and charges policy on proposed lease and sale transactions.

The FAA will not attempt to define as a matter of general policy the level of a reasonable rate of return for equity owners or lessees but would consider the issue on a case-by-case basis. Consistent with accepted practices for determining the reasonableness of regulated rates, the primary factor that the FAA would consider in determining a reasonable rate of return would be the private operator's cost of capital for its investment in the airport. The FAA requests that commenters who disagree with this proposed case-by-case approach propose and justify an alternative approach that could be adopted as a matter of general policy.

Consistent with the terms of the Policy, the provisions governing reasonable rates of return on investment

need not be followed if the private operator and aeronautical users agree to another arrangement. Policy Par. 2.4. Such an agreement would also be subject to sections 47134(c) (4), (5), as discussed below.

#### *Carrier Approval of Fee Increases*

Section 47134(c)(4) requires the transfer agreement to include provisions ensuring that airport fees imposed on air carriers will not increase faster than the rate of inflation unless 65 percent of carriers operating at the airport and air carriers whose aircraft accounted for 65 percent of the landed weight at the airport in the preceding calendar year approve of the increase. The FAA does not intend to require the purchase agreement to include any more specific language than the statutory provision. However, if a fee increase that exceeds the rate of inflation is contemplated as part of the initial transfer, the FAA would require that the application for approval include proof that the requisite carrier approval has been obtained.

Another provision of § 47134 requires the airport operator to commit to making capital investments in the airport. Consistent with that provision, the FAA does not intend to apply § 47134(c) to fee increases that are attributable solely to inclusion of new investments in the airport rate base. If the 65 percent approval requirement were to apply to fee increases caused by new capital improvements, the requirement would give air carriers an effective veto over those capital improvements, since investors could not be expected to put capital into a project that is legally barred from generating sufficient revenue to earn a return on investment. Thus, an interpretation of the 65 percent approval requirement to apply to fee increases attributable solely to new investment at the airport would frustrate implementation of the statutory provision requiring the airport operator to commit to making capital investment at the airport. The FAA, therefore, intends to permit fee increases based solely on new capital investment at the airport to occur without 65 percent air carrier approval. Existing majority-in-interest clauses and similar agreements would continue in effect, however. Comments are requested on the effect of this interpretation of the 65 percent approval provision.

#### *Terms and Conditions To Assure Continued Operation in the Event of Bankruptcy or Insolvency*

Section 47134(c)(2) requires the sale or lease agreement to include provisions ensuring that the operation of the airport will not be interrupted by the

insolvency, liquidation, or bankruptcy proceeding. The FAA considers this to be an issue for which simple repetition of the statutory assurance in the sale or lease agreement will not be adequate. Some provisions that could be sufficient to ensure continued operation are listed below; the FAA invites suggestions for other approaches:

(1) Including in the transfer agreement an automatic reverter to the public sponsor in the event that the airport ceases operations due to the bankruptcy or reorganization of the private operator.

(2) In lieu of automatic reverter, including in the application a contingency plan for sponsor takeover in defined circumstances.

(3) Recording as an encumbrance on the airport property the obligation to operate the property as an airport.

(4) Establishing an escrow fund or bond to ensure funds are available to pay the essential costs of operating the airport.

The FAA's objective is to implement the statutory mandate to assure that the transferred airport continues to operate while avoiding requirements that interfere with the feasibility of a pilot program. The FAA specifically invites comment on whether the individual options would be effective under U.S. bankruptcy law.

#### *Terms and Conditions To Assure Capital Investment and Improvements by the Airport Operator*

One of the purposes of the pilot program is to use private ownership or long term leases of airports to increase investment in airport infrastructure above that available through the public sector. Section 47134(c)(3) requires the transfer agreement to include provisions to assure that the airport operator will maintain, improve and modernize the facilities of the airport through capital investments and will submit to the Secretary a plan for carrying out such maintenance, improvements and modernization. The FAA proposes to consider as acceptable components of the plan for improvement and modernization (1) a five-year capital improvement plan (CIP), and inclusion in the transfer agreement of a provision assuring that the airport operator will substantially implement the five-year CIP; and (2) an assurance of a certain minimum level of capital investment using the private operator's funds. For an assurance of sufficient minimum investment, the applicant could, for example, offer a five-year CIP that exceeds or accelerates the public sponsor's most recent five-year CIP for the airport; commit to an amount that exceeds the local match for entitlement

funds; commit to apply for and use entitlement funds, if available, for the life of the lease of the airport; or commit to use sources other than PFCs to finance at least a share of its investment in the airport.

*Terms and Conditions Relating to Safety and Security*

Section 47134(c)(6) requires that the transfer agreement include satisfactory provisions to assure that safety and security at the airport will be maintained at the highest possible levels.

For airports that are currently subject to airport operator certificates issued under 14 CFR Part 139, the FAA proposes to satisfy this statutory mandate as it applies to safety by requiring that the transfer agreement provide that the private operator shall not take over operational control of the airport until the private operator has received a new Part 139 certificate. The FAA proposes to take a similar approach to airport security by requiring that a transfer agreement for an airport governed by an airport security plan approved under 14 CFR Part 107 provide that the private operator shall not take over operational control of the airport until the private operator has received approval of an airport security plan under Part 107.

For general aviation airports, including reliever airports, that are not governed by Part 107 or Part 139, the FAA intends to rely on the private operator's assumption of the public sponsor's outstanding grant obligations to provide for the requisite level of safety and security of the airport. Standard assurance 19.a requires the airport sponsor to "suitably operate and maintain the airport and all facilities thereon or connected therewith," and further requires that the "airport and all facilities which are necessary to serve aeronautical users of the airport \* \* \* shall be operated at all times in a safe and serviceable conditions and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes." The FAA relies on the assurances to provide an appropriate level of safety and security at all grant-obligated general aviation airports, including privately-owned reliever airports currently under grant.

*Terms and Conditions Relating to Noise Mitigation*

Section 47134(c)(7) requires the transfer agreement to include satisfactory provisions to assure that adverse effects of noise from the operation of the airport will be mitigated to the same extent as at a public airport.

The FAA will look to proponents to describe means of assuring that this condition can be satisfied for the particular airport at issue. One obvious provision would be the private operator's commitment to continue to implement the measures of an existing approved Part 150 noise compatibility program, which could be included in the transfer agreement. (Proponents should note the provision in Section 47109(a), as amended, setting the Federal share at 40% of project costs if discretionary funds are used. Although FAA will evaluate applications from a private operator according to the same priority ranking system as for a public sponsor, the private operator should anticipate bearing 60 percent of allowable noise project costs as well as other projects receiving discretionary funds.) The FAA solicits comment on other possible commitments by applicants that would satisfy the intent of the congressional requirement. For example, the sponsor could commit to continue to exercise its land-use control powers, including the power to condemn land for public purposes, to assure airport compatible land use.

In proposing measures to assure the implementation of § 47134(c)(7), proponents should keep in mind that the private operator will be subject to other assurances to permit access to the airport on reasonable and not unjustly terms, without unreasonable burdens on air commerce. Also, the airport under private operation will be subject to the Airport Noise and Capacity Act of 1990 (ANCA). ANCA prohibits the adoption of noise or access restrictions on stage 2 aircraft unless specified procedures are followed and prohibits the adoption of noise or access restrictions on stage 3 aircraft except by agreement with aircraft operators or upon approval by the FAA.

*Terms and Conditions Relating to Environmental Mitigation*

Section 47134(c)(8) requires the transfer agreement to include satisfactory provisions to assure that any adverse effects on the environment from operations at the airport will be mitigated to the same extent as at a public airport. The FAA proposes to implement this provision by requiring

the airport operator to assume all mitigation measures identified in existing records of decisions accompanying final environmental impact statements, findings of no significant impact, and airport layout plan approvals previously agreed to by the public sponsor. The FAA would rely on its current practices for airport layout plan approval, and approval of AIP grants and PFC applications to assure that adverse effects from any new airport development are suitably mitigated.

*Terms and Conditions: Collective Bargaining*

Section 47134(c)(9) requires the transfer agreement to include satisfactory provisions to assure that the transfer does not abrogate any collective bargaining agreement covering employees of the airport in effect on the date of transfer. The FAA proposes to consider this provision satisfied if the transfer agreement includes a provision by which the parties agree not to abrogate any collective bargaining agreement covering employees of the airport in effect on the date of transfer. Certification from each collective bargaining representative that the transfer agreement will not abrogate its contract would also meet the requirement.

**Unfair Competition Finding**

Section 47134(e) requires the FAA to find that approval will not result in unfair and deceptive practices or unfair methods of competition. The FAA proposes to evaluate each proposed transaction's potential for unfair competition individually and solicits comment on information that would be needed to perform this evaluation.

*Protection of General Aviation Interests*

Section 47134(f) requires the FAA to ensure that the interests of general aviation users of the airport are not adversely affected in approving an application for a private transfer. The FAA intends to review the exemption application and transfer agreement for the applicant's commitment to this effect. The FAA solicits comments on whether any additional measures are appropriate.

*Revocation Procedures*

Section 47134(i) authorizes the FAA to revoke the exemptions granted to permit a private transfer if, after providing the airport operator with notice and an opportunity to be heard, the FAA determines that the transferee has knowingly violated any of the required terms and conditions specified



in the section titled, Form and Content of Applications. The FAA proposes to rely on the procedures in 14 CFR Part 16 to provide the required notice and opportunity to be heard in the case of a revocation proceeding. In addition, the FAA will consider other remedies, such as obtaining orders for specific performance of the terms and conditions, as an alternative to commencement of revocation procedures. The FAA invites comments on the adequacy of these procedures in the event of a violation of the terms of the exemption.

#### *Administration of AIP Grants*

Sections 47134(g)(1) authorizes otherwise eligible airports to continue to qualify for AIP apportionments under 49 U.S.C. § 47114. In addition, a private operator may receive discretionary AIP funds, but with a higher local share required than a public sponsor's share. Under 49 U.S.C. § 47107, the FAA must receive satisfactory written assurances on a number of subjects before issuing a grant. This requirement is fulfilled by the standard sponsor assurances included in every AIP grant agreement. Section 47134 authorizes the FAA to grant exemptions from a very limited number of the assurances mandated by § 47107.

In addition, standard assurance 5.b. requires a sponsor, before transferring an obligated airport to include in the transfer document and make binding on the transferee all conditions and assurances contained in the grant agreement.

The FAA intends to apply the requirement in standard assurance 5.b. to any transfer proposed under § 47134, subject to the specific exemptions authorized by that section. In addition, the FAA would require an airport operator applying for new AIP grants to agree to all standard assurances except those from which § 47134 authorizes an exemption. As with a public sponsor, approval of a project grant would be subject to the provisions of 49 U.S.C. § 47106, which requires the FAA to make special findings on environmental impacts and local acceptance before approving grants for certain airport improvement projects.

The FAA employs a priority system to allocate discretionary AIP funds. The current system does not differentiate between otherwise equivalent projects proposed by public and private sponsors. The FAA solicits comment on whether such a distinction is appropriate for requests for discretionary funds submitted by participants in the pilot program.

#### *Administration of Passenger Facility Charges*

Section 47134(g)(1) authorizes an airport operator to impose a passenger facility charge (PFC) under 49 U.S.C. § 40117. If a PFC is being collected at an airport at the time of transfer, the FAA would require the private operator to agree to accept all of the terms, requirements, and limitations of the PFC statute, 14 CFR Part 158 and all applicable records of decision approving collection and use of PFC revenues as a condition of continuing the existing PFC program. A private operator would need to comply with the PFC statute and Part 158 to obtain new approval to impose a new PFC or to use PFC revenue not already approved for use in an FAA record of decision.

#### **Notice of Public Meeting**

##### *Background*

The FAA will conduct a public meeting on the proposed application procedures and policies discussed in this notice. Comments from the public at this meeting should be directed specifically to the agency's implementation of the Airport Privatization Pilot Program established in the FAA Reauthorization Act of 1996.

The closing date for comments on the proposal is June 4, 1997. In order to give the public an additional opportunity to comment on this notice, the FAA is planning this public meeting. Because this additional opportunity to comment is provided, the FAA does not intend to extend the closing date for comments.

##### *Participation at the Public Meeting*

Requests from persons who wish to present oral statements at the public meeting on the Airport Privatization Pilot Program should be received by the FAA no later than May 16, 1997. Such requests should be submitted to Kevin Hehir, AAS-310, 202-267-8224 as listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Requests received after May 16, 1997, will be scheduled if time is available during the meeting; however, the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

#### *Public Meeting Procedures*

The following procedures are established to facilitate the public meeting:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting, subject to availability of space in the meeting room.

2. The public meeting may adjourn earlier if all speakers have completed their statements.

3. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group.

4. Participants should address their comments to the panel. No individual will be subject to cross-examination by any other participant.

5. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

6. Representatives of the FAA will conduct the public meeting.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to this notice may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meeting panel are intended to facilitate discussion of the issues or to clarify issues. FAA officials may ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at this public meeting will be considered by the FAA when deliberations begin concerning whether to adopt any or all of the proposed rules.

10. The meeting is designed to solicit public views and more complete information on the proposed application



procedures and implementation of the Airport Privatization Pilot Program. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Issued in Washington, DC on April 16, 1997.

**David L. Bennett,**

*Director, Office of Airport Safety and Standards.*

[FR Doc. 97-10355 Filed 4-18-97; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-97-24]

#### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 12, 1997.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW.,

Washington, D.C. 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Fred Haynes (202) 267-3939 or Angela Anderson (202) 267-9681 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 16, 1997.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

#### Petitions for Exemption

*Docket No.:* 28760.

*Petitioner:* McDonnell Douglas.

*Sections of the FAR Affected:* 14 CFR 25.785(d), 25.807(c)(1), 25.857(e), and 25.1447(c)(1).

*Description of Relief Sought:* To permit the accommodation of two supernumeraries outside the cockpit and the installation of a crew rest facility in the Class E cargo compartment of MD-11 freighter aircraft.

*Docket No.:* 23771.

*Petitioner:* Cessna Aircraft Company.

*Sections of the FAR Affected:* 14 CFR 91.9(a) and 91.531(a)(1) and (2).

*Description of Relief Sought/*

*Disposition:* To permit operators to allow certain qualified pilots of Cessna Citation Model 550, S550, 552, or 560 aircraft to operate those aircraft without a pilot who is designated as second in command. *GRANT, March 26, 1997, Exemption No. 4050I.*

*Docket No.:* 23869.

*Petitioner:* The Uninsured Relative Workshop, Inc.

*Sections of the FAR Affected:* 14 CFR 105.43(a).

*Description of Relief Sought/*

*Disposition:* To permit the petitioner's employees, representatives, and other volunteer experimental parachute test jumpers under its direction and control to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a). Also to permit pilots in command of aircraft involved in these operations to allow such persons to make these jumps. *PARTIAL GRANT, March 19, 1997, Exemption No. 4943G.*

*Docket No.:* 25233.

*Petitioner:* Alaska Air Carriers Association.

*Sections of the FAR Affected:* 14 CFR 43.3(g), 121.709(b)(3), and 135.443(b)(3).

*Description of Relief Sought/*

*Disposition:* To allow a certificated and

appropriately trained pilot employed by an Alaska Air Carriers Association member airline to remove and reinstall passenger seats on aircraft used by that airline in operations conducted under part 121 and part 135. *GRANT, March 20, 1997, Exemption No. 4802G.*

*Docket No.:* 25552.

*Petitioner:* State of Alaska Department of Transportation.

*Sections of the FAR Affected:* 14 CFR 45.29(h).

*Description of Relief Sought/*

*Disposition:* To allow persons operating aircraft within, to, or from the State of Alaska to fly their aircraft across the inner boundaries of the Alaskan Air Defense Identification Zone or the Defense Early Warning Identification Zone without displaying temporary or permanent registration marks at least 12-inches high, unless otherwise required by the Federal Aviation Regulations. *GRANT, March 10, 1997, Exemption No. 5630B.*

*Docket No.:* 26474.

*Petitioner:* Deere & Company.

*Sections of the FAR Affected:* 14 CFR 21.197(a)(1).

*Description of Relief Sought/*

*Disposition:* To permit the petitioner to operate its Cessna Model CE-650 aircraft, Registration No. N400JD, Serial No. 650-0035; Registration No. N900JD, Serial No. 650-0213; and Registration No. N600JD, Serial No. 650-0236, without obtaining a special flight permit when the flaps fail in the up position. *GRANT, March 11, 1997, Exemption No. 6581.*

*Docket No.:* 26478.

*Petitioner:* Department of the Air Force.

*Sections of the FAR Affected:* 14 CFR 91.209 (a) and (d).

*Description of Relief Sought/*

*Disposition:* To allow the Air Force to conduct counternarcotics aircrew flight training operations in support of drug law enforcement and drug traffic interdiction, without lighted aircraft position or anticollision lights. *GRANT, March 11, 1997, Exemption No. 5305B.*

*Docket No.:* 26734.

*Petitioner:* Sierra Industries, Inc.

*Sections of the FAR Affected:* 14 CFR 91.9(a) and 91.531(a) (1) and (2).

*Description of Relief Sought/*

*Disposition:* To permit certain qualified pilots of its Cessna Citation 500 airplanes (Serial Nos. 0001 through 0349 only) with Supplemental Type Certificate (STC) No. SA8176SW and either STC No. SA2172NM or SA645NW to operate that aircraft without a pilot who is designated as second in command. *GRANT, March 26, 1997, Exemption No. 5517C.*