the six-month statutory deadline for concluding this investigation. USTR will look to the new government taking office in Paraguay in mid-August to move quickly to address the continuing serious deficiencies in Paraguay's intellectual property regime.

In light of the need for further time for negotiations to resolve these remaining issues, the USTR has determined pursuant to section 304(a)(3)(B)(i) of the Trade Act, that ''complex or complicated issues are involved in the investigation that require additional time.'' The USTR has therefore extended this investigation, and will make a final determination by November 17, 1998.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 98–21641 Filed 8–11–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Federal Aviation Administration

[Docket No. 29303]

Policy Regarding Airport Rates and Charges

AGENCY: Departmen of Transportation, Office of the Secretary, and Federal Aviation Administration.

ACTION: Advance notice of proposed policy, request for comments.

SUMMARY: This document requests suggestions for replacement provisions for the portions of the Department of Transportation's Policy Regarding Airport Rates and Charges (Policy Statement) issued June 21, 1996 and vacated by the United States Court of Appeals for the District of Columbia Circuit. The Department is beginning this proceeding in order to carry out its responsibility to establish reasonableness guidelines for airport fees.

DATES: Comments must be submitted on or before October 13, 1998. Reply comments will be accepted and must be submitted on or before October 26, 1998. Late filed comments will be considered to the extent possible.

ADDRESSES: Comments on this notice must be delivered or mailed, in quadruplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 29303, 800 Independence Ave., SW, Room 915G, Washington, DC 20591. All comments must be marked ''Docket No. 29303.'' Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: ''Comments to Docket No. . The postcard will be date stamped and mailed to the commenter.

Comments on this Notice may be delivered or examined in room 915G on weekdays, except on Federal holidays between 8:30 am and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Molar, Manager (AAS–400), (202) 267–3187 or Mr. Wayne Heibeck (AAS–400), Compliance Specialist, (202) 267–8726, Airport Compliance Division, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 1996, Office of the Secretary and the Federal Aviation Administration (together, the ''Department'' of Transportation or ''Department'') issued a Policy Statement (61 FR 31994 *et seq.*) on the fees charged by airports to air carriers and other aeronautical users. This Policy Statement responded to 49 U.S.C. 47129(b), which requires the Secretary to publish standards or guidelines to be used in determining whether an airport fee is reasonable in disputes between airports and airlines. (Section 113 of the Federal Aviation Administration Authorization Act of 1994, Public Law No. 103–305).

The Policy Statement reflected industry practice at commercial service airports of establishing fees for the use of airfields (*e.g.*, runways and taxiways) and public-use roadways on the basis of the airport operator's costs, using historic cost valuation (HCA requirement). This cost-based approach allowed airports to recover out-of-pocket costs and permitted airfield fees to include as a cost imputed interest on airport operator funds invested in the airfield, except funds obtained from airfield fees.

Recognizing that fees for other aeronautical facilities (*e.g.*, hangars and terminals) were often established through direct negotiations with individual users, the Department adopted a more flexible approach to nonairfield fees. The Department permitted these fees to be set by any reasonable methodology, including, among others, appraised fair market value. Among the factors it considered to support the disparate treatment, the Department found that airports had not exercised monopoly power in pricing these facilities and that state and local governments operate airports to provide aeronautical services for their communities to benefit their residents and improve the local economic base, not to generate revenue surpluses.

The Policy Statement modified the approach taken in the February 3, 1995 Interim Policy on determining the reasonableness of fees for nonairfield facilities. (Under the Interim Policy, airfield and nonairfield fees were considered reasonable only when capped at historical cost). The Policy Statement also discussed: the Department's preference for direct local negotiation between airport proprietors and users; the prohibition on unjustly discriminatory fees; the obligation to maintain a fee and rental structure that makes the airport as self-sustaining as possible under the circumstances at the airport; and the prohibition against unlawful diversion of airport revenues.

Both the Air Transport Association (ATA) and the City of Los Angles sought judicial review of the policy Statement. The ATA challenged the Department's approach to determining reasonable nonairfield fees and the decision to permit airfield fees to include any imputed interest charge. The City of Los Angeles challenged the HCA requirement for airfield fees.

The United States Court of Appeals for the District of Columbia Circuit vacated and remanded portions of the Policy Statement setting forth guidance on fair and reasonable airfield and nonairfield fees. *Air Transport Association of America* v. *Department of Transportation (ATA v. DOT)*, 119 F.3d 38 (D.C. Cir. 1997), as modified on rehearing, Order of Oct. 15, 1997. Specifically, the court vacated:

> paragraphs 2.4, 2.4.1, 2.4.1(a), 2.5.1, 2.5.1(a), 2.5.1(b), 2.5.1(c), 2.5.1(d), 2.5.1(e), 2.5.3, 2.5.3(a), 2.6, the Secretary's supporting discussion in the preamble, and any other portions of the rule *necessarily* implicated by the holding of [the August 1, 1997 opinion].

The court's opinion found fault with the Department's distinction between the airfield, on the one hand, and nonairfield facilities, on the other hand, with respect to the reasonableness of fees. The court believed the Department should have explained its fees policy in light of the economics of airport behavior and had failed to justify the distinction between airfield and nonairfield fees. The court also questioned the Department's justification for the disparate treatment of imputed interest charges.

On November 25, 1997, the Airports Council International-North America (ACI) and the American Association of Airport Executives (AAAE) filed a

Petition for Rulemaking proposing revisions of the Policy Statement (Docket No. OST–97–3158). The ACI/AAAE would have the Department permit airport proprietors to value airfield assets at an amount greater than historic cost (but no higher than a competitive market-based fair market value) and would permit an airport proprietor to charge imputed interest on aeronautical fees invested in aeronautical facilities. It would also permit an airport proprietor to charge current costs for airfield facilities (in addition to non-airfield facilities) not currently in use.

In support of its petition, the ACI/AAAE explained that it is the longstanding practice at many commercial service airports to charge fair market value for exclusive-use assets and to value airfield assets on the basis of historical cost. They asserted that their proposal would not necessarily change industry practice.

With regard to monopoly power, the ACI/AAAE disputed the claim that airports behave like monopolists and did not believe it necessary to hold all aeronautical fees to cost-of-service levels. Capping the fees at competitive market rates (as opposed to above-competitive market rate) would, in any event, prevent any monopolistic abuses, according to ACI/AAAE. Additionally, ACI/AAAE explained that airport proprietors engage in competition in order to maintain existing service and attract new air carriers. Further, the prohibition against unlawful airport revenue diversion acts as a check to monopolistic charging, according to these airport industry organizations. Airports compete to be gateways to domestic and international geographic regions, also. It is airlines that have market power in many city-pair markets, not airports, according to ACI/AAAE. Airlines wield power at airports through majority-in-interest clauses that provide veto power over construction or other capital projects.

ACI/AAAE also requested revisions to portions of the Policy Statement not vacated by the D.C. Circuit Court of Appeals. They proposed that the Department base its review of the reasonableness of airport fees on written submissions, rather than on a *de novo* review. They also proposed language that the Policy Statement and the expedited procedures created by 49 U.S.C. 47129 should not be applied to fees charged to signatories to an agreement.

On March 12, 1998, the ATA filed a Petition for Rulemaking proposing revisions to the Policy Statement. The ATA would have the Department reinstate the approach taken in the Interim Policy and require all aeronautical fees to be based on HCA valuation of assets. The result of this requirement would in turn be to reinstate the HCA cap on total aeronautical revenues, according to the ATA. In addition, the ATA would have the policy bar imputed interest in aeronautical charges, or at most permit imputed interest only on funds derived from nonaeronautical users. Finally, the ATA would have the Department reinstate the prohibition on charges for facilities not in use and apply that prohibition to all aeronautical charges.

In support of its request on the first two issues, ATA asserts that its proposal would address the concerns expressed by the Court of Appeals over the disparate treatment of airfield and nonairfield fees. In addition, the ATA argues that the proposal on asset valuation and imputed interest is not precluded by the court's opinion, which faulted the Department for lack of adequate justification. The ATA further argues that its approach is supported by the Department's recent determination on remand in the *Los Angeles International Airport (''LAX'') Rates Proceeding*, DOT Order 97–12–31 (December 23, 1997), and that the Department's rationales in that decision apply nationwide.

On the third issue, the ATA argues that the court vacated the prohibition on charging for facilities not in use only because the prohibition was limited to the airfield. The ATA argues that because the basic premise and reasoning for the prohibition were not challenged before the court, the ACI/AAAE should not be permitted to reopen the issue, especially when the ACI/AAAE have offered no persuasive reason to reject the Department's rationale for the prohibition.

Request for Comments

As a first step in responding to the court's decision, the Department is soliciting suggestions for appropriate replacement provisions for the portion of the Policy Statement vacated by the court. In addition, more information on the nature of specific airport fee practices and analysis of the economics of airport behavior are necessary before the Department proposes new fee guidelines.

The Department anticipates that these comments will be candid, will accurately reflect current industry practices, and will suggest procedures that can be implemented without undue disruption to the industry. We hope that both the air carriers and the airports will be able to provide us with the same type of information, from each party's perspective. This request for comment is limited to the provisions in the Policy Statement that the District of Columbia Circuit Court of Appeals vacated. These are the provisions subjected to the remand proceeding. Accordingly, the Department is not requesting, at this time, comments on other portions of the Policy Statement nor on our procedures under 49 U.S.C. 47129.

Specifically, in addition to proposals for replacement provisions, the Department requests the following:

- A description of the existing aeronautical fee structures and methodologies in place at specific airport(s) (in the case of aeronautical users, airports where the user pays fees).
- The rationale for those methodologies and, if certain fees are negotiated, including a discussion of the factors considered in arriving at the final fee product.
- The explanation of the basis for distinctions between fees charged for airfield versus non-airfield assets, if applicable (and, if applicable, between terminal facilities and hangars and maintenance facilities). The basis may include industry practice, airport market power, airline market power, etc.
- Evidence that would support a determination that airports do or do not possess or use monopoly power in setting aeronautical fees and a discussion of the comment's view of the issue. In the proceeding that led to the Policy Statement, airport operators and airport users disputed whether airport proprietors can and do exercise monopoly power in pricing essential aeronautical facilities.
- Proposals on methods to curb abuse of any monopoly power in a fee reasonableness standard.
- If comments suggest a change in fee structures or methodologies, comments should include an explanation of how the proposal would affect the economic behavior of airports and air carriers. Comments should also justify the proposal under the statutory reasonableness standard (49 U.S.C. 40116(e) and 47107(a)) and explain how the proposal addresses the concerns raised by the court.
- Comments should also address the suggestion in *ATA* v. *DOT* that ''Congress intended the Secretary to fashion a quasi-legislative uniform approach [for several different methodologies, depending on the circumstances] to measuring the reasonableness of airport fees.'' 119 F.3d at 40. Examples of approaches that would meet the court's concerns, accompanied by justification based on

industry practice, economic behavior, and other relevant criteria are invited.

• Comments requesting the Department to readopt any of the vacated provisions should include suggestions on how the Department could better justify doing so in light of the concerns raised by the court.

Accordingly, the Department is requesting comments on the matters stated above and is requesting proposals to replace provisions for the vacated portions of the Policy Statement.

Petitions for Rulemaking

The petitions for rulemaking of ACI/AAAE and ATA evidently start from different assumptions and propose significantly divergent policies. Moreover, as discussed above, the Department has determined that additional information and input is needed before a specific proposal is formulated. Accordingly, the Department is opening a new docket to receive comments on fee reasonableness. The Department is taking no further action on these petitions at this time. Therefore, this Advance Notice of Proposed Policy is limited to the issues raised by *Air Transport Association of America* v. *Department of Transportation,* 119 F.3d 38 (D.C. Cir. 1997). The substance of the two petitions will be considered along with the comments submitted by other interested parties. Comments on the petitions may be submitted during the reply period.

Issued in Washington, D.C. on August 5, 1998.

Rodney E. Slater,

Secretary of Transportation.

Jane F. Garvey,

Adminsitrator, Federal Aviation Administration.

[FR Doc. 98–21607 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending July 31, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4265.

Date Filed: July 30, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–ME 0059 dated July 14, 1998. Europe-Middle East Resolutions r1–35 PTC2 EUR–ME 0060 dated July 17, 1998—Minutes, PTC2 EUR–ME Fares 0019 dated July 28, 1998—Tables Intended effective date: January 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–21584 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport, Chicago, Illinois and Use FPC Revenue at Gary Regional Airport, Gary, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a FPC at Chicago O'Hare International Airport and use the revenue from a PFC at Gary Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 11, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Rose Loney, Commissioner, of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666. Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago O'Hare International Airport and use the revenue from a PFC at Gary Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 15, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 5, 1998.

The following is a brief overview of the application. PFC application number: 98–09–C–00–ORD.

Level the PFC: $3.00.

Original charge effective date: September 1, 1993.

Revised proposed charge expiration date: November 1, 2011.

Total estimated PFC revenue: $1,540,000.00.

Brief description of proposed project(s):

a. Phase II Airport Master Plan
b. Terminal Apron Expansion
c. Snow Removal Equipment

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on August 6, 1998.

Robert Benko,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–21602 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4209]

Red River Manufacturing, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Red River Manufacturing, Inc. (Red River), a manufacturer of trailers, of