The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Sitka, AK [Modified]

Sitka Rocky Gutierrez Airport, AK
(Lat. 57°02′50″ N., long. 135°21′42″ W.)

Within a 4.1 mile radius of Sitka Rocky Gutierrez Airport, and within 3.5 miles each side of the airport 209° radial extending from the 4.1-mile radius to 10.5 miles southwest of the airport, and within 3 miles each side of the airport 313° radial extending from the 4.1-mile radius to 11.1 miles northwest of the airport. This Class E airspace is effective during the dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Alaska Supplement.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Sitka, AK [Modified]

Sitka Rocky Gutierrez Airport, AK
(Lat. 57°02′50″ N., long. 135°21′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Sitka Rocky Gutierrez Airport, and within 4 miles each side of the airport 209° radial extending from the 6.6-mile radius to 14.5 miles south of the airport, and within 4 miles east and 8 miles west of the airport 313° radial extending from the 6.6-mile radius to 29 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 40-mile radius of lat. 56°51′34″ N., long. 135°33′05″ W.; and that airspace extending upward from 5,500 feet MSL within an 85-mile radius of lat. 56°51′34″ N., long. 135°33′05″ W.; excluding that airspace that extends beyond 12 miles from the coast.

Issued in Seattle, Washington, on November 13, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–27858 Filed 11–20–13; 8:45 am]

BILLING CODE 4910–13–P

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: Notice of Proposed Clarification of Policy; Request for Comments.

SUMMARY: This action proposes to amend the Federal Aviation Administration (''FAA'') Policy and Procedures Concerning the Use of Airport Revenue published in the **Federal Register** on February 16, 1999 (''Revenue Use Policy'') to clarify FAA's 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. The 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 notice publishes a proposed clarification of FAA's understanding 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 are used for certain aviation-related purposes. These purposes include airport capital and operating costs, and state aviation programs. In view of the interests of sellers and consumers of aviation fuel, and of state and local government taxing authorities in limits on use of proceeds from taxes touching aviation fuel, this notice solicits public comment on the proposed policy clarification. This notice also solicits comments about whether there are other reasonable interpretations regarding local taxes that are not enumerated here and should be considered by the FAA. Finally, this proposed policy clarification, if finalized, would apply prospectively to use of proceeds from both new taxes and to existing taxes that do not qualify for grandfathering from revenue use requirements.

DATES: Comments must be received by January 21, 2014. Comments that are received after that date will be considered only to the extent possible.

ADDRESSES: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may also send written comments by any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically. Docket Number: FAA 2013–0988.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to mail address above between 9:00 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Identify all transmissions with ''Docket Number FAA 2013–0988'' at the beginning of the document.

FOR FURTHER INFORMATION CONTACT: Randall S. Fiertz, Director, Office of Airport Compliance and Management Analysis, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3085; facsimile (202) 267–5257.

SUPPLEMENTARY INFORMATION:

Authority for the Proposed Policy Clarification

This notice is published under the authority described in Subtitle VII, part B, chapter 471, section 47122, and the Federal Aviation Administration Authorization Act of 1994, section 112(a), Public Law 103–305, 49 U.S.C. 47107(l)(1) (Aug. 23, 1994).

Background

The Airport and Airway Improvement Act of 1982, now codified at 49 U.S.C. 47101 *et seq.* (AAIA), establishes the Airport Improvement Program (AIP) for awarding Federal grants to airports in the United States. The AAIA requires that an airport sponsor accepting a grant under the AIP give assurances that any revenues received by the airport will be used for the capital and operating

expenses of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to air transportation. The purposes of the revenue use requirements are to prevent a ''hidden tax'' on air transportation, and to ensure that Federal airport grants are used to supplement funding for airport projects and are not simply used to substitute funds diverted to support local non-airport programs.

In the years following the 1982 enactment of the AAIA, there were several instances of new state taxes being imposed on the sale of aviation fuel at AIP-funded airports. The application of the AAIA revenue use requirements to these new taxes was not entirely clear.[1] In response, Congress adopted an amendment to the AAIA in 1987 to bring state and local taxes on aviation fuel within the scope of the airport revenue use requirements of the AAIA. The amendment also provided that revenues from a state fuel tax could be used for state aviation programs, in addition to the uses permitted for revenue received by the airport sponsor.

Specifically, 49 U.S.C. 47107(b), as amended in 1987, requires that recipients of airport grants under the Airport Improvement Program provide the FAA with written assurances on use of revenue that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of the airport; the local airport system; or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

This revenue use limitation does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator. The statute does not prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

However, the 1987 amendment itself was open to interpretation on the application of use requirements to different taxes on aviation fuel. The conference report on the 1987 amendment to the AAIA did not clearly resolve all of these issues. The report stated:

> The assurance requiring that local taxes on aviation fuel must be spent on the airport is intended to apply to local fuel taxes only, and not to other taxes imposed by local governments, or to state taxes. Similarly, this provision is not intended to modify subsequent provisions in the bill which clarify that a state may commit the proceeds from state aviation fuel taxes to state aviation agencies and that an airport may apply airport revenues for airport noise abatement on or off the airport.

(1987 U.S.C.C.A.N. vol. 5, pp. 2613–2614 (H.R. Rep. No. 100–123(II)); 2638–2639 (H.R. Rep. No. 100–484))

In 1996, Congress enacted 49 U.S.C. 47133 to extend substantially the of 49 U.S.C. 47107(b) identical requirements for use of airport revenue and state and local taxes on aviation fuel to all airports that have been the subject of Federal assistance, regardless of whether the airport is currently subject to an FAA grant agreement.

The conference report for the FAA Reauthorization Act of 1996, which added section 47133, noted that ''revenue diversion burdens interstate commerce even if the airport is no longer receiving grants,'' and that the new § 47133 would remove the ''perverse incentive'' for airports to refuse AIP grants in order to avoid Federal policies on use of airport revenue.

The FAA Reauthorization Act of 1994, Section 112(a), codified at section 47107(l) directed FAA to establish policies and procedures to assure the prompt and effective enforcement of illegal diversion of airport revenue. Accordingly, to implement Sections 47107(b) and 47133, FAA has issued a comprehensive Revenue Use Policy on the use of revenues received by an airport sponsor. The Revenue Use Policy, at Section II.b.2., includes state or local taxes on aviation fuel in the definition of airport revenue:

> 2. State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered to be airport revenue subject to the revenue-use requirement. However, revenues from state taxes on aviation fuel may be used to support state aviation programs or for noise mitigation purposes, on or off the airport.

On the subject of noise mitigation, section 47133(c) states: ''Rule of construction.—Nothing in this section may be construed to prevent the use of a state tax on aviation fuel to support a state aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.'' While the statute does not expressly state that aviation fuel tax proceeds can be used for noise mitigation, those proceeds could be used for any purpose for which an airport operator's revenue could be used, and that expressly includes noise mitigation.

Aviation Fuel

As background, aviation fuel includes two general categories of fuel used in aircraft: aviation gasoline, or ''avgas,'' used in reciprocating engines; and kerosene jet fuel used in turbine engines. The American Society for Testing and Materials (ASTM) has issued separate standards for aviation fuel: ASTM D910 and D6227 for avgas and ASTM D1655–13 and D6615–11a for civil jet fuel. Both avgas and jet fuel are high-quality petroleum products that are refined, delivered, and stored separately from other fuels, such as vehicle gasoline, which can be refined to lower standards. Since aviation fuel and other fuels are distinct products, it should not be difficult for state and local government to identify the tax revenues attributable solely to aviation fuels.

The Case for Clarification

The FAA believes that general clarification is needed of the Revenue Use Policy and agency interpretation of Sections 47107(b) and 47133 for reference by all state and local taxing authorities.

Prior FAA Opinions

The FAA has issued five opinions on particular state or local aviation taxes on aviation fuel since 1987:

In 1990, Senator Slade Gorton sought clarification on whether the State of Washington or a locality within the state could impose a sales tax on aviation fuel and use the proceeds for a non-aviation purpose. FAA concluded that if the State and its localities imposed a direct tax on aviation fuel and used it for non-

[1] Title 49 of the U.S.C., section 40116(e), permits states and political subdivisions to levy or collect certain taxes, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services. Title 49 U.S.C. 40116(b), states and political subdivisions may not levy or collect a tax on (1) an individual traveling in air commerce; (2) the transportation of an individual traveling in air commerce; (3) the sale of air transportation; or (4) the gross receipts from that air commerce or transportation. The FAA Authorization Act of 1994 Section 112(e), amended the Anti-Head Tax Act, 49 U.S.C. 40116(d)(2)(A) to prohibit State, political subdivision, or an authority acting for a State or political subdivision from collecting a new tax, fee, or charge which is imposed exclusively upon any business located at a commercial service airport or operating as a permittee of the airport, other than a tax, fee, or charge utilized for airport or aeronautical purposes.

aviation purposes, it would be contrary to revenue use restrictions under 49 U.S.C. 47107. The FAA advised that a local tax on aviation fuel after December 1987 can only be expended for the capital and operating costs of the airport. The FAA further advised that the state tax on aviation fuel could only be spent on the local airport system or a state aviation program or noise mitigation measures on or off the airport. The opinion explained that Congress, by expressly permitting specific uses of aviation fuel tax revenue, necessarily excluded other non-airport related uses.

In 1992, Senator Christopher Bond sought clarification on the limitations on the imposition of a use tax on aviation fuel. The FAA response acknowledged that states are permitted to impose a use tax on aviation fuel, but that the AAIA limits the use that a state may prescribe for taxes collected at Federally-funded airports. The FAA concluded that the collection of the proposed tax at Federally-funded airports in the state would be in conflict with Federal grant assurance requirements, because the state's tax statute provided for unlimited use of tax proceeds. The tax at issue in Missouri was a general sales tax, not a specific tax on aviation fuel.

In 2000, the Tennessee Legislature considered diverting funds designated for the Tennessee Transportation Equity Fund (Equity Fund) or allocating funds already in the Equity Fund to the state general fund. The proceeds in the Equity Fund came from a 4 1/2% tax on the sale of aviation fuel on Federally obligated airports. The FAA advised that such action would be contrary to Federal law. In addition, FAA explained that the State of Tennessee could not rely on the fact that its 1986 state aviation fuel tax was grandfathered to enact new measures to divert, directly or indirectly, revenue previously allocated to aviation use. The FAA further advised that passage of the legislation to permit general use of the proceeds from the aviation fuel tax would place in jeopardy continued Federal funding of airport and noise abatement projects at Federally-assisted airports throughout the State of Tennessee.

In 2009, the State of Nebraska had a statewide general sales tax upon retail sales of products and services, but at some point had exempted the sale of aircraft fuel from the sales tax. The Nebraska Legislature considered repealing that exemption and proposed to make the aircraft fuel tax proceeds payable to the state general fund. An opinion was sought on whether the proposed sales tax upon aircraft fuel would violate 49 U.S.C. 40116, 49 U.S.C. 47107, or other Federal statutes, rules, or regulations. The FAA advised that if the State Legislature imposed a sales tax on aviation fuel sold on an airport, the use of the proceeds from the tax to support non-aviation activities would be inconsistent with Federal law. Monies from such a tax would have to be spent to support either (1) the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property; or (2) a state aviation program. The FAA advised that the enactment of the legislation to permit general use of the proceeds from the aviation fuel tax could jeopardize continued Federal funding of airport and noise abatement projects at Federally-assisted airports throughout the State of Nebraska.

In 2010, a state senator from Hawaii wrote to the General Counsel of the United States Department of Transportation and FAA Chief Counsel requesting a legal opinion concerning a proposed broad state tax on petroleum products that would have applied to aviation fuel as well as to other fuels. The Hawaii Attorney General took the position that because the tax law did not use the term ''aviation fuel'' and was not limited to aviation fuel, the requirements of Sections 47107(b) and 47133 would not apply. The FAA, responding for both FAA and DOT General Counsel, disagreed, and concluded that the proposed tax would be invalid under Federal law unless the proceeds from the sale of aviation fuel were used consistently with the revenue use statutes, or unless aviation fuel was expressly exempted from the tax.

Interpretation of Sections 47107(b) and 47133

In each of FAA's five opinions since 1987, the agency interpreted the provisions of Sections 47107(b) and 47133 to apply to any state or local tax on aviation fuel, whether the tax was specifically targeted at aviation fuel or was a general sales tax on products that included aviation fuel without exemption. Also, FAA interpreted these statutes to make no distinction between taxes imposed by a local government or state government agency. The FAA continues to see this interpretation as the most reasonable construction of these statutes, in view of the letter and intent of the statutes. At the same time, the agency also understands that there can be alternate views of the interpretation of a facially ambiguous statute. The agency is also aware that any interpretation of this statute will have substantial practical consequences both for state and local government agencies and for industry consumers of aviation fuel.

Any question of statutory interpretation begins with looking at the plain language of the statute to discover its original intent. To discover a statute's original intent, courts first look to the words of the statute and apply their usual and ordinary meanings. ''[T]he meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms.'' *Caminetti* v. *U.S.,* 242 U.S. 470, 485 (1917). If the meaning is clear, the agency must ''give effect to the unambiguously expressed intent of Congress.'' *Barnhart* v. *Walton,* 535 U.S. 212, 217–218 (U.S. 2002), citing *Chevron* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–843 (1984). This principle is called 'the plain meaning rule.' The rule ''generally means when the language of the statute is clear and not unreasonable or illogical in its operation, the court may not go outside the statute to give it a different meaning.'' 2A Sutherland Statutory Construction section 46:1 (7th ed.) (Nov. 2012).

If after looking at the language of the statute the meaning of the statute remains unclear (e.g., the statute is silent or ambiguous), courts attempt to ascertain the intent of the legislature by looking at legislative history. 3A Sutherland Statutory Construction section 66:3 (7th ed.) (Nov. 2012). ''Where, as here, resolution of a question of Federal law turns on a statute and the intention of Congress, we look first to the statutory language and then to the legislative history if the statutory language is unclear.'' *Blum* v. *Stenson,* 465 U.S. 886, 896–897 (1984). When a Federal agency interprets a statute, the primary focus is to determine the intent of Congress. Where different interpretations are possible, a court must look to reasons for the enactment of the statute and the purposes to be gained by it and construe the statute in the manner which is consistent with the law's purpose. *Dole* v. *United Steelworkers of America,* 494 U.S. 26, 35 (1990). Where a statute ''is silent or ambiguous with respect to the specific issue,'' an agency's interpretation must be sustained if it is ''based on a permissible construction'' of the Act. Chevron, 476 U.S. at 843. The U.S. Supreme Court has ''long recognized that considerable weight should be accorded to an executive

department's construction of a statutory scheme it is entrusted to administer . . . .'' *Chevron* at 844. ''[T]he well-reasoned views of the agencies implementing a statute 'constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.' '' *Bragdon* v. *Abbott,* 524 U.S. 624, 642 (1998), citing *Skidmore* v. *Swift & Co.,* 323 U.S. 134, 139–140 (1944).

While the plain language of these statutes is not precise and could be subject to alternate interpretations, FAA believes that there are compelling reasons for the agency's past reading of the statutes. Alternate interpretations, while possible, tend to be inconsistent with the basic purposes of the legislation, including the need to avoid ''hidden taxation,'' and may not adequately account for language in legislative history indicating intent for a broader reach of the revenue use requirements.

> Statutory construction, however, is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme because the same terminology is used elsewhere in a context that makes its meaning clear . . . or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.,* 484 U.S. 365, 371 (1988).

Courts harmonize the various parts of a statute if possible, reconciling them in the manner that best carries out the overriding purpose of the legislation. 3B Sutherland Statutory Construction section 75:2 (7th ed.) (Nov. 2012).

Reasons for FAA's interpretation of Sections 47107(b) and 47133, and for the clarification of policy on use of aviation fuel tax proceeds proposed in this Notice, include:

Local taxes. The term ''local taxes'' is reasonably interpreted to include both local government and state government taxes. ''Local'' refers to the geographic locale where the tax is collected, not to local government. This interpretation is supported both by the statutory language and by legislative intent (see 1987 U.S.C.C.A.N. vol. 5, pp. 2613–2614 (H.R. Rep. No. 100–123(II)); 2638–2639 (H.R. Rep. No. 100–484)):

- The provisions permitting certain uses of a ''state tax'' in sections 47107(b)(3) and 47133(c) would be unnecessary and meaningless unless state taxes were included in the requirements of sections 47107(b)(1) and (2) and 47133(a), which refer only to ''local'' taxes.
- There is no apparent rationale for distinguishing between local government and state government taxes for accomplishing the purposes of the Federal airport revenue use requirements, i.e., the prohibition on airport revenue diversion and avoidance of hidden taxes on aviation. Under the statutory framework, state governments are allowed slightly broader use of proceeds from aviation fuel taxes—i.e., support of state aviation programs—but otherwise all state and local government taxes on aviation fuel are treated identically.
- Requiring aviation use of local government proceeds but not state proceeds from taxes on aviation fuel would substantially undermine the purpose and effect of Sections 47107(b) and 47133, and would be inconsistent with the congressional intent behind the 1987 amendment regarding taxation of aviation fuel.
- The AAIA uses the term ''political subdivisions of the state'' elsewhere in the statute where the intent is to refer to local government.

The FAA seeks comment on whether there are other reasonable interpretations regarding local taxes that are not enumerated here and should be considered by the FAA.

Taxes on aviation fuel. Given the basic purpose of the revenue use statutes, the term ''taxes on aviation fuel'' cannot reasonably be construed to mean only taxes specifically on aviation fuel, and not to include taxes on petroleum products generally or general sales taxes on all goods that touch on aviation fuel. It seems to us that the most reasonable test is whether payment of the tax is required for sale of aviation fuel, not what the tax is called or whether other products are also subject to the tax. For a number of reasons, FAA has to date interpreted sections 47107(b) and 47133 to apply to all taxes that touch the sale of aviation fuel, regardless of whether the taxes are specific or general. These reasons include:

- Limiting the application of sections 47107(b) and 47133 only to taxes specifically imposed solely on aviation fuel would substantially defeat the legislative purpose of these statutes. If revenues from taxes on aviation fuel could be used for any purpose simply because the tax also applied to other products, then state and local governments could easily structure taxes to circumvent the effect of sections 47107(b) and 47133.
- The amendment as originally adopted by Congress in 1987 referred to ''any local taxes on aviation fuel.'' The word ''any'' was removed in the 1994 recodification of the AAIA, but Congress made clear in adopting the recodification that changes in wording would not make any change in the meaning or construction of the statute. See Public Law 103–272, section 1 (July 5, 1994). In our view, ''any'' connotes broad applicability and without restriction.
- Legislation enacted in 1994 and 1996 adopted increasingly stringent requirements for use of airport revenue and added sanctions for violations of revenue use requirements, including civil penalty authority for violations of 47107(b) and 47133. This indicates congressional support for the most effective administration of the revenue use requirements, and argues against an interpretation that effectively leaves aviation fuel tax proceeds subject to potentially unlimited state taxation.

The FAA seeks comments on whether there are other reasonable interpretations of the phrase ''taxes on aviation fuel'' that are not enumerated here and should be considered by the FAA.

Other taxes. The conference report on the 1987 amendment to the AAIA states that:

> The assurance requiring that local taxes on aviation fuel must be spent on the airport is intended to apply to local fuel taxes only, and not to other taxes imposed by local governments, or to state taxes. (1987 U.S.C.C.A.N. vol. 5, pp. 2613–2614 (H.R. Rep. No. 100–123(II)); 2638–2639 (H.R. Rep. No. 100–484))

While this could be read out of context to appear to exempt all state taxes, including taxes on aviation fuel, from the statute, the report states in the next sentence that:

> * * * a state may commit the proceeds from state aviation fuel taxes to state aviation agencies * * * (H.R. Rep. No. 100–4844, p. 2638–2639)

Because this second sentence expressly refers to a permitted but still limited use of state aviation fuel tax revenues, it is clear that Congress intended for the statute to apply to such revenues. In our view, the reasonable reading of both provisions together is to take the term ''other taxes imposed by local governments, or to state taxes'' to mean taxes collected from sale of products other than aviation fuel. In other words, simply because a general tax collects revenues from sales of both aviation fuel and other products, the total revenues from the tax are not considered airport revenue. Only the tax collections from the sale of aviation fuel are subject to the statutory revenue use requirements. ''Other taxes'' means tax revenues collected from sale of products other than aviation fuel.

Grandfathered taxes. Sections 47107(b) and 47133 both contain a

''grandfather'' exception for taxes in effect on December 30, 1987. By itself the term ''in effect'' could mean enacted but not imposed, or enacted *and* actually being collected. The conference report to the Federal Aviation Reauthorization Act of 1996 clarifies congressional intent toward the scope of this exception:

> The conferees want to clarify that if a local fuel tax was enacted or adopted before December 30, 1987, but for which collections were not made until some significant period of time after December 30, 1987, it shall not be grandfathered pursuant to this section and all proceeds of such a tax must be used for the capital or operating costs of the airport, the local airport system, or pursuant to paragraph (3) of subsection (a).

Accordingly, the fact that an ordinance permitting taxes on aviation fuel existed in 1987 is not sufficient to exempt the tax from the revenue use requirements. A tax ordinance is grandfathered only if collection of the tax revenues on the sale of aviation fuel was initiated before December 30, 1987 or within a relatively short period after that date. If tax collections begin later, then the proceeds must be used for the purposes in sections 47107(b) and 47133.

Compliance

Airport sponsors. An airport sponsor applying for an AIP grant agrees to comply with a number of standard grant assurances, which are published on FAA's Airports Web site. See *http://www.faa.gov/airports/aip/grant_assurances/.* Grant Assurance no. 25, *Airport Revenues,* incorporates the provisions of 49 U.S.C. 47107(b) in each AIP grant agreement. So, executing a grant application involves assuring FAA that fuel taxes collected on aviation fuel will only be used for certain aviation purposes. Neither section 47107(b) nor section 47133 limits this requirement to taxes imposed by the airport sponsor; the assurance applies to any state or local government tax on aviation fuel. As FAA noted in a 2009 letter to the Hall County Airport Authority, Nebraska, regarding proposed state legislation to tax aviation fuel:

> * * * enactment of the [state] legislation to permit general use of the proceeds from the aviation fuel tax could jeopardize continued federal funding of airport and noise abatement projects at Federally-assisted airports throughout the [state].

Non-sponsor state and local governments. Title 49 U.S.C. 47133 contains a prohibition on use of aviation fuel tax proceeds for general purposes. This is a direct and self-implementing statutory requirement, and does not rely on contract terms, as does section 47107(b). Congress has provided two means for Federal enforcement of the terms of section 47133: Civil penalty authority in 49 U.S.C. 46301(a), and application to U.S. district court for judicial enforcement pursuant to 49 U.S.C. 47111(f).

Prospective application. In determining that a clarification of agency policy on use of aviation fuel tax proceeds is warranted, FAA is mindful that entities affected by this policy may not have fully understood the scope of Federal requirements in the past. Accordingly, it is FAA's intention to apply any final clarification of policy adopted in this proceeding prospectively, and to allow affected parties a reasonable time to bring state and local government taxes into compliance.

Request for comments. The clarification of policy proposed in this notice is intended to clarify FAA's interpretation of statutory requirements for use of airport revenue. In view of the potential interests of aircraft operators, aviation service providers, the aviation fuel industry, state and local taxing authorities and others in the Federal requirements applicable to aviation fuel taxes, this notice requests public comment on the proposed policy clarification.

Clarification of the Revenue Use Policy on Use of Proceeds From Taxes on Aviation Fuel

In consideration of the foregoing, FAA proposes to amend the Policy and Procedures 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 to be airport revenue subject to the revenue-use requirement. However, revenues from state taxes on aviation fuel may be used to support state aviation programs, and as airport revenue can be used for noise mitigation purposes, on or off the airport.

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 tax on aviation fuel may be used for any purpose for which other airport revenues may be used, and 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 commitment is not limited to taxes on aviation fuel imposed by the airport operator, and includes taxes on aviation fuel imposed by state government and other local jurisdictions.

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 a tax imposed by either a state government or a local government taxing authority;

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, 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.

Issued in Washington, DC on November 14, 2013.

Randall S. Fiertz,

Director, Office of Airport Compliance and Management Analysis.

[FR Doc. 2013–27860 Filed 11–19–13; 11:15 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

[CPSC Docket No. CPSC–2013–0040]

Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Consumer Product Safety Commission (Commission, CPSC, or we) proposes an interpretive rule to set forth principles and guidelines for the content and form of voluntary recall notices that firms provide as part of corrective action