U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

ORDER 5190.6B

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SUBJ: FAA Airport Compliance Manual

The Airport Compliance Program ensures airport sponsors' compliance with their federal obligations in the form of grant assurances, surplus and nonsurplus obligations, or other applicable federal law. The Airport Compliance Program is administered by the FAA headquarters Airport Compliance Division (ACO-100) based in Washington, DC.

This handbook provides guidance to FAA personnel on interpreting and administering the various continuing commitments airport sponsors make to the U.S. Government when they accept grants of federal funds or federal property for airport purposes. The handbook (i) analyzes the various federal obligations set forth in legislatively mandated airport sponsor assurances, (ii) addresses the nature of the assurances and the application of the assurances in the operation of public use airports, and (iii) facilitates interpretation of the assurances by FAA personnel. This manual was designed to provide guidance to FAA personnel pertaining to the Federal Aviation Administration (FAA) Airport Compliance Program.

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Chapter 1. Scope and Authority

1.1 Purpose. This Order sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of federal property for airport purposes. The Order, *inter alia,* analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

1.2. Audience. FAA personnel having responsibility for monitoring airport sponsor compliance with the sponsor's federal obligations.

1.3. Where Can I Find This Order? The Order will be available on the FAA web site.

1.4. Cancellation. This Order cancels FAA Order 5190.6A, dated October 2, 1989.

1.5. Introduction. This chapter discusses the scope of the Order, the sources of sponsor[1] federal obligations, and the Federal Aviation Administration's (FAA) authority to administer the Airport Compliance Program within the FAA Office of Airports (ARP). The FAA Airport Compliance Program is contractually based; it does not attempt to control or direct the operation of airports. Rather, the program is designed to monitor and enforce obligations agreed to by airport sponsors in exchange for valuable benefits and rights granted by the United States in return for substantial direct grants of funds and for conveyances of federal property for airport purposes. The Airport Compliance Program is designed to protect the public interest in civil aviation. Grants and property conveyances are made in exchange for binding commitments (federal obligations) designed to ensure that the public interest in civil aviation will be served. The FAA bears the important responsibility of seeing that these commitments are met. This Order addresses the types of these commitments, how they apply to airports, and what FAA personnel are required to do to enforce them.

1.6. Scope. This Order provides guidance, policy, and procedures for conducting a comprehensive and effective FAA Airport Compliance Program to monitor and ensure airport sponsor compliance with the applicable federal obligations assumed in the acceptance of airport development assistance.

[1] A sponsor is any public agency or private owner of a public use airport, as defined in the Airport and Airway Improvement Act of 1982 (AAIA), codified at 49 U.S.C. § 47102(24).

Grants and property conveyances are made in exchange for binding commitments (federal obligations) designed to ensure the public interest in civil aviation will be served.

The Federal Aviation Act of 1958 (FAA Act) transferred the Civil Aeronautics Administration's (CAA) functions to a new independent body, the Federal Aviation Agency, which had broader authority to address aviation safety. The FAA Act took safety rulemaking from the Civil Aeronautics Board (CAB) and entrusted it to the new Federal Aviation Agency. It also gave the Federal Aviation Agency sole responsibility for developing and maintaining a common civil-military system of air navigation and air traffic control. Seen here, Edward R. Quesada, the first Administrator of the Federal Aviation Agency, is sworn in by Chief Justice Earl Warren and President Dwight Eisenhower. (Photo: FAA)

1.7. Background. The Air Commerce Act of 1926 was the cornerstone of the federal government's regulation of civil aviation. This landmark legislation was passed at the urging of the aviation industry, whose leaders believed that aviation could not reach its full commercial potential without federal action to improve and maintain safety standards. The Air Commerce Act charged the Secretary of Commerce with fostering air commerce, issuing and enforcing air traffic rules, licensing pilots, certificating aircraft, establishing airways, and operating and maintaining aids to air navigation. A new Aeronautics Branch of the Department of Commerce assumed primary responsibility for aviation oversight.

In 1938, the Civil Aeronautics Act transferred the federal civil aviation responsibilities from the Commerce Department to a new independent agency, the Civil Aeronautics Authority. The legislation also expanded the government's role by giving the Civil Aeronautics Authority the power to regulate airline fares and to determine the routes that air carriers would serve. In 1940, President Franklin Roosevelt split the Civil Aeronautics Authority into two agencies, the Civil Aeronautics Administration (CAA) and the Civil Aeronautics Board (CAB). The CAA was responsible for air traffic control (ATC), airman and aircraft certification, safety enforcement, and airway development. The CAB was entrusted with safety rulemaking, accident investigation, and economic regulation of the airlines. Both organizations were part of the Department of Commerce. Unlike the CAA, however, the CAB functioned independent of the Secretary of Commerce. On the eve of America's entry into World War II, CAA began to extend its ATC responsibilities to takeoff and landing operations at airports. This expanded role eventually became permanent after the war. The application of radar to ATC helped controllers keep abreast of the postwar boom in commercial air transportation.

In the Federal Airport Act of 1946 (1946 Airport Act), Congress gave CAA the added task of administering the Federal Aid to Airports Program (FAAP), the first peacetime program of

financial assistance aimed exclusively at promoting development of the nation's civil airports. The approaching introduction of jet airliners and a series of midair collisions spurred passage of the Federal Aviation Act of 1958 (FAA Act). This legislation transferred CAA's functions to a new independent body, the Federal Aviation Agency, which had broader authority to address aviation safety. The FAA Act removed safety rulemaking from the CAB and entrusted it to the new Federal Aviation Agency. It also gave the Federal Aviation Agency sole responsibility for developing and maintaining a common civil-military system of air navigation and air traffic control, a responsibility CAA had shared with others.

In 1966, Congress authorized the creation of a cabinet department that would combine federal transportation responsibilities for all public modes of transportation. This new Department of Transportation (DOT) began full operations on April l, 1967. On that day, the Federal Aviation Agency became one of several modal organizations within DOT and received a new name, the Federal Aviation Administration (FAA). At the same time, CAB's accident investigation function was transferred to the new National Transportation Safety Board (NTSB).

The FAA has gradually assumed responsibilities not originally contemplated by the FAA Act. For example, the hijacking epidemic of the 1960s brought the agency into the field of aviation security. That function was later transferred to the Transportation Security Administration (TSA) in 2001. In 1968, Congress vested in the FAA Administrator the power to prescribe aircraft noise standards. The Airport and Airway Development Act of 1970 (1970 Airport Act) placed the agency in charge of a new airport aid program funded by a special aviation trust fund. The 1970 Airport Act also made FAA responsible for safety certification of airports served by air carriers. In 1982, Congress enacted the current grant statute, the Airport and Airway Improvement Act (AAIA), which established the Airport Improvement Program (AIP). FAA's mission expanded again in 1995 with the transfer of the Office of Commercial Space Transportation from the Office of the Secretary to FAA.

The airport system envisioned in the first National Airport Plan, issued in 1946, has been developed and nurtured by close cooperation between federal, state, and local agencies. The general principles guiding federal involvement[2] have remained largely unchanged for the National Plan of Integrated Airport Systems (NPIAS); the airport system should have the following attributes to meet the demand for air transportation:

- Airports should be safe and efficient, located at optimum sites, and be developed and maintained to appropriate standards.

- Airports should be operated efficiently both for aeronautical users and the government, relying primarily on user fees and placing minimal burden on the general revenues of the local, state, and federal governments.

- Airports should be flexible and expandable, able to meet increased demand and accommodate new aircraft types.

[2] Extracted from the Report to Congress, National Plan of Integrated Airport Systems (NPIAS) (2009-2013).

- Airports should be permanent, with assurance that they will remain open for aeronautical use over the long term.

- Airports should be compatible with surrounding communities, maintaining a balance between the needs of aviation and the requirements of residents in neighboring areas.

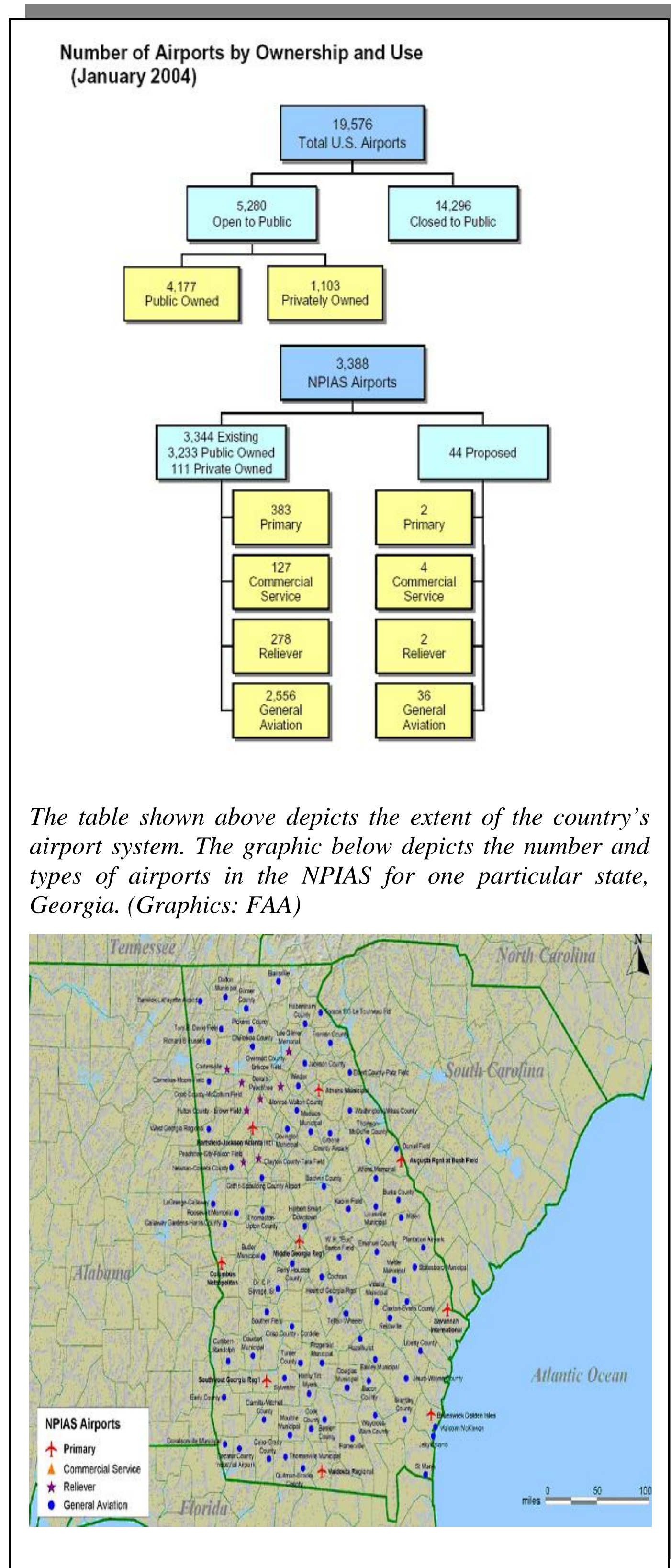
- Airports should be developed in concert with improvements to the air traffic control system.

- The airport system should support national objectives for defense, emergency readiness, and postal delivery.

- The airport system should be extensive, providing as many people as possible with convenient access to air transportation, typically not more than 20 miles of travel to the nearest NPIAS airport.

Airports should be permanent with assurance that they will remain open for aeronautical use over the long term.

- The airport system should help air transportation contribute to a productive national economy and international competitiveness.



The table shown above depicts the extent of the country's airport system. The graphic below depicts the number and types of airports in the NPIAS for one particular state, Georgia. (Graphics: FAA)

In addition to these principles specific to airport development, a guiding principle for federal infrastructure investment, as stated in Executive Order 12893, *Principles for Federal Infrastructure Investments* (January 26, 1994), is that such investments must be cost beneficial, i.e., must have a positive ratio of benefits to costs. The FAA implements these principles using program guidance to ensure the effective use of federal aid.

A national priority system guides the distribution of funds. Information used to establish the priority is supplemented by specific requirements for additional analysis or justification. For example, the airport sponsor must prepare a benefit-cost analysis for airport capacity development projects to be funded under the Airport Improvement Program (AIP).

The extent of the country's airport system, both at the national level and at the state level, is illustrated to the right.

1.8. Compliance Program Background. The Civil Aeronautics Act of 1938, as amended, and the FAA Act, as amended, charge the FAA Administrator with broad responsibilities for the regulation of air commerce in the interests of safety and national defense and for the development of civil aeronautics. Under these broad powers, FAA was tasked with promoting air commerce while seeking to achieve safety and efficiency of the total airspace system through direct regulation of airmen, aircraft, navigable airspace, and airport operations. The federal interest in advancing civil aviation has been augmented by various legislative actions that authorize programs for granting property, funds, and other assistance to local communities to develop airport facilities.

In each program, the airport sponsor assumes certain federal obligations, either by contract or by restrictive covenants in property deeds, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in deeds or grant agreements have been generally successful in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance. The FAA Airport Compliance Program establishes the policy and guidelines for monitoring the compliance of airport sponsors with their obligations to the United States and for ensuring that airports serve the needs of civil aviation.

The federal obligations a sponsor assumes in accepting FAA administered airport development assistance are mandated by federal statute.

1.9. Sources of Airport Sponsor Federal Obligations. The federal obligations a sponsor assumes in accepting FAA administered airport development assistance are mandated by federal statute and incorporated in the grant agreements and property conveyance instruments entered into by the sponsor and the United States Government, including:

a. Grant agreements issued under the various FAA-administered airport development grant programs through the years. These include, but are not limited to, the Federal Aid to Airports Program (FAAP), the Airport Development Aid Program (ADAP), and the Airport Improvement

Program (AIP) under 49 U.S.C. § 47101, et seq. This statutory provision provides for federal airport financial assistance for the development of public use airports under the AIP established by the AAIA. Section 47107 sets forth assurances that FAA must include in every grant agreement as the sponsor's conditions for receiving federal financial assistance. (The current version of 49 U.S.C. § 47107 can be found online.) Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal government.

The FAA is also charged with responsibility for monitoring and enforcing compliance of federally obligated sponsors with the provisions prohibiting exclusive rights set forth in section 303 of the Civil Aeronautics Act of 1938, as amended, and in section 308(a) of the FAA Act, as amended. The exclusive rights prohibition was designed to ensure that airports maintain public access and availability to all aeronautical users at airports funded with federal assistance. This applies to all commercial and noncommercial aeronautical users alike, from private aircraft operators (i.e. general aviation) to airlines and all aeronautical ground services. (Photos: FAA)

b. Instruments of surplus property transfer issued under the provisions of section 13(g) of the Surplus Property Act of 1944, as amended, 49 U.S.C. §§ 47151-47153.

c. Instruments of nonsurplus conveyance issued under section 16 of the 1946 Airport Act, as amended; under section 23 of the 1970 Airport Act, as amended; or under section 516 of the AAIA, as amended. Following recodification, the statute governing this type of conveyance appears at 49 U.S.C. § 47125.

d. Exclusive Rights under section 303 of the Civil Aeronautics Act of 1938, as amended, and section 308(a) of the FAA Act, as amended, now codified at 49 U.S.C. § 40103(e).

e. Title VI of the Civil Rights Act of 1964, as amended.

1.10. FAA Authority to Administer the Compliance Program. Responsibility for monitoring and ensuring airport sponsor compliance with applicable federal obligations is vested in the Secretary of Transportation by statute and delegated to the FAA:

a. Surplus Property Transfers. Surplus property instruments of transfer were issued by the War Assets Administration (WAA) and are now issued by its successor, the General Services Administration (GSA). However, section 3 of Public Law (P.L.) No. 81-311 specifically imposes upon FAA the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is, or has been, conveyed to nonfederal public agencies pursuant to the Surplus Property Act of 1944, as amended.

b. Nonsurplus Property Transfers. Nonsurplus property transfers are conveyances under section 16 of the 1946 Airport Act, under section 23 of the 1970 Airport Act, or under section 516 of the AAIA. The statutory provision now appears at 49 U.S.C. § 47125. These are also referred to as nonsurplus property conveyances. Instruments of property conveyance issued under these sections are also issued by agencies other than the FAA. The conveyance instrument, deed, or quitclaim document assigns monitoring and enforcement responsibility to the FAA.

c. Grant agreements from the FAAP, ADAP, and the AIP programs. FAA is vested with jurisdiction over monitoring and enforcing grant agreements; the FAA and its predecessor, the CAA, execute such agreements for, and on behalf of, the United States.

d. Exclusive Rights Prohibition. The FAA is also charged with responsibility for monitoring and enforcing compliance with the provisions prohibiting exclusive rights set forth in section 303 of the Civil Aeronautics Act of 1938, as amended, and in section 308(a) of the FAA Act, as amended, 49 U.S.C. § 40103(e).

e. Amendment, Modification, or Release of Airport Sponsor Federal Obligations. The authority of the FAA to release or modify the terms and conditions of airport sponsor grant agreements varies based on the respective types of agreements. P.L. No. 81-311 prescribes specific circumstances and conditions under which the FAA may release, modify, or amend the terms and conditions of surplus property conveyances. While the FAA has the ability to amend, modify, or release an airport sponsor from a federal obligation, the FAA is not required to do so. In other words, there is no obligation for the FAA to release a sponsor from any of its obligations. For additional information, refer to chapter 22 of this Order, *Releases from Federal Obligations*.

1.11. through 1.14. reserved.

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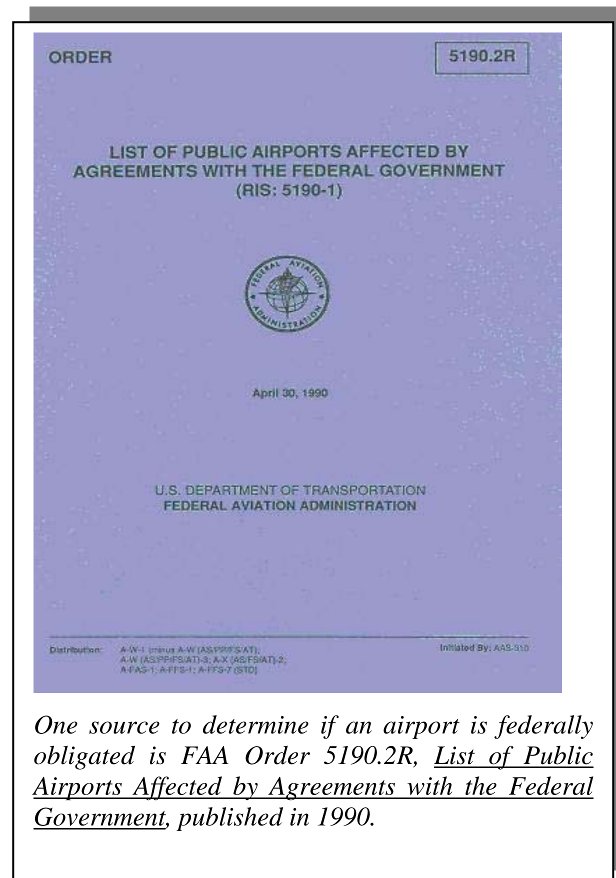
Chapter 2. Compliance Program

2.1. Introduction. This chapter is an introduction to the Federal Aviation Administration (FAA) Airport Compliance Program. The basis of sponsor federal obligations resides with federal statute, the Airport Improvement Program (AIP) grant program, land transfer documents, and surplus property agreements. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to advise sponsors of their compliance requirements and to ensure that sponsors comply with their federal obligations.


ORDER 5190.2R

LIST OF PUBLIC AIRPORTS AFFECTED BY AGREEMENTS WITH THE FEDERAL GOVERNMENT (RIS: 5190-1)

April 30, 1990

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

Distribution: A-W-1 (minus A-W (AS/PP/FS/AT); A-W (AS/PP/FS/AT)-3; A-X (AS/FS/AT)-2; A-FAS-1; A-FFS-1; A-FFS-7 (STD)

Initiated By: AAS-310

One source to determine if an airport is federally obligated is FAA Order 5190.2R, List of Public Airports Affected by Agreements with the Federal Government, published in 1990.

2.2. Background. The FAA Airport Compliance Program enforces contractual federal obligations that a sponsor accepts when receiving federal grant funds or the transfer of federal property. These contractual federal obligations serve to protect the public's interest in civil aviation and achieve compliance with federal statutes. Given the great number of federally obligated airports and the variety of federal obligations, the compliance program primarily focuses on education with the goal of achieving voluntary compliance. The program supplements this educational approach with periodic compliance monitoring and vigorous investigation of potential violations.

2.3. Determining if an Airport is Federally Obligated.

a. General Information. One source for determining if an airport is federally obligated is FAA Order 5190.2R, *List of Public Airports Affected by Agreements with the Federal Government*, published in 1990. The Order contains a listing of all publicly and privately owned public use airports that are affected by agreements with the federal government and handled by the FAA.

Line 25 of Form 5010, The Airport Master Record, indicates whether the airport is obligated. Form 5010 is available online.

b. Information Codes. In FAA Order 5190.2R and on Form 5010, relevant federal obligation data is presented in the form of codes, such as G, R, S or P. Each code represents a particular federal obligation type. (Refer to the list of Federal Obligation Codes at the end of this chapter for details.)

2.4. Objectives of the Compliance Program.

a. Voluntary Compliance and Enforcement Actions. Most violations of sponsor federal obligations are not a deliberate attempt to circumvent federal obligations. Generally, violations occur because sponsors do not understand specific requirements or how a requirement applies to a specific circumstance. Therefore, the program works to ensure sponsors are fully informed of their federal obligations and of the applicability of those obligations to the circumstances at a given airport. Informal resolution is the preferred course of action. (See chapter 5 of this Order, *Complaint Resolution*.)

When all reasonable efforts have failed to achieve voluntary compliance on the part of the sponsor, the FAA may take more formal compliance actions. This may result in withholding federal funds, issuing a Notice of Investigation (NOI) under 14 Code of Federal Regulations (CFR) Part 16, or initiating judicial action if warranted. An option available to the ADOs and regional airports divisions during the informal resolution process is to limit AIP grant funding to entitlement funding only; issuing a NOI or initiating formal legal action are options exercised by the FAA Headquarters (HQ) Airport Compliance Division (ACO-100) in accordance with 14 CFR Part 16 procedures.

b. Advisory Services. Generally, the FAA will not substitute its judgment for that of the airport sponsor in matters of administration and management of airport facilities.

However, the FAA is in a position to assist airport sponsors in achieving voluntary compliance through guidance and counsel about the nature and applicability of federal compliance obligations affecting their airports.

In developing priorities for the regional administration of the compliance program, FAA personnel should direct attention to those airports with the greatest potential for compliance problems and to issues that have the largest impact on aeronautical users. Variables such as the number of based aircraft and annual aircraft operations are valid indicators of the impact of a particular airport. The classification of the airport – such as being a reliever airport like the Martin State Airport in Maryland (above) – is another valid indicator of the role and the impact a particular airport has in the nation's airport system. (Photo: FAA)

c. Compliance Oversight. Given the approximately 2,800 federally obligated airports, the FAA cannot practically conduct compliance oversight with an annual visit or review at each airport.

However, periodic monitoring of a certain number of federally obligated airports is necessary to identify individual issues and problems that may be indicative of system deficiencies.

d. Uniform Application of Remedies. FAA personnel involved in compliance should make every effort to obtain voluntary compliance; enforcement actions on nonsafety compliance matters should be taken only after exhausting all other appropriate measures.

When enforcement action is taken, it must be fair and applied in a uniform manner. When safety issues are identified, however, expeditious action is expected.

Consistent with the FAA mission, the most important objective in FAA's oversight of the compliance program is to ensure and preserve safety at federally obligated airports. Safety includes, among other things, maintaining runways, taxiways, and other operational areas in a safe and usable condition; keeping runway approaches cleared; providing operable and well-maintained marking and lighting in order to ensure safe aircraft operations. (Photo: FAA)

When safety issues are identified, expeditious action is expected.

2.5. Program Elements. Education is the primary tool for achieving program compliance. However, to maintain program integrity, FAA personnel must also include limited surveillance to detect recurring deficiencies, system weaknesses, or abuses by sponsors. Investigation and resolution of complaints is the most important tool of the compliance program.

When FAA efforts fail to obtain voluntary compliance, enforcement actions must be pursued.

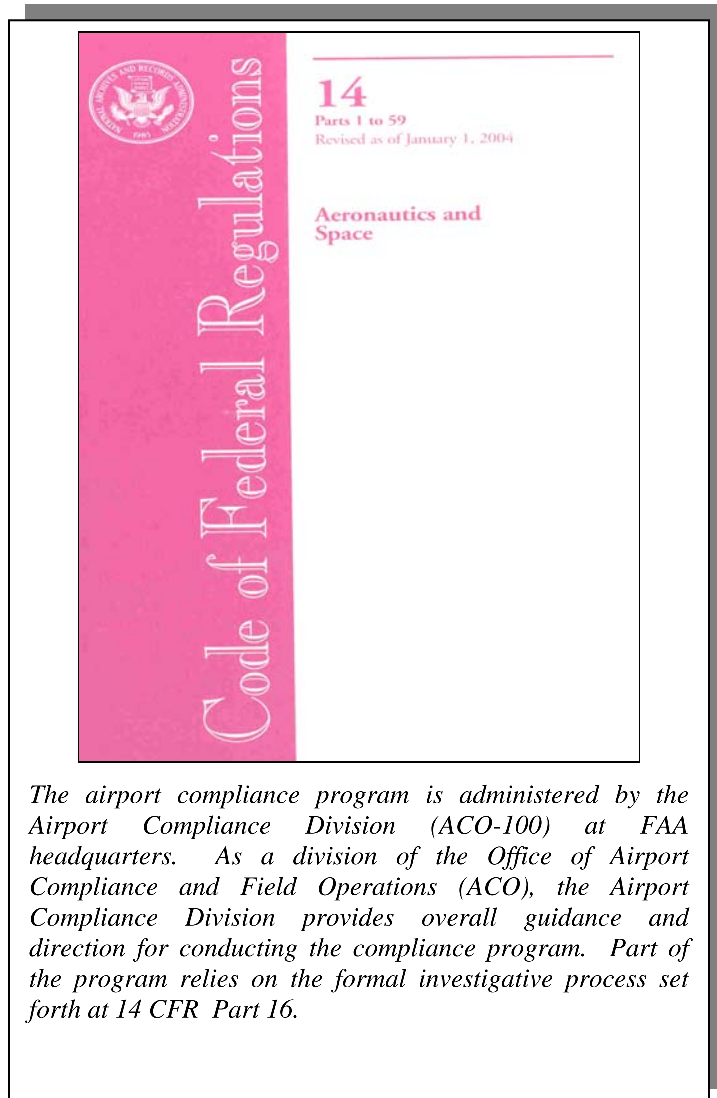
a. Education. The education of sponsors may take many forms, beginning when the sponsor receives its first federal grant or transfer of federal property. ADOs and FAA regional airports divisions should discuss with first-time sponsors the impact of specific grant assurances and/or land transfer federal obligations and let them know that the offices will continue to provide advisory services.

At least once every three years, FAA personnel should advise sponsors in writing to review their grant or land-transfer federal obligations. Compliance personnel should also provide sponsors with information or material to aid sponsors' understanding of their federal obligations.

Finally, sponsors should be encouraged to conduct or participate in periodic seminars or courses for federally obligated airports. In many instances, FAA regional airports divisions host or sponsor airport-related events, such as conferences, that are good opportunities to disseminate information regarding airport compliance.

b. Surveillance. Surveillance is the process of gathering data on the condition or operation of an airport to determine the sponsor's compliance with federal obligations. FAA personnel routinely gather such information during their site visits to airports. In addition, information is gathered from other sources, including other FAA offices, state inspectors, airport tenants, and information forms, such as FAA Form 5010, *Airport Master Record.*[3]

FAA personnel may also conduct surveillance by means of telephone discussions or written correspondence with appropriate airport officials to learn if potential problems exist. Further follow up through on-site surveillance may or may not be necessary depending on the information obtained. The information received should be documented and maintained for future reference. Alternately, FAA personnel may provide sponsors with printed material that identifies and explains the federal obligations accepted by that sponsor.



The airport compliance program is administered by the Airport Compliance Division (ACO-100) at FAA headquarters. As a division of the Office of Airport Compliance and Field Operations (ACO), the Airport Compliance Division provides overall guidance and direction for conducting the compliance program. Part of the program relies on the formal investigative process set forth at 14 CFR Part 16.

Findings from surveillance inspections should be shared with other federally obligated airports as an additional means of educating sponsors.

[3] In many instances, state aviation inspectors gather the data for inclusion in FAA Form 5010 on behalf of the FAA.

c. Investigations of Complaints. ADOs and regional airports divisions must investigate complaints from aeronautical users alleging that an airport is not complying with its federal obligations. FAA personnel should complete the investigation in a timely manner and notify the complainant in writing of the outcome of any investigation. Informal complaints need to be addressed in a timely manner (within 120 days, if possible). When an investigation reveals a violation of a federal obligation, ADOs and regional airports divisions should initiate a timely dialogue with the affected airport and attempt to achieve voluntary complianceas soon as practicable.

Safety-related issues may require expedited action on the part of the FAA. Where appropriate, airport sponsors should also use an airport safety self-inspection checklist as a means to assist in ensuring safe airport operations.

2.6. Priorities and Emphasis.

When pursuing remedial or enforcement actions, the FAA considers all federal airport obligations important. However, consistent with the FAA mission, the most important objective in FAA's oversight of the compliance program is to ensure and preserve safety at all federally obligated airports.

Ensuring safe airport operations includes maintaining runways, taxiways, and other operational areas in a safe and usable condition; keeping runway approaches cleared; providing operable and well-maintained marking and lighting; etc.

In developing priorities for compliance surveillance in the region, FAA personnel should direct attention to those airports with the greatest potential for compliance problems and to those issues that have the largest impact on aeronautical users.

2.7. Responsibilities.

a. The airport compliance program is administered by the Airport Compliance Division (ACO-100) at FAA headquarters. As a division of the Office of Airport Compliance and Field Operations (ACO), the Airport Compliance Division provides overall guidance and direction for conducting the compliance program. It conducts evaluations to determine compliance with the guidance contained in this Order. It also looks for opportunities to improve the quality of the compliance program. The Airport Compliance Division conducts recurrent training and on-request training to ADOs and regional airports divisions. Additionally, the Airport Compliance Division is responsible for elaborating policy, supporting ADOs and regional airports divisions in conducting informal resolution, and resolving formal complaints. The Airport Compliance Division also directs the formal enforcement of FAA grant obligations, as well as surplus and nonsurplus property conveyances. The Airport Compliance Division prepares generalized educational materials for ADOs and regional airports divisions to use in their compliance programs.

b. ADOs and regional airports divisions are responsible for the day-to-day conduct of the compliance program in accordance with the direction provided in this Order. This guidance establishes the basic requirements and goals to be achieved in the compliance program. Compliance is an essential component in safeguarding both the federal investment and the public's interest in civil aviation. This also includes ensuring public access to the national system of airports.

c. Only the Director, Office of Airport Compliance and Field Operations (ACO-1) in FAA headquarters, generally through the formal Part 16 process, can order the suspension of primary entitlement grants. However, the ADOs and regional airports divisions – in conjunction with ACO-100 – can make decisions to suspend discretionary funding, including nonprimary entitlement grants.

2.8. Analyzing Compliance Status.

a. Data Analysis. FAA compliance personnel should carefully analyze accumulated data in evaluating a sponsor's compliance performance and identifying appropriate actions to correct any deficiencies noted. More often than not, when apprised of a deficiency, a sponsor will ask for recommendations to correct the problem.

b. Preliminary assessment. FAA must make a judgment call in all cases as to whether a sponsor is reasonably meeting its federal commitments. A sponsor meets its commitments when:

(1). The federal obligations are fully understood;

(2). A program (e.g., preventive maintenance, leasing policies, operating regulations, etc.) is in place that the FAA deems adequate to carry out the sponsor's commitments;

(3). The sponsor satisfactorily demonstrates that such a program is being carried out; and,

(4). Past compliance issues have been addressed.

c. Follow-up.

(1). Each ADO or regional airports division should develop a system to follow up and ensure that airports take action on any identified compliance deficiencies until the airport sponsor achieves compliance. Failing to follow up on compliance issues at the ADO or regional airports division level may lead to unnecessary and resource-intensive formal complaints.

(2). FAA compliance personnel must initiate action at those airports that are not being maintained or operated in accordance with the sponsors' commitments, especially if safety is involved. The offices should make an effort to help the sponsor meet these commitments voluntarily. When the sponsor has demonstrated an unwillingness to make the corrections necessary to achieve compliance, the offices must pursue corrective enforcement and document such actions.

(3). FAA may undertake a formal compliance inspection in response to a complaint. Such an inspection may also take place whenever the FAA has any reason to believe that a sponsor may be in violation of one or more of its federal obligations. Appendix G of this Order, *Formal Compliance Inspection*, contains the procedures and form(s) to follow in a formal compliance inspection.

2.9 Compliance Determinations. FAA personnel must remain aware of which airports are not in compliance in their areas of responsibility. Before the ADO can issue a federal airport grant, it must make an official determination that the sponsor is in compliance with its federal obligations.

A determination of compliance is a judgment call based on a review of all available data concerning the airport and the circumstances involving its operation. The review need not include a formal compliance inspection or a formal compliance determination. It should, however, include the properly documented review of available data on hand. At the region's discretion, the ADO may rely on a sponsor's self-certification of compliance when making a compliance determination prior issuing a grant. However, it is important that all data used to support this determination, including informal complaints and related materials, be analyzed and recorded in the appropriate files.

a. Notification. When the ADO's assessment of the sponsor's performance concludes that the sponsor is not meeting its federal compliance obligations, the ADO must give the sponsor notification of apparent noncompliance. Failure to provide such notice delays the corrective action and the problem may become more difficult to resolve at a future date. Prompt communication between the ADO and the sponsor about compliance deficiencies is essential to solving problems early before they become more difficult to resolve.

b. Actions Needed to Correct Noncompliance. The ADO notification must clearly spell out the actions needed to correct the compliance deficiency. The office should also perform a timely follow-up review to ensure completion of the corrective action.

2.10. Airport Noncompliance List (ANL). As a result of its compliance functions, FAA headquarters Airport Compliance Division (ACO-100) issues an *Airport Noncompliance List* (ANL) on a regular basis.

The ANL lists those obligated airports with egregious violations where the airport sponsor has been informally determined to be in noncompliance with its grant assurances and/or surplus property obligations as of a particular date. An airport is placed on the ANL if it falls in one or more of the following categories and the violations are so egregious as to preclude additional federal financial assistance until the issues are resolved:

a. Airports with a formal finding of noncompliance under 14 CFR Part 16 if corrective action has not been taken,

b. Airports listed in the Airport Improvement Program (AIP) Report to Congress under 49 U.S.C. § 47131 for certain land use violations,

c. Airports that are clearly in noncompliance despite FAA requests to the sponsor for corrective action, and

d. Airports where the violations are so egregious as to preclude additional federal financial assistance until the issues are resolved.

The ANL lists obligated airports with egregious violations where the airport sponsor has been informally determined to be in noncompliance with its grant assurances and/or surplus property obligations as of a particular date.

The sponsor will be considered in compliance if the physical condition of paving, lighting, grading, runway, marking, etc, meet applicable standards and if the sponsor is following realistic procedures to preserve these facilities in an acceptable condition. This requirement also applies to federally obligated airports in the national system that were previously military bases. In this photograph, we see the ramp of the Naval Air Station Miami in 1943. Today, this former Navy base is known as the Opa-Locka Airport near Miami, Florida. (Photo: National Archives)

The ANL is essentially an internal notification from ACO-100 to other FAA Airports offices regarding which airports are not to receive any further discretionary grants authorized under 49 U.S.C. § 47115 and the General Aviation $150,000 apportionment under 49 U.S.C.

§ 47114(d)(3)(A) until corrective action is achieved. The ANL may also include formal findings of noncompliance under 14 CFR Part 16 that support the withholding of grants under 49 U.S.C. § 47114(c).

ACO-1 updates the ANL as changes occur. The listing is automatically superseded as soon as a new ANL is issued. Additional information on those airports having land use compliance issues may be available under the "Planning Section" of the *System of Airports Reporting (SOAR)* by using the airport identification (ID) function or by generating a Compliance Report from the same database. For a generic sample *Airport Noncompliance List*, refer to Appendix G-1 of this Order.

2.11. through 2.15. reserved.

Federal Obligation Codes

CODE	DEFINITION
B	Privately owned airport obligated by agreement, Order 6030.40.
M	Privately owned airport obligated by grant agreement under AIP.
G	Grant agreement under FAAP, ADAP, or AIP
P	Surplus Property Agreement under Public Law 80–289 (real property only)
R	Surplus Property Agreement under Regulation 16–WAA.
S	Conveyance under Section 16 or Section 23.
V	Advance Planning Agreement under FAAP.
X	Obligations assumed by transfer.
Y	Assurance pursuant to Title VI, Civil Rights Act.
Z	Conveyance under Section 303, Federal Aviation Act.
1	Expired Grant Agreement; however, statutory Exclusive Rights Prohibition (Federal Aviation Act, Section 308A) remains in force for as long as the property is used as an airport.
2	Expired Section 303 Conveyance; however, Statutory Exclusive Rights Prohibition (Federal Aviation Act, Section 308A) remains in force for as long as the property is used as an airport.
1	Airports certificated under FAR Part 139.
2	A civil airport where military use is subject to a lease.
3P	The airport is PARTIALLY released from National Emergency Use Provision.
3E	The airport is ENTIRELY released from National Emergency Use Provision.
4	The airport includes surplus real property which has been conveyed for, or converted to, revenue production.
5	An exclusive military use airport.
6	The airport is in the process of disposal or reversion.
7P	A "Letter of Intent" has been issued to release a PART of the airport property.
7E	A "Letter of Intent" has been issued to release the ENTIRE airport property.
8	An exclusive right has been granted (whether or not in violation of an agreement).
8P	An exclusive right has been granted (whether or not in violation of an agreement); however, this exclusive right is of the "proprietary" type.
8N	An exclusive right exists through a P.L. 80–289 deed providing an exemption for fuel and oil sales (not overridden by prior or subsequent grant agreement); however, and exclusive right for fuel and oil sales has not been granted.

Sample FAA Form 5010 Airport Master Record

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AIRPORT MASTER RECORD

PRINT DATE: 09/23/2004
AFD EFF 08/05/2004
Form Approved OMB 2120-0015

> 1 ASSOC CITY: CAHOKIA/ST LOUIS 4 STATE: IL LOC ID: CPS FAA SITE NR: 04458.8*A
> 2 AIRPORT NAME: ST LOUIS DOWNTOWN 5 COUNTY: ST CLAIR IL
3 CBD TO AIRPORT (NM): 01 E 6 REGION/ADO: AGL/CHI 7 SECT AERO CHT: ST LOUIS

GENERAL

10 OWNERSHIP: PUBLIC
> 11 OWNER: BI-STATE DEVELOPMENT AGENCY
> 12 ADDRESS: 707 N FIRST ST
ST LOUIS, MO 63102-2595
> 13 PHONE NR: 314-982-1588
> 14 MANAGER: ROBERT L. MCDANIEL
> 15 ADDRESS: 10 ARCHVIEW DR
CAHOKIA, IL 62206
> 16 PHONE NR: 618-337-6060
> 17 ATTENDANCE SCHEDULE:

MONTHS	DAYS	HOURS
ALL	ALL	ALL

18 AIRPORT USE: PUBLIC
19 ARPT LAT: 38-34-14.608N ESTIMATED
20 ARPT LONG: 090-09-22.396W
21 ARPT ELEV: 413 SURVEYED
22 ACREAGE: 940
> 23 RIGHT TRAFFIC: 30R, 12R
> 24 NON-COMM LANDING: NO
25 NPIAS/FED AGREEMENTS:NGY
26 FAR 139 INDEX:

SERVICES

> 70 FUEL: 100LL A
> 71 AIRFRAME RPRS: MAJOR
> 72 PWR PLANT RPRS: MAJOR
> 73 BOTTLE OXYGEN:
> 74 BULK OXYGEN: HIGH
75 TSNT STORAGE: HGR TIE
76 OTHER SERVICES:
CHTR INSTR RNTL SALES

FACILITIES

> 80 ARPT BCN: CG
> 81 ARPT LGT SKED: DUSK-DAWN
> 82 UNICOM: 122.950
> 83 WIND INDICATOR: YES-L
84 SEGMENTED CIRCLE: NONE
85 CONTROL TWR: YES
86 FSS: SAINT LOUIS
87 FSS ON ARPT: NO
88 FSS PHONE NR: 636-536-2980
89 TOLL FREE NR: 1-800-WX-BRIEF

BASED AIRCRAFT

90 SINGLE ENG:	163
91 MULTI ENG:	55
92 JET:	34
TOTAL:	252
93 HELICOPTERS:	13
94 GLIDERS:	0
95 MILITARY:	0
96 ULTRA-LIGHT:	0

OPERATIONS

100 AIR CARRIER:	0
101 COMMUTER:	0
102 AIR TAXI:	4,000
103 G A LOCAL:	90,000
104 G A ITNRNT:	75,000
105 MILITARY:	1,000
TOTAL:	170,000

OPERATIONS FOR
MOS ENDING

RUNWAY DATA

> 30 RUNWAY IDENT:	04/22	12L/30R	12R/30L
> 31 LENGTH:	2,799	3,800	6,997
> 32 WIDTH:	75	75	100
> 33 SURF TYPE-COND:	ASPH-G	CONC-G	ASPH-G
> 34 SURF TREATMENT:			
35 GROSS WT: SW	12	30	43
36 (IN THSDS) DW		30	71
37 DTW			100
38 DDTW			
LIGHTING/APCH AIDS			
> 40 EDGE INTENSITY:	MED	MED	MED
> 42 RWY MARK TYPE-COND	BSC - G / BSC - G	BSC - F / BSC - F	PIR - G / PIR - G
> 43 VGSI	/	/	V4R / V4L
44 THR CROSSING HGT	/	/	50 / 50
45 VISUAL GLIDE ANGLE	/	/	3.00 / 3.00
> 46 CNTRLN-TDZ	N - N / N - N	- / -	N - N / N - N
> 47 RVR-RVV	- N / - N	- / -	- N / - N
> 48 REIL	N / N	Y / Y	Y / N
> 49 APCH LIGHTS	/	/	/ MALSR
OBSTRUCTION DATA			
50 FAR 77 CATEGORY	A(V) / A(V)	A(V) / A(V)	B(V) / PIR
> 51 DISPLACED THR	/	/	/
> 52 CTLG OBSTN	TREE / TOWER	TREE / TREE	TREE / TREE
> 53 OBSTN MARKED/LGTD	/ L	/	/
> 54 HGT ABOVE RWY END	28 / 72	92 / 60	29 / 100
> 55 DIST FROM RWY END	799 / 1,645	3,840 / 2,674	806 / 3,803
> 56 CNTRLN OFFSET	52R / 15R	254L / 306R	494L / 20R
57 OBSTN CLNC SLOPE	21:1 / 20:1	39:1 / 41:1	20:1 / 36:1
58 CLOSE-IN OBSTN	N / N	N / N	N / N
DECLARED DISTANCES			
> 60 TAKE OFF RUN AVBL (TORA)	/	/	/
> 61 TAKE OFF DIST AVBL (TODA)	/	/	/
> 62 ACLT STOP DIST AVBL (ASDA)	/	/	/
> 63 LNDG DIST AVBL (LDA)	/	/	/

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

110 REMARKS:

A 081 MIRL RY 12R/30L PRESET ON MED INTST WHEN ATCT CLSD, MIRL RY 12L/30R NOT AVBL WHEN ATCT C LSD - ACTVT MALSR RY 30L WHEN ATCT CLSD - CTAF.
A 110 THIS AIRPORT HAS BEEN SURVEYED BY THE NATIONAL GEODETIC SURVEY.
A 110-01 DEER & MIGRATORY WATERFOWL ON & INVOF ARPT.
A 110-02 (A23) RIGHT TFC RYS 12R & 30R DURG DALGT HRS WHEN ATCT CLSD.

111 INSPECTOR: (S) 112 LAST INSP: 02/13/2003 113 LAST INFO REQ:

FAA Form 5010-1 (5-91) SUPERSEDES PREVIOUS

Sample Airport Grant Certification Compliance Checklist

AIRPORT GRANT ASSURANCE COMPLIANCE CERTIFICATION

I hereby certify that the below named airport is in compliance with all the terms and conditions of existing Federal Aviation Administration Grants and other assumed federal obligations with regard to:

(Please check or initial each)

- ☐ Exclusive Rights Prohibition
- ☐ Safe operation, control, and maintenance of airport facilities
- ☐ Protection of approaches
- ☐ Compatible land use
- ☐ Availability of facility to all types, kinds and classes of aeronautical activity on fair and reasonable terms without unjust discrimination.
- ☐ An approved ALP/Exhibit "A" is on file with the FAA which reflects the current land use of the airport.
- ☐ Utilization of Surplus Property is proper.
- ☐ Utilization of section 16/23/516 lands is proper.
- ☐ Sale or disposal of property acquired under FAAP/ADAP/AIP.
- ☐ Utilization and accounting of airport revenues is proper.
- ☐ Fee and rental rate structures which are maintained will make the airport as self-sustaining as possible.
- ☐ Sponsor rights and powers are preserved.
- ☐ To the best of my knowledge, the lease log reflects all major leases on the airport or airport property.

________________________________ ______________________________
(Airport) (Date)

(Signature)
____

Note: Please return this form to the airports district office:

A GUIDE TO SPONSOR OBLIGATIONS

This guide provides information on various obligations by airport sponsors through federal agreements and/or property conveyances. The obligations listed are those generally found in agreement and conveyance documents. Sponsors should be aware, however, that older deeds and agreements may contain obligations that are different from current standard assurances and deed restrictions. Also, some agreements contain special conditions applicable only to that airport. Therefore, the actual agreement or conveyance document itself should be reviewed to determine the specific obligations that apply.

SOURCES OF OBLIGATIONS:

a. Grant agreements issued under the Federal Airport Act of 1946 (1946 Airport Act), the Airport and Airway Development Act of 1970 (1970 Airport Act), and the Airport and Airway Improvement Act of 1982 (AAIA).

b. Surplus airport property instruments of transfer, issued pursuant to section 13g of the Surplus Property Act of 1944.

c. Deeds of conveyance issued under section 16 of the 1946 Airport Act, under section 23 of the 1970 Airport Act, and under section 516 of the AAIA.

d. AP-4 agreements authorized by various acts between 1939 and 1944. (Note: All AP-4 agreements have expired; however, sponsors continue to be subject to the statutory exclusive rights prohibition.)

e. Commitments in environmental documents prepared in accordance with current Federal Aviation Administration requirements, which address the National Environmental Policy Act of 1969 (NEPA) and the AAIA.

f. Separate written agreements between the sponsor and the FAA, including settlement agreements resulting from litigation.

OBLIGATIONS:

The following is a list of assurances and deed restrictions most commonly encountered in compliance cases. Exceptions to the standard duration of the obligations in a grant agreement or conveyance document are noted. "Standard" duration means:

(1) Grant agreements for development other than land purchase. Pavement and other facilities built to FAA standards are designed to last at least 20 years, and the duration of the obligation should generally be assumed to be 20 years. The duration may be shorter for grants made exclusively for certain equipment, such as a vehicle, that clearly has a useful life shorter than 20 years.

(2) Grant agreements for land purchase. AIP grant agreements for purchase of land provide that obligations do not expire, since the useful life of land does not end or depreciate. However, FAAP and ADAP grants did not always contain this language, and the grant documents should be reviewed to determine whether the obligations expire in 20 years or continue indefinitely. Also, grants to a private operator of a public-use general aviation airport provide for a defined duration of the obligations attached to the grant, and the grant documents should be reviewed to determine the actual obligations that apply.

(3) Surplus property deeds and nonsurplus land conveyance documents. Documents conveying federal land and property interests for airport use generally have no expiration date, and obligations continue indefinitely until the sponsor is formally released from the obligation by the FAA. Obligations run with the land and bind subsequent owners.

a. Exclusive Rights Prohibition:

(1) Applies to airports subject to: Any federal agreement or property conveyance.

(2) Obligation: To operate the airport without granting or permitting any exclusive right to conduct any aeronautical activity at the airport. (Aeronautical activity is defined as any activity which involves, makes possible, or is required for the operation of an aircraft, or which contributes to or is required for the safety of such operations; i.e., air taxi and charter operations, aircraft storage, sale of aviation fuel, etc.)

(3) Duration of obligation: For as long as the property is used as an airport.

b. Maintenance of the Airport:

(1) Applies to airports subject to: FAAP/ADAP/AIP agreements, surplus property, conveyances, and certain section 16/13/516 conveyances.

(2) Obligation: To preserve and maintain the airport facilities in a safe and serviceable condition. This applies to all facilities shown on the approved ALP which are dedicated for aviation use, and includes facilities conveyed under the Surplus Property Act.

(3) Duration of obligation: Standard.

c. Operation of the Airport:

(1) Applies to airports subject to: FAA/ADAP/AIP agreements and surplus property conveyances.

(2) Obligation: To operate the aeronautical and common use areas for the benefit of the public and in a manner that will eliminate hazards to aircraft and persons.

(3) Duration of obligation: Standard.

d. Protection of Approaches:

(1) Applies to airports subject to: FAAP/ADAP/AIP agreements and surplus property conveyances.

(2) Obligation: To prevent, insofar as it is reasonably possible, the growth or establishment of obstructions in the aerial approaches to the airport. (The term "obstruction" refers to natural or man-made objects which penetrate the imaginary surfaces as defined in FAR Part 77, or other appropriate citation applicable to the specific agreement or conveyance document.)

(3) Duration of obligation: Standard.

e. Compatible Land Use:

(1) Applies to airports subject to: FAAP (after 1964)/ADAP/AIP agreements.

(2) Obligation: To take appropriate action, to the extent reasonable, to restrict the use of lands in the vicinity of the airport to activities and purposes compatible with normal airport operations.

(3) Duration of obligation: Standard.

f. Availability of Fair and Reasonable Terms:

(1) Applies to airports subject to: Any federal agreement or property conveyance.

(2) Obligation: To operate the airport for the use and benefit of the public to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination.

(3) Duration of obligation: Twenty years from the date of execution for grant agreement prior to 1964. For grants executed subsequent to the passage of the Civil Rights Act of 1964, the statutory requirement prohibiting discrimination remains in effect for as long as the property is used as an airport. The obligation runs with the land for surplus property and section 16/23/516 conveyances.

g. Adherence to the Airport Layout Plan:

(1) Applies to airports subject to: FAAP/ADAP/AlP agreements.

(2) Obligation: To develop, operate, and maintain the airport in accordance with the latest approved airport layout plan. In addition, airport land depicted on the latest property map (Exhibit "A") cannot be disposed of or otherwise encumbered without prior FAA approval.

(3) Duration of obligation: Standard.

h. Utilization of Surplus Property:

(1) Applies to airports subject to: Surplus property conveyances.

(2) Obligation: Property conveyed under the Surplus Property Act must be used to support the development, maintenance and operation of the airport. If not needed to directly support an aviation use, such property must be available for use to produce income for the airport. Such property may not be leased or rented at a discount or for nominal consideration to subsidize nonairport objectives. Airport property cannot be used, leased, sold, salvaged, or disposed of for other than for airport purposes without FAA approval.

(3) Duration of obligation: Standard.

i. Utilization of Section 16/23/516 lands:

(1) Applies to airports subject to: Section 16/23/516 conveyances.

(2) Obligation: Property must be used for airport purposes; i.e., uses directly related to the actual operation or the foreseeable aeronautical development of the airport. Incidental use of the property must be approved by the FAA.

(3) Duration of obligation: Standard.

j. Sale or Other Disposal of Property Acquired Under FAAP/ADAP/AIP:

(1) Applies to airports subject to: FAAP/ADAP/AIP agreements.

(2) Obligation: To obtain FAA approval for the sale or other disposal of property acquired under FAAP/ADAP/AIP, as well as approval for the use of any net proceeds realized.

(3) Duration of obligation: Standard.

k. Utilization of Airport Revenue:

(1) Applies to airports subject to: Any federal agreement or property conveyance.

(2) Obligation: To use all airport revenues for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport, and directly related to the actual air transportation of passengers or property.

(3) Duration of obligation: Standard for grants and conveyances executed prior to October 1, 1996. For airports receiving assistance on or after that date, the obligation continues as long as the facility is used as a public-use airport.

(4) Special Conditions Affecting Noise Land and Future Aeronautical Use Land: Apply interim revenue derived from noise land or future aeronautical use land to projects eligible for grants under the AIP. This income may not be used for the matching share of any grant.

l. National Emergency Use Provision:

(1) Applies to airports subject to: Surplus property conveyances (where sponsor not released from this clause.)

(2) Obligation: That during any war or national emergency, the government has the right of exclusive possession and control of the airport.

(3) Duration of Obligation: Runs with the land (unless released from this clause by the FAA, with concurrence of the Department of Defense.)

m. Fee and Rental Structure:

(1) Applies to airports subject to: FAAP/ADAP/AIP agreements.

(2) Obligation: To maintain a fee and rental structure of the facilities and services being provided the airport users which will make the airport as self-sustaining as possible. (Note: Fair and reasonable for aeronautical activities and fair market value for nonaeronautical activities.)

(3) Duration of obligation: Standard.

n. Preserving Rights and Powers:

(1) Applies to airports subject to: FAAP/ADAP/AIP agreements.

(2) Obligation: To not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the sponsor assurances without FAA approval, and to act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. To not dispose of or encumber its title or other interests in the site and facilities for the duration of the terms, conditions, and assurances in the grant agreement without FAA approval.

(3) Duration of Obligation: Standard.

o. <u>Environmental Requirements</u>: The AAIA requires that for certain types of project, an environment review be conducted. The review can take the form of either an environmental assessment or an environmental impact statement. These environmental documents often contain commitments related to mitigation of environmental impacts. FAA approval of environmental documents containing such commitments has the effect of requiring that these commitments be fulfilled before FAA grant issuance or as part of the grant.

p. <u>Other Obligations:</u> The above obligations represent the more important obligations assumed by an airport sponsor. Other obligations that may be found in grant agreements include:

-Use of Government Aircraft
-Land for Federal Facilities
-Standard Accounting Systems
-Reports and Inspections
-Consultation with Users
-Terminal Development Prerequisites
-Construction Inspection and Approval
-Minimum Wage Rates
-Veterans Preference
-Audits, Audit Reports and Record Keeping Requirement
-Local Approval
-Civil Rights
-Construction Accomplishment
-Planning Projects
-Good Title
-Sponsor Fund Availability

SAMPLE LEASE LOG

LESSEE	LEASE DATE	TERM	AREA (Acres / Sq. Ft.)	RENTAL RATE

Lease rates based on fair market value? **Yes**☐ **No**☐

All airport revenue credited to airport account? **Yes**☐ **No**☐

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Chapter 3. Federal Obligations from Property Conveyances

3.1. Introduction. This chapter discusses the various types of agreements that the federal government has used to transfer personal and real property to airport sponsors. The types of transfers include surplus property and nonsurplus property agreements. This chapter also discusses the sponsor's federal obligations under the various types of transfers, the duration of the associated federal obligations, and the need for FAA airports district offices (ADOs) and regional airports divisions to review the specific transfer document when assessing sponsor federal obligations.

After World War II, most of the property conveyance instruments issued by the War Assets Administration (WAA) and General Services Administration (GSA) that conveyed real property contained provisions obligating the sponsor to operate and maintain the entire airport where the property is located, regardless of the amount of property conveyed. Real property conveyances include buildings and hangars such as the ones shown above at the Van Nuys Airport in California. The massive expansion of civil aviation in the U.S. after the war was due not only to technological advances in aviation, illustrated below by a Lockheed Constellation, but also by the large number of former military bases transferred to civilian use. (Photos: FAA).

In general, property agreements require the sponsor to:

- Maintain the airport in good and serviceable condition,
- Use specific lands approved by the FAA for nonaeronautical use to generate revenue to support the airport's aviation needs,
- Operate the airport in the public interest, and
- Ensure there is no grant of an exclusive right for any aeronautical purpose or use.

It is the responsibility of the ADOs and regional airports divisions to:

- Ensure that the sponsors operate and maintain their airports in accordance with the transfer agreements,
- Evaluate sponsor requests for release, and
- Release qualifying property from sponsor federal obligations only when appropriate.

In addition to any airport-specific federal obligations, surplus and nonsurplus property federal obligations will, for the most part, mirror language found today in most grant agreements with respect to the basic compliance requirements, i.e., exclusive rights, reasonable access, and unjustly discriminatory treatment.

3.2. Background. Prior to the enactment of Public Law (P.L.) No. 80-289 in 1947, all surplus property conveyance instruments were issued under the Surplus Property Act of 1944 (Surplus Property Act). As later amended, the Surplus Property Act was codified at 49 United States Code (U.S.C.) §§ 47151-47153. The Surplus Property Act was the primary legislative effort by the U.S. Government to dispose of excess military equipment and infrastructure as World War II was coming to an end. The Surplus Property Act authorizes the conversion of surplus military airports to civilian public use airports. The FAA recommends to the General Services Administration (GSA) which property should be transferred for airport purposes to public agencies. Prior to 1958, the Civil Aeronautics Authority (CAA) made these recommendations. Neither the FAA nor the federal government owns the properties in question once they are transferred.

Form SPB-5 (3-30-45) UNITED STATES OF AMERICA SURPLUS PROPERTY BOARD

Budget Bureau No. 16-R005.2 Approval expires May 1, 1946

DECLARATION OF SURPLUS REAL PROPERTY
(In the continental United States, its Territories and possessions)
to the Surplus Property Board, Washington 25, D. C.

IMPORTANT.—Instructions for completing this form appear on reverse.

7. DATE: June 10, 1946
8. REPORTING AGENCY NO.: 129
9. SURPLUS PROPERTY BOARD NO.: N-Fla 88
10. DISPOSAL AGENCY NO.:

1. FROM: Real Estate Division, Bureau of Yards and Docks, BuYards and Docks Annex, Navy Department, Washington, D. C.
2. LOCATION OF PROPERTY (ATTACH MAP): Near Roseland, Indian River County, Florida
3. REPRESENTATIVES TO CONTACT: Commanding Officer, Naval Air Station, Vero Beach, Florida
4. USE OF PROPERTY WHEN ACQUIRED: Agriculture Lands
5. OPINION OF BEST FUTURE USE: Airport

11. APPROXIMATE AREA: 1025 Acres
12. COST OF PROPERTY

ACQUISITION	$ 3,571.50
BETTERMENTS	$ 618,657.42
TOTAL	$ 622,228.92

13. PROCEEDS: IF "REIMBURSABLE", GIVE SYMBOL AND TITLE OF APPROPRIATION OR GOVERNMENT CORPORATION.

6. GENERAL DESCRIPTION OF PROPERTY
1. The Navy Department hereby declares surplus its interests in, together with the improvements constructed by it, on the below described property.

2. Fee simple title to 1025 acres of land comprising Roseland Field, an Outlying Field of the Naval Air Station, Vero Beach, Florida, was acquired by condemnation proceedings, entitled The United States of America v. 1025 acres of land, more or less, in Indian River County, Florida, et al., Civil No. 45 Ft.P. in the United States District Court for the Southern District of Florida. A plat of the lands is attached as Exhibit "A", and a photostatic copy of the Judgment on the Declaration of Taking giving a complete legal description as Exhibit "B". The Attorney General in his opinion of 12 April 1946 found valid title to 1025 acres, Parcels Nos. 1 to 27 inclusive, vested in the United States. A photostatic copy of the letter is attached as Exhibit "C". Total cost of acquisition was $3,571.50.

3. Roseland Field was utilized as an outlying field of the Naval Air Station, Vero Beach, Florida. During Naval occupancy the following improvements were constructed:

Clearing, draining and construction 4 runways 150' x 4000' 2 taxiways 50' x 1000' 2" bituminous paving on 7" stablilized marl	$612,526.52
Utility Building 16' x 36' 1-story, built-up roof	5,173.28
1½ miles telephone pole line	957.62
TOTAL	618,657.52

DO NOT FILL IN
FOWARDED BY SPB TO:
Date Initials

14. AUTHORIZED BY
ANDREW J. MURPHY, JR.,
(Name of reporting official (please type))
Captain, USNR,
Head, Real Estate Division
(Title (please type))
BY
(Signature of authorized official)
16—43987-1

The ownership of such property is generally transferred to the new public-entity owner (i.e., city, county, state, or airport authority) by instruments of property conveyance issued by the GSA. GSA has statutory jurisdiction over the disposition of properties that are declared to be surplus to the needs of the federal government. Prior to the establishment of the GSA in 1949, the War Assets Administration issued the property conveyance instruments.

3.3. The War Assets Administration (WAA). Upon enactment of the Surplus Property Act, the WAA, under general authority granted by the Surplus Property Act, conveyed significant amounts of federally owned surplus properties to public agencies. Before

conveyance, the responsible government entity issued a declaration of surplus real property. For surplus airport properties conveyed under this authority, the WAA established certain terms and conditions and prescribed them in Regulation 16.[4] A copy of regulation 16 is provided as Appendix I of this Order, *Surplus Property Administration (SPA) Regulation 16.*

Public Law (P.L.) No. 80-289, adopted in 1947, amended the 1944 Surplus Property Act to authorize the Administrator of the WAA (and later GSA) to convey to any state, political subdivision, municipality, or tax-supported institution surplus federally owned real and personal property for airport purposes without monetary consideration to the United States.

These conveyances of surplus property are subject to the terms, conditions, reservations, and restrictions prescribed in the instruments of conveyance. In other words, the properties were conveyed with strings attached, which are the sponsor's federal obligations.

The FAA takes the position that each conveyance of revenue-production property obligates the public-agency recipient to use the revenues generated by the nonaeronautical use of the property for the operation, maintenance, or development of the airport. Consequently, if the property conveyed has been determined by the GSA with FAA concurrence) to be used for revenue-production purposes, the airport sponsor must use the revenue generated by the property for airport purposes by depositing the revenues into an airport fund designated for airport use. (Photo: FAA)

Conveyances of surplus property are subject to the terms, conditions, reservations, and restrictions prescribed in the instruments of conveyance. In other words, the properties were conveyed with strings attached, which are the sponsor's federal obligations.

3.4. Nonairport Property. Prior to the amendment of the Surplus Property Act by P.L. No. 80-289, the WAA took the position that it had no authority to convey to public agencies any property other than that which had been, and was intended to be, used solely for the operation and maintenance of an airport. This precluded the transfer of some types of buildings, facilities,

[4] Note: Regulation 16 from the Surplus Property Act is different from section 16 of the Federal Airport Act of 1946.

and other nonairport properties comprising parts of surplus military air bases formerly operated by the federal government.

Each conveyance of revenue-production property federally obligates the public agency recipient to use the revenue generated by the property for the operation, maintenance, or development of the airport

3.5. The Use of Property for Revenue Production. P.L. No. 80-289 specifically authorized the GSA to transfer such surplus nonairport property as needed to develop sources of revenue from nonaeronautical commercial businesses at a public use airport. This essentially became the point at which the FAA began tracing the requirement to use airport property for aeronautical purposes. If the property is not used for aeronautical purposes directly, the property must be used to generate revenue for the benefit of the airport consistent with FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999 (*Revenue Use Policy*). The FAA must approve the use for nonaeronautical purposes before such use is allowed.

As a precondition to a land conveyance, the WAA and later the GSA, needed to determine that such surplus nonairport property was needed by the airport and would be used as a source of revenue to defray the cost of operation, maintenance, and development of the public use airport. Originally, the GSA conveyance instrument made no distinction between federal obligations imposed on property conveyed for aeronautical use and those imposed on property conveyed for nonaeronautical, revenue-production purposes.

Each federal conveyance of revenue production property obligates the public-agency sponsor to use the revenue generated by the nonaeronautical use for the operation, maintenance, or development of the airport. Consequently, if the property conveyed has been determined by the GSA, with FAA concurrence, to be used for revenue-production purposes, the airport sponsor must use the revenue generated by the property for airport purposes by depositing the revenues in an airport fund designated for airport use. This is true even if the property is not specifically identified as revenue producing in the conveyance instrument.

3.6. Highest and Best Use and Suitability for Airport Use. In order for any surplus real or personal property to be transferred, the FAA must determine that it is essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport. This includes real property needed to develop sources of revenue from nonaeronautical commercial businesses at a public airport. (See 49 U.S.C. § 47151(a).)

Highest and best use has been defined – when appraising the market value of real property – as the "reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value." (See *Dictionary of Real Estate Appraisal*, 4th Edition, Appraisal Institute.) The Department of Justice's Uniform Appraisal Standards for Federal Land Acquisition relies on *Olson v. United States*, 292 U.S. 246.255 (1934). See also *Bloom Company v. Patterson*, 98 U.S. 403.408 (1878) for its definition

of highest and best use. “The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.” The highest and best use must be based on:

- the economic potential of the property,
- qualitative values (social or environmental) of the property, and
- use factors affecting land use (e.g., zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations).

It is the task of an appraiser to evaluate competing land uses and determine the “highest and best” use of the land and appraise the fair market value of the property at its “highest and best” use based on sales of property that sold and were used at that same “highest and best” use. Any "highest and best use" determination should consider the probability of achieving such use and should not be speculative.

3.7. Types of Conveyance Instruments for Surplus Property. The federal government has used three basic instruments to transfer ownership of federally owned surplus property for public use airport purposes:

a. The WAA instrument prescribed in Regulation 16 conveyed surplus real property for public use airport purposes prior to the amendment of the Surplus Property Act of 1944 by P.L. No. 80-289.

b. The GSA real property instrument issued under P.L. No. 80-289 conveyed surplus real property, or a combination of surplus real and airport-related personal property, for public use airport purposes.

c. The GSA personal property instrument issued under P.L. No. 80-289 conveyed only surplus airport-related personal property for public use airport purposes.

Each instrument of conveyance of surplus property for public use airport purposes sets forth the particular rights retained by the federal government and the specific federal obligations assumed by the airport sponsor following the transfer of ownership.

d. Each federal instrument of conveyance of surplus property for public use airport purposes, regardless of its form or format, sets forth the particular rights retained by the federal government and the specific federal obligations assumed by the airport sponsor following the transfer of ownership.

3.8. Sponsor Federal Obligations for Surplus Property. A conveyance document sometimes may contain one or more special conditions. Special conditions are in addition to the conditions required by the Surplus Property Act. Also, at different times, the WAA and the GSA may have used different wording of the statute or a requirement in their various types of property conveyance instruments.

a. War Assets Administration Regulation 16 Conveyance. Instruments of conveyance, also known as instruments of disposal, issued under WAA Regulation 16 are not consistently uniform. One common variation in WAA conveyance instruments is the provision relating to joint military use of the airport. Some WAA property conveyance instruments give the federal government the right to unlimited use of the airport by federally owned aircraft without charge. Others stipulate that the use by federally owned aircraft may not exceed a specified percentage of the capacity of the airport if such use interferes with other authorized uses. Regulation 16 conveyances are typically the most restrictive. In some cases, they incorporate reversion clauses (see chapter 23 of this Order, *Reversions of Airport Property*). Regulation 16 properties must be operated for public airport purposes. Property, as well as structures, cannot be used for any other purposes – including revenue-producing, manufacturing, or industrial purposes – without FAA concurrence (release). (For additional Regulation 16 information, see Appendix I of this Order, *SPA Reg. 16*.)

b. GSA Public Law No. 80-289 Conveyance. Instruments of conveyance under P.L. No. 80-289 issued by the GSA are generally similar in form and content. In some cases, however, certain terms and conditions may be different. Therefore the actual obligating documents must be reviewed in the initial phase of an investigation.

c. Operation of the Entire Airport. Most of the property conveyance instruments issued by the WAA and GSA that conveyed real and airport-related personal property contain provisions obligating the sponsor to operate and maintain the entire airport where the property is located, regardless of the amount of property conveyed.

d. National Emergency Use. Practically all WAA and GSA conveyance instruments transferring ownership of surplus real and airport-related personal property to airport sponsors for public use airport purposes contain the National Emergency Use Provision (NEUP) under which the United States has the right to make exclusive or joint use of the airport, or any portion thereof, during a war or national emergency. This has actually happened several times since World War II, particularly after the United States' involvement in the Korean War began in 1951. Two examples of airports that were reactivated are Sanford, Florida, and Brown Field, California. However, while the authorizing statutes require this provision to be included in all such conveyance instruments, it has been discovered that the NEUP was omitted from a few conveyance instruments issued by WAA and GSA. (For additional information, refer to chapter 22 of this Order, *Releases from Federal Obligations*.)

e. NEUP Case Study: Sanford Naval Air Station. The City of Sanford is located in the northwestern portion of Seminole County, approximately 16 nautical miles (or 18 statute miles) northeast of Orlando, Florida. The Orlando Sanford Airport is located in the southeastern portion of the City of Sanford. The Airport began its history prior to the 1940s as an 865-acre

airport equipped with two runways. On June 11, 1942, the City of Sanford deeded the airport to the U.S. Navy and the airport became a Naval Air Station. The Navy acquired an additional 615 acres of land for the station and immediately began construction of its facilities. The majority of these facilities are still present at the airport today. Some of these facilities currently serve as storage hangars. In 1943, active flight operations began at the Naval Air Station; the station served as a fighter and dive-bomber training base. Following World War II, the Naval Air Station was decommissioned. The City of Sanford reacquired the land and the facility, now known as the Orlando Sanford Airport. After the Korean War began in 1951, the Navy once again acquired the airport and purchased an additional 164 acres, bringing the total acreage of the airport to 1,644. The airport operated as a training base for fighter, attack, and reconnaissance aircraft until it closed in June of 1968. The City of Sanford realized that closing the base would pose an economic threat to the local economy. In an effort to limit this threat, the City negotiated with the federal government for the property purchase. It was ultimately purchased for the sum of $1.00. This case study illustrates the U.S. Government exercising its option to reactivate a former military facility in case of national need.

3.9. Duration of Surplus Property Federal Obligations. The duration of the federal obligations assumed by airport sponsors for surplus federal property depends on the type of property conveyed.

a. Real Property. The federal obligations set forth in surplus airport property conveyance instruments (except those conveying only personal property) provide that the covenants assumed by the sponsor regarding the use, operation, and maintenance of the airport and the property transferred shall be deemed to run with the land. This means that subsequent owners or successors of the land would be subject to the covenants. Accordingly, such covenants continue in full force and effect until released under the Surplus Property Act, as amended. (See 49 U.S.C. § 47153.)

b. Personal Property. In most cases, conveyance instruments transferring ownership of surplus real property also convey airport-related personal property. Accountability for the personal property conveyed in this manner is for its useful life not to exceed one year.

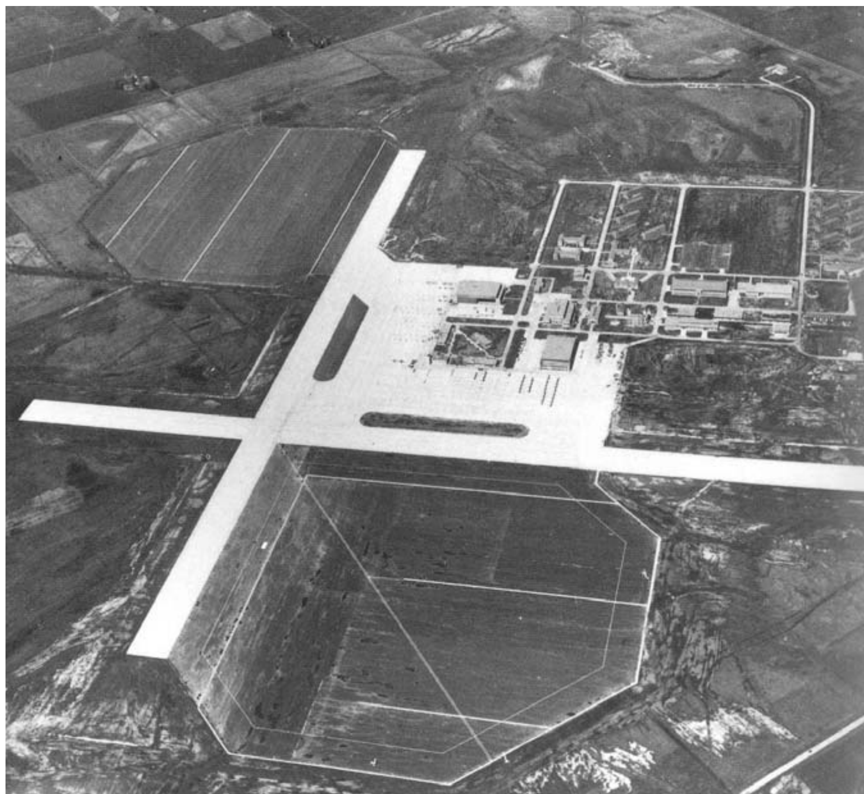
c. Trade-in of Personal Property. Airport sponsors may dispose of conveyed personal property that has outlived its useful life. If the sponsor uses such property for trade-in on new equipment, the FAA will not hold that sponsor accountable for that new equipment.

3.10. Airport Sponsor Compliance. In order to identify the specific federal obligations assumed by a nonfederal public agency in accepting surplus federal property conveyed for public use airport purposes, the office assessing the compliance status of a federally obligated airport sponsor must consult the actual surplus property conveyance instruments.

a. FAA Order 5150.2A, *Federal Surplus Property for Public Airport Purposes*, September 19, 1972, provides detailed guidance on FAA participation in the conveyance of surplus federal property by the GSA for public airport purposes.

b. FAA Order 5250.2, *Applicability of Exclusive Rights Provisions of Public Law 80-289 to Previously Obligated Public Airports*, issued March 29, 1965, provides detailed guidance on exclusive rights prohibitions. It discusses when an exclusive rights prohibition would apply to an airport sponsor formerly obligated under a Federal Aid to Airports Program (FAAP) grant agreement (1946-1970) and subsequently obligated by accepting surplus property conveyed under P.L. No. 80-289.

3.11. Nonsurplus Federal Land Conveyances. Federally owned or controlled land that is not surplus (not in excess of federal needs) may be conveyed for airport purposes under the authority contained in section 516 of the Airport and Airway Improvement Act of 1982 (AAIA). (See 49 U.S.C. § 47125 for current provision.) Prior to the effective date of the AAIA, similar authority existed in section 16 of the Federal Airport Act of 1946 and section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act). There are many instances where a government entity, such as the Department of Interior's (DOI) Bureau of Land Management (BLM) agreed to convey nonsurplus land for public use, including use as an airport. This is particularly common in the western states. FAA records indicate that about 170 airports have benefited from nonsurplus conveyances. Unlike surplus land, the federal government may not transfer this nonsurplus land for the specific purpose of revenue production.



FAA works with the Department of Defense (Army, Air Force, and Navy), as well as local civil airport sponsors to convert military airfields to civil use. The agency also works with the General Services Administration (GSA) on airport property disposals. Currently, the FAA is working with local communities to convert several military airfields to civil airports. (See Appendix J of this Order, DoD Base Realignment and Closure (BRAC) for listing of airports.) The FAA manages surplus property transfers for airports, military base conversions, and the promotion of joint use of existing military air bases. The FAA also administers the Military Airport Program (MAP). (Photo: National Archives)

3.12. Land Conveyance Federal Obligations. Instruments of conveyance transferring ownership of nonsurplus federal land issued under sections 16, 23, 516 or under 49 U.S.C. § 47125 impose upon the airport sponsor certain federal obligations regarding the use of the lands conveyed. There are terms, conditions, and covenants included in the property conveyance

instruments, deeds, or quitclaim instruments. These terms include requirements that:

a. The airport sponsor will use the conveyed property for airport purposes and will develop that property for airport purposes within one year or as set forth in the conveyance instrument, deed, or quitclaim instrument.

b. The airport sponsor will operate the airport, together with its appurtenant areas, buildings, and facilities regardless of whether they are on the land being conveyed, as a public use airport on fair and reasonable terms and without unjust discrimination.

c. The airport sponsor will not grant or permit any exclusive right in the operation and use of the airport, together with its appurtenant areas, buildings, and facilities regardless of whether they are on the land being conveyed, as required by section 303 of the Federal Aviation Act of 1938, as amended, and section 308(a) of the Federal Aviation Act of 1958 (FAA Act), as amended.

d. Any subsequent transfer of the conveyed property interest to another nonfederal public entity will be subject to the terms, conditions, and covenants set forth in the original instrument of conveyance.

e. In the event of a breach of any term, condition, or covenant contained in the conveyance instrument, the airport sponsor will, on demand, take such action as required to transfer ownership of the conveyed premises to the U.S. Government.

f. All or any part of the property interest conveyed under section 16 shall automatically revert to the U.S. Government (through the GSA for assignment) in the event that the land in question is not developed for airport purposes or used in a manner consistent with the terms of the conveyance.

3.13. Bureau of Land Management. Many airports in the western states are located on public land. The Bureau of Land Management (BLM) has statutory authority in the Airport Act of 1928 to lease up to 2,560 acres of public lands for use as a public airport.

Under the AAIA, the BLM may continue to convey, subject to reversion, lands to a public agency for an airport. As of 2000, the BLM had 84 active airport leases and had made 33 airport grants. These leases are located near small towns, mining operations, and ranches. Local governments hold many of these leases. The FAA is involved in the approval of these leases and conveyances.

3.14. Federal Obligations Imposed by Other Government Agencies. In some instances, the government agency issuing the conveyance instrument may impose special conditions or federal obligations. Therefore, consult the particular deed by which the lands were conveyed to determine all the conditions and covenants.

3.15. Duration of Nonsurplus Federal Obligations. Terms, conditions, covenants, and other federally obligating provisions in conveyance instruments issued under sections 16, 23, and 516 remain in force and effect as long as the land is held by a nonfederal public agency, its

successors, or assignees. Sections 16, 23, 516, and 49 U.S.C. § 47125 do not expressly provide for authority to release property transferred under those sections. Congress, through special legislation, can authorize the FAA to grant a release from the federal obligations associated with these sections. In addition, they may – with the approval of the controlling federal agency – be amended or modified to provide for a greater or lesser property interest as dictated by the needs of the airport: e.g. change from easement, right-of-way, or permit to fee, or vice versa.

Nonsurplus federal land conveyance instruments issued under sections 16, 23, and 516 provide for reversion to the U.S. Government in the event the lands are not developed, or cease to be used, for airport purposes.

3.16. Reversion Provisions. Nonsurplus federal land conveyance instruments issued under sections 16, 23, and 516 provide for reversion to the U.S. Government in the event the lands are not developed, or cease to be used, for airport purposes. If the land conveyed under sections 16, 23, and 516 is no longer used or needed for any airport purpose, the FAA must invoke the reversion provision in accordance with the terms of the deed unless the airport sponsor willingly agrees to reversion of the property voluntarily. (See chapter 23 of this Order, *Reversions of Airport Property*, for additional details on reversions.)

a. Section 16 Conveyances. The Federal Airport Act of 1946 required that conveyances of nonsurplus federal land under section 16 be subject to the condition that, if the land is not developed as an airport or ceases to be used for airport purposes, the property interest conveyed shall automatically revert to the U.S. Government.

b. Section 23/516 Conveyances. Conveyance instruments issued under section 23 of the 1970 Airport Act or section 516 of the AIAA do not contain the automatic property reversion requirement contained in conveyance instruments issued under section l6. They do, however, provide the Secretary of Transportation the option of reverting nonsurplus federal land undeveloped or not used for airport purposes by the airport sponsor. The Secretary has assigned this discretionary authority to the FAA Administrator. The Administrator will decide, on behalf of the U.S. Government, whether to recover title to all or any part of the property interests conveyed.

3.17. Airport Sponsor Compliance. The range of terms, conditions, and covenants contained in the instruments of nonsurplus property conveyance under sections 16, 23, and 516, can have significant differences. There are variations of nonsurplus conveyance federal obligations because of different authorizing legislation, amendments over time, as well as special conditions and obligations imposed by the conveying federal agency in response to airport-specific circumstances. Therefore, in assessing an airport sponsor's compliance status, the FAA must review each instrument of nonsurplus federal property conveyance under sections 16, 23, and 516 entered into by the airport sponsor. For a more detailed discussion, refer to the following document:

a. FAA Order 5170.1, *Transfer of Federal Lands, section 23 of the Airport and Airway Development Act of 1970*, issued March 18, 1977, provides detailed guidance for FAA in reviewing and processing applications by nonfederal public agencies to receive federally owned land conveyed for the development, improvement, or future use of a public airport. Although the title reflects section 23, the document contains guidance for section 16 and 516 conveyances as well.

3.18. The AP-4 Land Agreements. Federal legislation enacted between 1939 and 1944 authorized the *Development of Landing Areas for National Defense* (DLAND) and the *Development of Civil Landing Areas* (DCLA) programs. The Work Project Administration and the CAA jointly administered the DLAND programs. In general, under these two federal programs (DLAND and DCLA), existing publicly owned airports were transferred to the federal government for development and use at its discretion, subject to the terms and conditions of an instrument known as an AP-4 Agreement. The AP-4 Agreement contained the applicable federal obligations. After considering the types of improvements, design standards, construction methods, and normal deterioration, the FAA has administratively determined that the useful life of all improvements on airports subject to AP-4 Agreements has expired. Termination of an AP-4 Agreement relieved the airport sponsor only of the contractual federal obligations imposed in the agreement. The sponsor remains subject to the exclusive rights prohibition for as long as the airport is operated as an airport.

3.19. Base Conversion and Surplus Property. The FAA works with the Department of Defense (DoD) (the Army, Air Force, and Navy) and local civil airport sponsors to convert military airfields to civil use. The agency also works with the GSA on airport property disposals under the Surplus Property Act, as amended. (See 49 U.S.C. § 47151, et seq.). (See Appendix J of this Order, *DoD Base Realignment and Closure (BRAC)*, for a listing of air bases converted from military to civil use under the BRAC laws.) The FAA manages surplus property transfers for airports, military base conversions, and the promotion of joint use of existing military air bases. A sample of a recent surplus property conveyance or deed is provided in Appendix V of this Order, *Sample Deed of Conveyance.* The FAA also administers the Military Airport

FAA also works with the various Department of Defense (DoD) military departments on the joint use of existing military airports when a civil sponsor wants to use the military airfield. (Photo: USAF)

Program (MAP).[5] The MAP provides financial assistance to the civilian sponsors who are converting, or have already converted, military airfields to civilian or joint military/civilian use. To aid in this process, MAP grants may be used for projects not generally funded by the Airport Improvement Program (AIP), such as buildings, rehabilitating surface parking lots, fuel farms, hangars, utility systems, access roads, and cargo buildings.

3.20. Joint Civilian/Military Use (Joint Use) Airports. FAA also works with the various Department of Defense (DoD) military departments on the joint use of existing military airports when a civil sponsor wants to use the military airfield. It is noted however, that the term joint use is also used in situations addressing military use of civilian airports. (See Appendix J-1 of this Order for *Air National Guard Pamphlet* 32-1001, 8 April 2003 entitled *Airport Joint Use Agreements for Military Use of Civilian Airfields.*)

There are three types of agreements under which the government has the right to joint use of airport facilities, either with or without charge.

a. Grant Agreements. The sponsor's assurances, which accompany the project application, provide that all facilities of the airport developed with federal aid and all those usable for the landing and taking off of aircraft will be available to the United States at all times without charge for use by government aircraft in common with others. However, the assurances provide that if such use is deemed substantial, a reasonable share of the cost of operating and maintaining the facilities used, in proportion to the use, may be charged. Substantial use is defined in the assurances as: (1) five or more government aircraft are regularly based at the airport or on land adjacent thereto; or (2) the total number of calendar month operations (counting each landing and each takeoff as a separate operation) of government aircraft is 300 or more; or (3) the gross accumulative weight of government aircraft using the airport in a calendar month (the total operations of government aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

b. P.L. No. 80-289. Surplus Airport Property Instruments of Transfer issued under P.L. No. 80-289 provide that "The United States shall at all times have the right to make nonexclusive use of the landing area (runways, taxiways and aprons) of the airport without charge, except that such use may be limited as may be determined at any time by the Administrator of FAA to be necessary to prevent undue interference with use by other authorized aircraft and provide further that the United States shall be obligated to pay for any damage caused by its use, and if the use is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area, in proportion to such use." For guidance on substantial use, see (a) above.

[5] Under 49 U.S.C. § 47118, the Secretary can designate up to 15 current or former military airports for inclusion in the Military Airport Program (MAP). These general aviation, commercial service, or reliever airports can receive grants for projects necessary to convert the airports to civilian use or to reduce congestion, including grants for projects not generally funded by the Airport Improvement Program (AIP).

c. Regulation 16 Transfer. Surplus Airport Property Instruments of Transfer issued under WAA Regulation 16 (i.e., prior to the effective date of P.L. No. 80-289) provide that the government shall at all times have the right to use the airport in common with others provided that such use may be limited as determined by the FAA Administrator to be necessary to prevent interference with use by other authorized aircraft, so long as such limitation does not restrict government use to less than 25 percent (25%) of the capacity of the airport. These instruments of transfer further provide that government use of the airport to this extent shall be without charge of any nature other than payment for any damage caused.

FAA Order 5170.1, Transfer of Federal Lands, Section 23 of the Airport and Airway Development Act of 1970, provides guidance for when other U.S. Government land adjoins the airport and that land is requested for incorporation into the airport. For instance, an easement interest should be requested as necessary to protect the airport. A typical example would be to protect the aerial approaches to the airport by preventing obstructions from being erected. (Photo: USGS)

d. Negotiation Regarding Charges. In all cases where the airport owner proposes to charge the government for use of the airport under the joint-use provision, negotiations should be between the airport owner and the government agency or agencies using that airport.

3.21. Environmental Issues Related to Land Conveyances.

a. The airport sponsor should normally prepare an environmental assessment (EA) in accordance with the applicable sections of the most current version of FAA Order 5050.4 *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions*. The FAA must then independently evaluate the EA and take responsibility for its scope and content. Generally, an EA is not required if the use of the land falls within the scope of the section in FAA Order 5050.4 covering categorical exclusions, also known as “CATEXs.” The FAA responsible official[6] shall consult with the federal agency controlling the land to assure that environmental documentation meets the needs of the controlling agency as well as of the FAA. If an environmental impact statement (EIS) is required, the airport sponsor shall not prepare it. Instead, the FAA may act as either joint lead agency with the controlling agency or as a

[6] Responsible Official. This is an FAA employee designated with overall responsibility to furnish guidance and participate in the preparation of environmental impact statements, to evaluate the statements, and to take responsibility for the scope and content of the statements.

cooperating agency with jurisdiction by law. The FAA may request further information from the sponsor in order to complete the EIS.

b. The FAA may include environmental mitigation measures as covenants in the deed that transfers the land.

c. Public agencies may receive surplus property for public airport purposes. FAA's involvement in such process is set forth in FAA Order 5150.2A, *Federal Surplus Property for Public Airport Purposes*. The GSA has primary responsibility for disposition of surplus federally owned or controlled property and, therefore, is the lead agency in meeting the requirements of NEPA. However, FAA has a key role in making recommendations to GSA regarding the suitability and amount of property considered necessary for airport purposes.[7]

3.22. through 3.25. reserved.

[7] For additional information, see the current version of FAA Order 5010.4, *Airport Environmental Handbook*.

Sample Surplus Property Conveyance - Page 1

QUITCLAIM DEED

THIS INDENTURE, made this 17th day of June 1948, between THE UNITED STATES OF AMERICA, acting by and through the WAR ASSETS ADMINISTRATOR, under and pursuant to Reorganization Plan One of 1947 (12 F.R. 4534), and the powers and authority contained in the provisions of the Surplus Property Act of 1944 (58 Stat. 765), as amended, and applicable rules, regulations, and orders, GRANTOR, and PINAL COUNTY, a body corporate and politic under the laws of the State of Arizona, acting by and through its BOARD OF SUPERVISORS, GRANTEE.

WITNESSETH: That the said GRANTOR, for and in consideration of the assumption by the GRANTEE of all the obligations and its taking subject to certain reservations, restrictions, and conditions and its covenant to abide by and agreement to certain other reservations, restrictions, and conditions, all as set out hereinafter, has remised, released, and forever quitclaimed, and by these presents does remise, release, and forever quitclaim unto the said GRANTEE, its successors, and assigns, under and subject to the reservations, restrictions, and conditions, exceptions, and reservation of fissionable materials and rights hereinafter set out, all its right, title, and interest in the following described property situated in the County of Pinal, State of Arizona, to wit:

I

All of Sections 32 and 33; the South Half of the South Half (S½ S½) of Section 28; the South Half of the South Half (S½ S½) of Section 29; the North Half (N½) of Section 34; the North Half of the South Half (N½ S½) of Section 34, in Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, containing 2080 acres more or less.

TOGETHER WITH all buildings, structures, and improvements located thereon, and that certain personal property set forth in Schedule "A" annexed hereto and made a part hereof as though fully set forth hereat.

The above described premises are transferred subject to all existing easements for roads, highways, public utilities, railways, and pipelines.

II

That certain air-space safety zoning restriction (avigation easement) established by agreement dated 23 July 1942, signed by Fok Yut, Demetrio P. Lopez, H. B. Aguirre, and Anita Aguirre in consideration of one dollar ($1.00) paid to them by the United States of America, affecting the following described properties to wit:

The Southeast Quarter of the Southwest Quarter (SE¼SW¼) and the South Half of the Southeast Quarter (S½SE¼), of Section Thirt Township Ten (10) South, Range Ten (10) East, of the Gila and Salt River Base and Meridian; and the Southwest Quarter of the Southwest Quarter (SW¼SW¼) of Section Thirty-five (35), Township Ten (10) South, Range Ten(10) East, and the Northeast Quarter of the Southwest Quarter (NE¼SW¼), and

the Southeast Quarter (SE¼) of Section Thirty-six (36), Township Ten (10) South, Range Nine (9) East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

III

That certain air-space safety zoning restriction (avigation easement) established by agreement dated 23, July, 1942, signed by Clarence W. George, Daisy George, T. J. Smith, and Jennie Smith in consideration of one dollar ($1.00) paid to them by the United States of America affecting the following described properties, to wit:

Those certain portions of Sections Nine (9) and Sixteen (16), in Township Eleven (11) South, Range Ten (10) East, of the Gila and Salt River Base and Meridian, Pima County, Arizona.

IV

That certain air-space safety zoning restriction (avigation easement) established by agreement dated 24, July, 1942, signed by the State Land Department of the State of Arizona in consideration of one dollar ($1.00) paid to the State of Arizona by the United States of America, affecting the following described properties to wit:

Those certain portions of Sections 16, 17, 19, 20, 21, 26, 27, 28, 29, 30, 31, 34 and 35, Township Ten (10) South, Range Ten (10) East, and of Sections 24 and 36, Township Ten (10) South, Range Nine (9) East, and of Section One (1), Township Eleven (11) South, Range Nine (9) East, and of Sections 4, 5, 6 and 17, Township Eleven (11) South, Range Ten (10) East, of the Gila and Salt River Base and Meridian.

V

That certain air-space safety zoning restriction (avigation easement) established for the period of the present War plus six (6) months by agreement dated 19, October, 1942, signed by the Cortaro Farms Company, an Arizona corporation, in consideration of one dollar ($1.00) paid to it by the United States of America, affecting the following described property, to wit:

Those certain portions of Sections 1, 2, 3, 10, 11 and 14, Township 11 South, Range 10 East, Pima County, Arizona, of the Gila and Salt River Base and Meridian.

EXCEPTING, HOWEVER, from this conveyance all right, title, and interest in and to all property in the nature of equipment, furnishings, and other personal property which can be removed from the land without material injury to the land or structures located thereon other than that property described in Schedule "A" hereof; and reserving to the GRANTOR for itself and its lessees, licensees, permittees, agents, and assigns the right to use the property excepted hereby in such a manner as will not materially and adversely affect the development, improvement, operation or maintenance of the airport and the right of removal from said premises of such property, all within a reasonable period of time after the date hereof, which shall not be construed to mean any period more than one (1) year after the date of this instrument, together with a right of ingress to and egress from said premises for such purposes.

Surplus Property Conveyance - Page 2

And further excepting from this conveyance and reserving to the GRANTOR, in accordance with Executive Order 9908, approved on December 5, 1947, (12 F.R. 8223), all uranium, thorium, and all other materials determined pursuant to Section 5 (b) (1) of the Atomic Energy Act of 1946 (60 Stat. 761), to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the lands covered by the instrument for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby. However, such land may be used, and any rights otherwise acquired by this disposition may be exercised, as if no reservation of such materials had been made; except that, when such use results in the extraction of any such material from the land in quantities which may not be transferred or delivered without a license under the Atomic Energy Act of 1946, as it now exists or may hereafter be amended, such material shall be the property of the United States Atomic Energy Commission, and the Commission may require delivery of such material to it by any possessor thereof after such material has been seperated as such from the ores in which it was contained. If the Commission requires the delivery of such material to it, it shall pay to the person mining or extracting the same, or to such other person as the Commission determines to be entitled thereto, such sums, including profits, as the Commission deems fair and reasonable for the discovery, mining, development, production, extraction, and other services performed with respect to such material prior to such delivery, but such payment shall not include any amount on account of the value of such material before removal from its place of deposit in nature. If the Commission does not require delivery of such material to it, the reservation hereby made shall be of no further force or effect.

Said property transferred hereby was duly declared surplus and was assigned to the War Assets Administration for disposal, acting pursuant to the provisions of the above-mentioned Act, as amended, Reorganization Plan One of 1947 and applicable rules, regulations, and orders.

By the acceptance of this deed or any rights hereunder, the said GRANTEE, for itself, its successors, and assigns agrees that transfer of the property transferred by this instrument, is accepted subject to the following restrictions set forth in subparagraphs (1) and (2) of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, Reorganization Plan One of 1947 and applicable rules, regulations, and orders:

(1) That, except as provided in subparagraph (6) of the next succeeding unnumbered paragraph, the land, buildings, structures, improvements and equipment in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of the terms "exclusive right" as used in subparagraph (4) of the next succeeding paragraph. As used in this instrument, the term "airport" shall be deemed to include at least all such land, buildings, structures, improvements and equipment.

(2) That, except as provided in subparagraph (6) of the next succeeding paragraph, the entire landing area, as defined in WAA Regulation 6, as amended, and all structures, improvements, facilities and equipment in which this instrument transfers any

Sample Surplus Property Conveyance - Page 3

interest shall be maintained for the use and benefit of the public at all times in good and serviceable condition, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the remainder of their estimated life, as determined by the Civil Aeronautics Administrator or his successor. In the event materials are required to rehabilitate or repair certain of the aforementioned structures, improvements, facilities or equipment, they may be procured by demolition of other structures, improvements, facilities or equipment transferred hereby and located on the above described premises which have outlived their use as airport property in the opinion of the Civil Aeronautics Administrator or his successor.

By the acceptance of this deed or any rights hereunder, the said GRANTEE for itself, its successors and assigns, also assumes the obligations of, covenants to abide by, and agrees to, and this transfer is made subject to, the following reservations and restrictions set forth in subparagraphs (1) to (7) of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, Reorganization Plan One of 1947 and applicable rules, regulations, and orders:

(1) That insofar as it is within its powers, the GRANTEE shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(2) That the United States of America (hereinafter sometimes referred to as the "Government") through any of its employees or agents shall at all times have the right to make nonexclusive use of the landing area of the airport at which any of the property transferred by this instrument is located or used, without charge: Provided, however, that such use may be limited as may be determined at any time by the Civil Aeronautics Administrator or his successor to be necessary to prevent undue interference with use by other authorized aircraft; Provided, further, that the Government shall be obligated to pay for damages caused by such use, or if its use of the landing area is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area, commensurate with the use made by it.

(3) That during any national emergency declared by the President of the United States of America or the Congress thereof, the Government shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the airport at which any of the property transferred by this instrument is located or used, or of such portion thereof as it may desire, provided, however, that the Government shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, or control, and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; Provided, further, that the Government shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively of any improvements to the airport made without United States aid.

(4) That no exclusive right for the use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the term "exclusive right" being defined to mean

Sample Surplus Property Conveyance - Page 4

(1) any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft;

(2) any exclusive right to engage in the sale or supplying of aircraft, aircraft accessories, equipment, or supplies (excluding the sale of gasoline and oil), or aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, propellers, and appliances).

(5) That, except as provided in subparagraph (6) of this paragraph, the property transferred hereby may be successively transferred only with the proviso that any such subsequent transferee assumes all the obligations imposed upon the GRANTEE by the provisions of this instrument.

(6) That no property transferred by this instrument shall be used, leased, sold, salvaged, or disposed of by the GRANTEE for other than airport purposes without the written consent of the Civil Aeronautics Administrator, which shall be granted only if said Administrator determines that the property can be used, leased, sold, salvaged or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the airport at which such property is located; Provided, that no structures disposed of hereunder shall be used as an industrial plant, factory, or similar facility within the meaning of Section 23 of the Surplus Property Act of 1944, as amended, unless the GRANTEE shall pay to the United States such sum as the War Assets Administrator or his successor in function shall determine to be a fair consideration for the removal of the restriction imposed by this proviso.

(7) The GRANTEE does hereby release the Government, and will take whatever action may be required by the War Assets Administrator to assure the complete release of the Government from any and all liability the Government may be under for restoration or other damages under any lease or other agreement covering the use by the Government of the airport, or part thereof, owned, controlled or operated by the GRANTEE, upon which, adjacent to which, or in connection with which, any property transferred by this instrument was located or used; Provided, that no such release shall be construed as depriving the GRANTEE of any right it may otherwise have to receive reimbursement under Section 17 of the Federal Airport Act for the necessary rehabilitation or repair of public airports heretofore or hereafter substantially damaged by any Federal agency.

By acceptance of this instrument or any rights hereunder, the GRANTEE further agrees with the GRANTOR as follows:

(1) That in the event that any of the aforesaid terms, conditions, reservations or restrictions is not met, observed, or complied with by the GRANTEE or any subsequent transferee, whether caused by the legal inability of said GRANTEE or subsequent transferee to perform any of the obligations herein set out, or otherwise, the title, right of possession and all other rights transferred by this instrument to the GRANTEE, or any portion thereof, shall at the option of the GRANTOR revert to the UNITED STATES OF AMERICA sixty (60) days following the date upon which demand to this effect is made in writing by the Civil Aeronautics Administrator or his successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions, reservations and restrictions shall have been

Sample Surplus Property Conveyance - Page 5

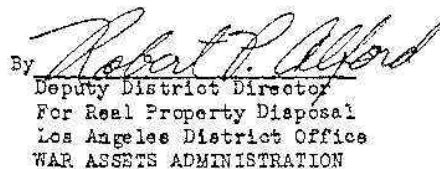
met, observed or complied with, in which event said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the GRANTEE, its transferees, successors and assigns.

(2) That if the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the Government may exercise its option to cause the title, right of possession and all other rights transferred to the GRANTEE, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

TO HAVE AND TO HOLD said premises, with appurtenances, except the fissionable materials and other property excepted above and the rights reserved above, and under and subject to the reservations, restrictions and conditions set forth in this instrument unto the said GRANTEE, its successors and assigns forever.

IN WITNESS WHEREOF, the GRANTOR has caused these presents to be executed as of the day and year first above written.

UNITED STATES OF AMERICA
Acting by and through
WAR ASSETS ADMINISTRATOR

By 
Deputy District Director
For Real Property Disposal
Los Angeles District Office
WAR ASSETS ADMINISTRATION

Sample Surplus Property Conveyance - Page 6

Chapter 4. Federal Grant Obligations and Responsibilities

4.1. Introduction. This chapter provides a brief description of the three FAA grant programs for airports, the duration of federal obligations, the useful life of grant funded projects, and the legislatively mandated sponsor compliance requirements. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to ensure that the sponsors understand and comply with their grant assurances.

Federal Airport Act
May 13, 1946

P.L. 377, 79th Congress
60 Stat. 170
49 U.S.C. 1101

AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970[1]

[*Act of May 31, 1970, 84 Stat. 219; as amended by the Act of November 27, 1971, 85 Stat. 491; Act of June 18, 1973, 87 Stat. 88; and Act of July 12, 1976, 90 Stat. 871*]

TITLE I—AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970

Part I—Short Title, Etc.

SECTION 1. SHORT TITLE. (*49 U.S.C. 1701 Note*)

This title may be cited as the "Airport and Airway Development Act of 1970".

SEC. 2. DECLARATION OF POLICY. (*49 U.S.C. 1701*)

The Congress hereby finds and declares—

That the Nation's airport and airway system is inadequate to meet the current and projected growth in aviation.

That substantial expansion and improvement of the airport and airway system is required to meet the demands of interstate commerce, the postal service, and the national defense.

That the annual obligational authority during the period July 1, 1970, through September 30, 1980, for the acquisition, establishment, and improvement of air navigational facilities under the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.), should be no less than $250,000,000.

4.2. Sponsor Federal Obligations Under Various Grant Agreements. Under the various federal grant programs, the sponsor of a project agrees to assume certain federal obligations pertaining to the operation and use of the airport. These federal obligations are embodied in the application for federal assistance as sponsor assurances. The federal obligations become a part of the grant offer, binding the grant recipient when it accepts federal funds for airport development.

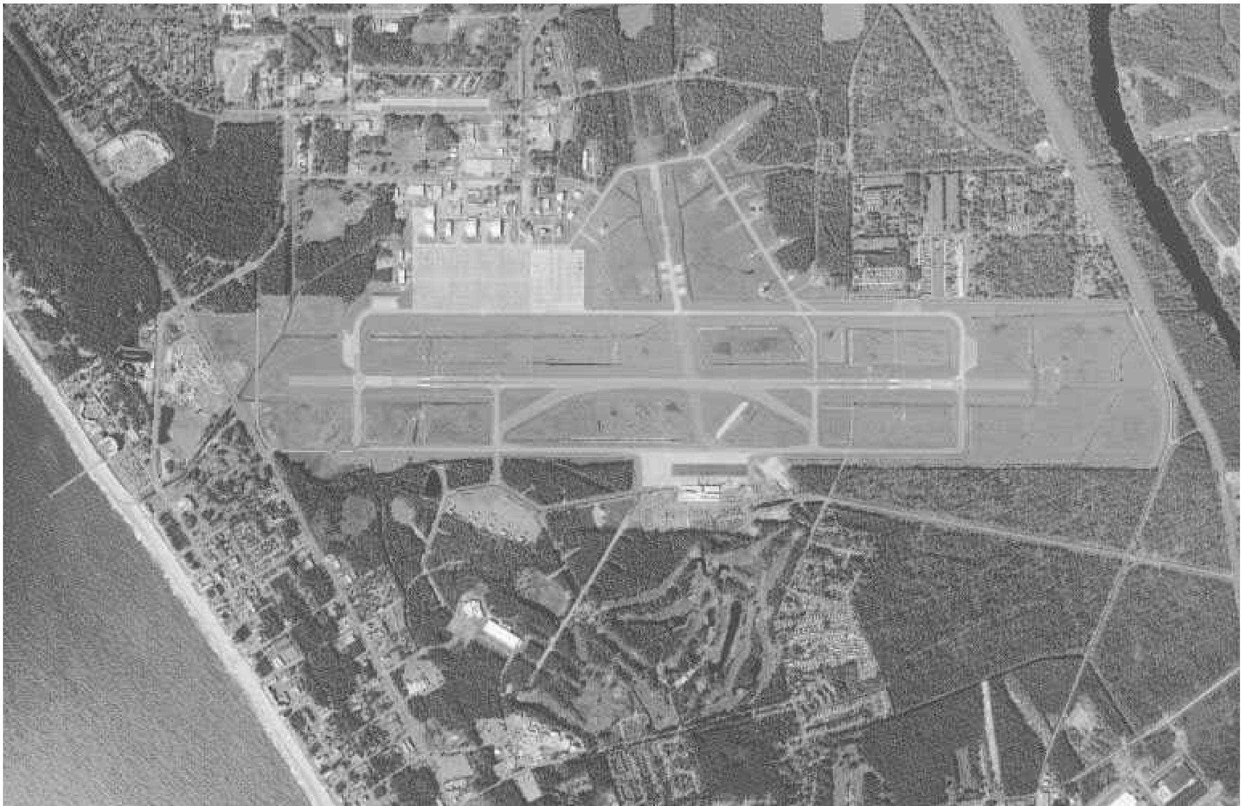
a. Since 1946, the FAA has administered three grant programs for development of airports:

(1). The Federal Aid to Airports Program (FAAP) pursuant to the Federal Airport Act of 1946, as amended, until repealed in 1970.

(2). The Airport Development Aid Program (ADAP) pursuant to the Airport and Airway Development Act of 1970 (1970 Airport Act), as amended, until repealed in 1982.

(3). The Airport Improvement Program (AIP) pursuant to the Airport and Airway Improvement Act of 1982 (AAIA), as amended. (See Title 49 U.S.C. § 47101, et seq.)

b. Assurances Pertaining to Grant Agreements. Each of these FAA administered federal airport financial assistance programs required airport sponsors to agree to certain assurances under the authorizing legislation of the grant programs. Certain assurances remain consistent from one grant program to the next. Other assurances were added by legislative mandate as the grant programs developed. Some assurances were superseded over time. In addition, the FAA has statutory authority to prescribe additional assurances or requirements for sponsors. (See 49 U.S.C. § 47107(g).) Also, some grant agreements contain special covenants or conditions intended to address an airport-specific situation.



The useful life of a federally funded airport development project extends only for the period during which it is serviceable and usable with ordinary day-to-day maintenance. Reconstruction, rehabilitation, or major repair of a federally funded airport project without additional federal aid does not automatically extend the duration of its useful life as it applies to grant agreements. Land, however, has no limit to its useful life. As such, obligations associated with land do not expire. (Photo: National Oceanic and Atmospheric Administration (NOAA))

c. Special Project Conditions. This Order generally does not address special conditions under which the FAA funded a particular project. An example of a special condition might be that funds would be withheld if land for a safety area were not acquired within a prescribed time period. Special conditions and assurances are enforced in the same manner as standard assurances.

4.3. The Duration of Federal Grant Obligations. Federal obligations relating to the use, operation, and maintenance of the airport remain in effect throughout the useful life of the facilities developed under the project, but not to exceed 20 years. In cases where land was acquired with federal assistance under AIP, the federal land obligations remain in perpetuity. In cases where land was acquired with FAAP or ADAP grants, FAA should review the language of such grants when it is necessary to determine the status of the sponsor's obligations since most FAAP land grants and some ADAP grant documents do not impose a perpetual obligation. For disposal of a specific parcel, the sponsor's obligation to reinvest the proceeds may depend on the grant history for that particular parcel. (More information about this process is contained in this Order in chapter 22, *Releases from Federal Obligations*.) Before concluding that a sponsor's

grant obligations have expired, the FAA should review all land grants at the airport to ensure that no land grant contains a perpetual obligation. All AIP land grants and most surplus property deeds of conveyance include the obligation to operate the airport property as an airport in perpetuity.

Additionally, there are three assurances for which the obligation continues without limit as long as the airport is used as a public use airport: Grant Assurance 23, *Exclusive Rights;* Grant Assurance 25, *Airport Revenues;* and Grant Assurance 30, *Civil Rights*.

Private sponsors have the added requirement that the useful life of federally assisted projects shall be no less than 10 years from the date of acceptance of federal aid. (Public sponsors do not have this minimum useful life requirement.) The actual grant agreement should be consulted to verify the federal obligations sponsors agreed to and to ensure the sponsor is being held to those assurances. This Order does not replace reading the obligating documents.

4.4. The Useful Life of Grant Funded Projects. The useful life of a federally funded airport development project extends for the period of time during which it is serviceable and usable with ordinary day-to-day maintenance.

Reconstruction, rehabilitation, or major repair of a federally funded airport project without additional federal aid does not automatically extend the duration of its useful life as it applies to grant agreements. Generally, improvements are presumed to last at least 20 years because they are built to FAA standards. If new grants are issued for reconstruction, rehabilitation, or major repair, a new useful life period begins.

An airport sponsor cannot shorten its obligations by allowing projects to deteriorate. FAA regional airports divisions make the determination of when the useful life has expired on a federally funded project that needs reconstruction, rehabilitation, or major repair in order to continue serving the purpose for which it was developed. See paragraph 4.6.h of this chapter for detailed guidance on the duration of grant obligations.

In cases where land was acquired with federal assistance, the federal obligations relating to the use, operation, and maintenance of the airport generally remain in perpetuity.

4.5. Airport Sponsor Compliance. Legislatively mandated sponsor assurances have varied over time due to statutory amendments and project specific circumstances. Therefore, in assessing an airport sponsor's compliance status, the FAA must review each grant agreement entered into by the airport sponsor and the FAA in order to determine the airport sponsor's federal obligations accurately and to assess the sponsor’s compliance with the applicable assurances.

4.6. Federal Obligations under the Basic Grant Assurance Requirements. This section discusses the different assurance lists and airport grant programs. Airport sponsors accept these

assurances as a condition of receiving grant funds under the AIP for projects that involve airport development, noise mitigation, and airport planning.

When the airport sponsor accepts the grant, the assurances become binding contractual federal obligations between the sponsor and the FAA. It is the responsibility of the ADOs and regional airports divisions to ensure sponsors understand and comply with their assurances.

a. Standard Sponsor Assurances. FAA uses three separate sets of standard sponsor assurances:

(1). Airport Sponsors (owners/operators).

(2). Planning Agency Sponsors.

(3). Nonairport Sponsors Undertaking Noise Compatibility Program Projects (referred to as nonairport sponsor assurances).

b. Types of Grant Programs or Projects. There are five types of airport grant programs or projects that include assurances from one of the three sets of standard assurances:

(1). Airport development programs undertaken by an airport sponsor.

(2). Noise compatibility programs undertaken by an airport sponsor.

(3). Planning projects undertaken by an airport sponsor.

(4). Planning projects undertaken by planning agency sponsors.

(5). Noise compatibility programs undertaken by nonairport sponsors.

The FAA may also award grants to nonairport sponsoring government entities for noise compatibility programs. These could include adjacent communities to the airport that are impacted by aircraft landing or taking off, but which are not sponsors of that airport. The assurances for these grants bind the recipients to specific federal obligations. While these assurances are similar to the airport sponsor assurances, there are differences; they follow a different numbering scheme and exclude airport-specific requirements. (Photo: FAA)

c. Groupings. Grant agreements list the assurances in three separate groups:

(1). Group "A" *General*, sets forth the basic requirement

binding the sponsor to all federal grant assurances.

(2). Group "B" *Duration and Applicability*, establishes the length of time that assurances remain in effect and identifies which assurances apply to the various programs or projects.

(3). Group "C" *Sponsor Certification*, lists all of the standard assurances that the sponsor must adhere to under the grant agreement.

d. Group A. The *General* assurance states the basic requirement for the sponsor to abide by all applicable assurances as a condition of accepting a federal grant for airport development, noise compatibility, and airport planning. The general assurance requires the sponsor to include these assurances as part of its grant application. When the sponsor accepts the grant offer, FAA incorporates these assurances into the grant agreement. When the sponsor accepts, the agreement binds both the federal government and the sponsor to its terms.

e. Group B. The *Duration and Applicability* assurance identifies those assurances that apply to different types of grant programs and specifies the length of time the assurances remain in force.

f. Group C. As of September 2009, there were 39 numbered assurances in the *Sponsor Certification* group for airport sponsors. All of these assurances apply to airport development programs and noise compatibility programs undertaken by an airport sponsor, but only 11 of them apply to planning projects undertaken by an airport sponsor.

g. Grant Assurance Applicability.

(1). Airport Sponsor Airport Development and Noise Compatibility. Requirements for airport development and noise compatibility programs undertaken by airport sponsors are the same. All 39 standard grant assurances for airport sponsors apply.

(2). Airport Sponsor Planning. Requirements for airport sponsor planning projects are different from airport sponsor development or noise compatibility programs. Several of the numbered assurances for airport sponsors apply to airport planning projects: Grant Assurance 1, *General Federal Requirements*; Grant Assurance 2, *Responsibility and Authority of the Sponsor*; Grant Assurance 3, *Sponsor Fund Availability*; Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 6, *Consistency with Local Plans*, Grant Assurance 13, *Accounting System, Audit, and Record Keeping Requirements*; Grant Assurance 18, *Planning Projects*; Grant Assurance 30, *Civil Rights*; Grant Assurance 32, *Engineering and Design Services*; Grant Assurance 33, *Foreign Market Restrictions*; and Grant Assurance 34, *Policies, Standards, and Specifications*. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the planning project. In addition, Grant Assurance 25, *Airport Revenues*, will apply where the planning grant applies to a specific airport.

Grant Assurance 4, Good Title, requires the airport sponsor to assure that good title exists or that the sponsor will acquire good title for any property where federal funds will be used. For airport development programs, the sponsor must assure that the sponsor, another public agency, or the federal government holds good title to the airfield or airport site. If not, the sponsor must give its assurance that it will acquire good title satisfactory to the Secretary. (Photo: FAA)

(3). Nonairport Sponsor Noise Programs. The FAA may also award grants to nonairport sponsoring government entities for noise compatibility programs. These would include adjacent communities impacted by aircraft noise, but which are not sponsors of that airport. The assurances for these grants bind the sponsors to specific federal obligations. While these assurances are similar to the airport sponsor assurances, there are some differences. Specifically, these assurances follow a different numbering scheme and exclude airport-specific requirements. For example, airport sponsor Grant Assurance 19, *Operation and Maintenance*, includes a section on operating the airport to serve aeronautical users. This applies only to airport sponsors and is not part of the assurance for nonairport sponsors. For nonairport sponsors, the comparable assurance on operation and maintenance includes only the last section of Grant Assurance 19, *Operation and Maintenance*, which requires the grant recipient to operate and maintain noise compatibility items or noise program implementation items obtained with federal funds. Even though the assurances for airport sponsors and nonairport sponsors have different numbering and vary slightly, the subjects addressed are consistent.

(4). Planning Agency Sponsors. A planning agency sponsor is a governmental entity that has planning responsibilities for an area that includes an airport, but is not the airport sponsor. A separate set of standard assurances applies to planning agency sponsors. Several of the applicable assurances mirror the assurance topics for airport sponsor planning projects, but the language is slightly different.

A planning agency sponsor is a governmental entity that has planning responsibilities for an area that includes an airport, but is not the airport sponsor.

h. Grant Assurance Duration.

(1). General. Most of the assurances remain in effect for the useful life of the facilities developed, equipment acquired, or project items installed in the facilities, not to exceed 20 years. Some assurances have no limit on the duration of terms; they remain in effect as long as the airport remains an airport. This is true for Grant Assurance 23, *Exclusive Rights;* Grant Assurance 25, *Airport Revenues;* and Grant Assurance 30, *Civil Rights*. In addition, under AIP grants, the duration of the terms, conditions, and assurances do not expire with respect to real property acquired with federal funds (land and appurtenances, when applicable) as covered by Grant Assurance 4, *Good Title*; Grant Assurance 31, *Disposal of Land*; and Grant Assurance 35, *Relocation and Real Property Acquisition*.

Although not specifically mentioned in the standard grant assurances, the accepted useful life for personal property acquisitions, such as aircraft rescue and fire fighting (ARFF) or snow removal equipment is generally less than 20 years. The federal obligations associated with new ARFF equipment purchased with AIP funds is ten (10) years unless stated otherwise. The normal useful life of a piece of snow removal equipment is about ten (10) years. (Photos: FAA)

(2). Intended Purpose. The FAA Office of Chief Counsel has indicated the FAA may determine the useful life of an airport or airport facility has expired if it is no longer used or needed for the purpose for which it was developed.

(3). Equipment. Although not specifically mentioned in the standard grant assurances, the accepted useful life for personal property acquisitions, such as aircraft rescue and fire fighting (ARFF) or snow removal equipment is generally less than 20 years. The duration of this federal obligation for equipment was generally one (1) year in cases where surplus used personal property was accepted from the U.S. Government; however, the federal obligations associated with new ARFF equipment purchased with AIP funds is ten (10) years unless stated otherwise. The normal useful life of a piece of snow removal equipment is about ten (10) years. (See Program Guidance Letter 08-04, *AIP Eligibility for Snow Removal Equipment (SRE),* dated April 24, 2008, which is available online. See also chapter 23 of this Order, *Reversions of Airport Property*, for information related to the release of personal property federal obligations.)

(4). Private Airport Sponsors. The requirements for airport development and noise compatibility programs undertaken by an airport sponsor apply to both public agency sponsors and private sponsors. However, for private sponsors there is an added requirement that the minimum applicable duration will not be less than ten (10) years, regardless of the useful life.

i. Agency Responsibilities. The Airport Compliance Division (ACO-100) deals primarily with the set of standard assurances for airport sponsors. The FAA Office of Airport Planning and Programming (APP) handles issues involving standard grant assurances for planning agencies and nonairport sponsors. The ADOs and regional airports divisions ensure that the sponsor understands and complies with the applicable assurances.

4.7. through 4.10. reserved.

Table 4.1 Grant Assurance Applicability

	Airport Sponsor			**Nonsponsor**	
Grant Assurance	Development	Noise	Planning	Noise	Planning
#1 General Federal Requirements	X	X	X	X	X
2 Responsibility and Authority of the Sponsor	X	X	X	X	X
3 Sponsor Fund Availability	X	X	X	X	X
4 Good Title	X	X		X	
5 Preserving Rights and Powers	X	X	X	X	X
6 Consistency with Local Plans	X	X	X	X	X
7 Consideration of Local Interest	X	X		X	
8 Consultation with Users	X	X			
#9 Public Hearings	X	X			
#10 Air and Water Quality Standards	X	X			
#11 Pavement Preventive Maintenance	X	X			
#12 Terminal Development Prerequisites	X	X			
#13 Accounting System, Audit and Record Keeping	X	X	X	X	X
#14 Minimum Wage Rates	X	X		X	
#15 Veteran's Preference	X	X		X	
#16 Conformity to Plans and Specifications	X	X		X	
#17 Construction Inspection and Approval	X	X		X	
#18 Planning Projects	X	X	X		X
#19 Operations and Maintenance	X	X		X	
#20 Hazard Removal and Mitigation	X	X		X	
#21 Compatible Land Use	X	X		X	
#22 Economic Nondiscrimination	X	X			
#23 Exclusive Rights	X	X			
#24 Fee and Rental Structure	X	X			
#25 Airport Revenues	X	X			
#26 Reports and Inspections	X	X		X	X
#27 Use by Federal Government Aircraft	X	X			
#28 Land for Federal Facilities	X	X			
#29 Airport Layout Plan	X	X			
#30 Civil Rights	X	X	X	X	X
#31 Disposal of Land	X	X		X	
#32 Engineering and Design Services	X	X	X	X	X
#33 Foreign Market Restrictions	X	X	X	X	X
#34 Policies, Standards, and Specifications	X	X	X		X
#35 Relocation and Real Property Acquisition	X	X		X	
#36 Access by Intercity Buses	X	X			
#37 Disadvantaged Business Enterprises (DBE)	X	X		X	X
#38 Hangar Construction	X	X			
#39 Competitive Access	X	X			

** Standard grant assurances for nonairport sponsors of noise compatibility programs and for planning agency sponsors of planning programs are numbered differently and vary slightly in language.*

Table 4.2 Standard Grant Assurance Applied to Airport Programs and Projects

Type of Assurance	Type of Program
Airport Sponsor	Airport Development
Airport Sponsor	Noise Compatibility
Airport Sponsor	Planning Projects
Planning Agency	Planning Projects
Nonairport Sponsor	Noise Compatibility

Table 4.3 Grant Assurance Duration

Project Type and Entity	Duration
Public Sponsor Airport Development	
Exclusive Rights, 23	No limit
Airport Revenue, 25	No limit
Real Property, 4, 31, 35	No limit
Other Assurances, 1-3, 5-22, 26-29, 32-34, 36-39	Useful life not to exceed 20 years
Public Sponsor Aircraft Noise	Same as for airport development
Public Sponsor Planning	Life of project
Grant Assurances 1-3, 5-6, 13, 18, 30, 32-34	
Private Sponsor Airport Development	Same as for public sponsor airport development except useful life may be no less than 10 years.
Private Sponsor Noise	Same as for public sponsor
Private Sponsor Planning	Same as for public sponsor
Non Airport Sponsor Noise – General	Useful life not to exceed 20 years
Non Airport Sponsor Noise – Land	No limit
Non Airport Sponsor - Planning	Life of project
Planning Agency – Planning	Life of project
Civil Rights Assurance for any project	Specified in the assurance

Table 4.4 Typical Grant History for a Specific Airport McClelland-Palomar Airport, San Diego, California (CRQ) 1983-2005

Grant Number	FY	Description	Entitlement	Discretionary	Total
001-1983	1983	Rehabilitate Taxiway	0.00	352,258.00	352,258.00
		Groove Runway	0.00	204,010.00	204,010.00
002-1988	1988	Rehabilitate Taxiway Lighting	125,000.00	0.00	125,000.00
		Install Runway Lighting	175,000.00	0.00	175,000.00
		Install Apron Lighting	100,000.00	0.00	100,000.00
003-1988	1988	Conduct Noise Compatibility Plan Study	0.00	133,220.00	133,220.00
004-1991	1991	Improve Access Road	128,000.00	0.00	128,000.00
		Install Perimeter Fencing	37,641.00	0.00	37,641.00
005-1992	1992	Rehabilitate Apron	500,000.00	75,000.00	575,000.00
		Construct Apron	500,000.00	75,000.00	575,000.00
006-1992	1992	Noise Mitigation Measures	0.00	390,124.00	390,124.00
007-1993	1993	Conduct Airport Master Plan Study	0.00	126,000.00	126,000.00
008-1994	1994	Acquire Security Equipment	70,000.00	0.00	70,000.00
		Expand Apron	33,443.00	0.00	33,443.00
		Acquire Aircraft Rescue & Fire Fighting Safety Equipment	126,000.00	0.00	126,000.00
009-1995	1995	Acquire Security Equipment	205,934.00	0.00	205,934.00
		Install Guidance Signs	236,099.00	0.00	236,099.00
		Install Apron Lighting	178,246.00	0.00	178,246.00
		Extend Runway	100,000.00	0.00	100,000.00
		Extend Taxiway	100,000.00	0.00	100,000.00
010-1997	1997	Extend Runway	605,451.00	0.00	605,451.00
		Improve Runway Safety Area	200,000.00	150,818.00	350,818.00
		Extend Taxiway	200,000.00	0.00	200,000.00
011-1999	1999	Rehabilitate Taxiway	0.00	806,000.00	806,000.00
		Groove Runway	363,664.00	0.00	363,664.00
		Construct Taxiway	0.00	144,000.00	144,000.00
012-1999	1999	Groove Runway	18,259.00	0.00	18,259.00
013-2000	2000	Construct Taxiway	650,000.00	0.00	650,000.00
014-2001	2001	Conduct Noise Compatibility Plan Study	0.00	200,000.00	200,000.00
015-2001	2001	Construct Taxiway	805,754.00	43,529.00	849,283.00
017-2002	2002	Construct Taxiway	298,552.00	0.00	298,552.00
018-2003	2003	Construct Apron	800,000.00	0.00	800,000.00
		Acquire Land for Development	1,098,552.00	284,783.00	1,383,335.00
019-2004	2004	Conduct Noise Compatibility Plan Study	55,071.00	0.00	55,071.00
		Rehabilitate Taxiway	209,000.00	0.00	209,000.00
		Acquire Land for Development	1,123,238.00	0.00	1,123,238.00
020-2005	2005	Acquire Aircraft Rescue & Fire Fighting Vehicle	0.00	495,000.00	495,000.00
		Improve Runway Safety Area	0.00	630,000.00	630,000.00
TOTAL GRANTS					**$13,152,646.00**

Federal Aid to Airports Program (FAAP)

Year	Announced Allocation	Number of Airports	Year	Announced Allocation	Number of Airports
1947-48	66.6	908	1960	57.1	288
1949	35.1	455	1961	58.8	314
1950	29.8	314	1962	70.1	327
1951	24.8	186	1963	74.3	419
1952	15.0	226	1964	76.0	452
1953	10.0	169	1965	72.6	413
1954	(No program)	(No program)	1966	84.5	445
1955	20.4	164	1967	72.5	341
1956[1]	58.3	524	1968	70.2	386
1957	51.9	368	1969	74.7	397
1958	55.0	334	1970	34.1	177
1959	63.6	358			

Airport Development Aid Program (ADAP) and Planning Grant Program (PGP)

Year	ADAP: Net Obligations	ADAP: No. of Projects	PGP: Net Obligations	PGP: Grants Issued
1971	170.0	231	3.6	42
1972	280.0	464	9.0	180
1973	206.6	450	9.6	275
1974	299.7	646	8.2	277
1975	339.9	643	9.6	286
1976 & Tran. Qtr.	416.3	525	6.0	122
1977	506.3	757	11.8	205
1978	539.8	761	14.0	242
1979	624.2	858	15.0	241
1980	639.0	817	10.0	165
1981	438.5	622	(No program)	(No program)

Chapter 5. Complaint Resolution

5.1. Introduction. This chapter discusses both informal and formal resolution of complaints involving federally assisted airports. It discusses the process under 14 Code of Federal Regulations (CFR) Part 13 for informal complaints and the process under 14 CFR Part 16 for formal complaints. More space is devoted to informal resolution since Part 16 procedures are described in detail in that regulation and because regional personnel will primarily be involved in informal resolution. Title 14 CFR Part 13, section 13.1, provides the public the means of reporting compliance violations of federal laws affecting air transportation, including any regulations, rules, policies, or orders issued under those laws. When appropriate, the FAA airports district office (ADO) and regional airports divisions will investigate complaints to ensure that each reported violation is properly evaluated and that sponsors are in compliance with their federal obligations.

The Department of Transportation (DOT) handles complaints from air carriers regarding the reasonableness of airport fees filed under 14 CFR Part 302. (Photo: FAA)

5.2. Background. Under 14 CFR § 13.1, any person who knows of a violation of federal aviation laws, regulations, rules, policies, or orders may report the violation to the FAA informally as a "report of violation." Section 13.5 provides for *formal* complaints to the FAA for matters not covered by 14 CFR Part 16. For example, Part 13.5 would be used to file a formal complaint against an airport operator for a violation of safety regulations, including Part 139, but not a violation of obligations under grant assurances or deeds. Section 13.1, however, applies to reports of violations and informal complaints relating to matters covered under either Part 13 or Part 16. A person reporting a violation under § 13.1 does not need to be affected by the violation alleged in the complaint. A § 13.1 informal complaint simply represents a report to the FAA of an alleged violation; the violation is not necessarily against or affecting the complainant.

5.3. Complaints Handled by Other FAA Offices or Other Federal Agencies. Although the ADO and regional airports divisions resolve most compliance complaints, there are a few exceptions where other FAA offices have primary responsibility. These exceptions are for issues involving civil rights and disability, certain fee disputes, and employee complaints.

a. Civil Rights and Disability. The FAA Office of Civil Rights handles alleged violations of laws relating to disadvantaged business enterprises (DBE), persons with disabilities at airports, and civil rights.

b. Fee Disputes. The Department of Transportation (DOT) handles complaints regarding the reasonableness of airport fees filed by air carriers against an airport under 49 U.S.C. § 47129. (Refer to 14 CFR Part 302.) Carriers have the choice of filing with the DOT under Part 302 or with the FAA under Part 16.

c. Employee Complaints. Neither Part 13.1 nor Part 16 applies to complaints against FAA employees acting within the scope of their employment. Complaints received about the conduct of an FAA employee should be forwarded to the Associate Administrator for Airports.

When evaluating an informal complaint, the investigating officer must identify the facts. Only supported facts may be considered in finding an airport in noncompliance. A supported fact is one that can be substantiated through corroborating evidence. They can be derived from minutes of meetings, contracts or leases, letters, airport layout plan, grant documents, financial statements, invoices, receipts, visual inspection, photographs, policy documents, procedures manuals, independent analysis, records of conversation, sworn testimony, and corroborating statements. All records obtained should be retained in the airports district office's files. (Photo: FAA)

5.4. Informal Complaints under § 13.1.

Any person suspecting a violation of federal aviation laws, regulations, rules, policies, or orders may file a complaint informally.

a. Informal Process. The informal filing process under § 13.1 permits the reporting party to submit its report of complaint verbally or in writing. The ADO or regional airports division will attempt to resolve these complaints. Accordingly, those offices will:

1. Evaluate the facts surrounding the filing and identify possible sponsor violations.
2. Clarify the rights and responsibilities of the airport sponsor and the complaining party.
3. Offer assistance to resolve the dispute in a manner consistent with the sponsor's federal obligations.
4. Provide the sponsor the opportunity to comply with its federal obligations voluntarily when a violation is identified.

b. Complaints Resolved at ADOs and Regional Airports Divisions. ADOs or regional airports divisions will review the filing and assist both parties in reaching a mutually agreeable resolution. If mutually agreed-upon resolution is not possible, the FAA office reviewing the complaint will make a preliminary determination based on the facts presented. Although there are no legislative or regulatory deadlines for completing informal complaints, regional offices and ADOs are encouraged to attempt to reach resolution within 120 days.

5.5. Process for Resolving Informal Complaints. When the violations involve an airport sponsor's compliance with its federal grant assurances or federal obligations assumed under land transfers, the ADO or regional airports compliance officer should handle the filing. When an ADO or regional airports division receives a complaint about an airport in another FAA region, that office should refer that matter to the appropriate region. If the Airport Compliance Division (ACO-100) receives an informal complaint, it may provide policy information to the complaining party, but will refer the matter to the appropriate regional office. ACO-100 may also forward to regional airports divisions complaints that warrant further action but fail to meet formal complaint standards under Part 16.

FAA offices should discourage anonymity by complainants. Anonymity does little to substantiate a claim.

5.6. Receiving the Complaint.

a. Taking the Complaint. The FAA may receive an informal complaint through telephone, letter or e-mail. If it receives the filing by telephone, the receiving office may request the complaining parties to submit the allegation and supporting information in writing. In fact, when the issues involve safety, are complex, or if the complainant is unusually emotional, the FAA advises receiving offices to request written allegations.

b. Acknowledging the Complaint. The receiving office should promptly acknowledge receipt of the informal complaint by letter.

c. File Documents. When the complaining party submits written allegations and supporting information, the ADO or regional airports division should provide copies to the airport sponsor and request the sponsor to provide a detailed written response for each allegation. Complaints filed with an FAA office are not confidential, and documents filed should always be provided to both parties during the proceedings. FAA offices should not require either party to file Freedom of Information Act (FOIA) requests to obtain these documents. In fact, unnecessary burdens placed on the parties to use the FOIA process may actually derail the informal resolution process. However, if the ADO or regional airports division has questions regarding the appropriateness of releasing specific documents, it should seek guidance from its local FOIA representative and ACO-100.

Informal resolution is a process in which the parties communicate their differences directly to one another and attempt to reconcile them. Participation is voluntary. The parties, themselves, determine the process and the decision-making criteria to be used. (Photo: FAA)

d. Block Grant States. When an ADO or regional airports division receives a complaint about an airport sponsor whose airport is located in a block grant state,[8] that FAA office should contact that state department of transportation or aeronautics division to decide on a protocol for resolving the allegations. While state participation is essential, the FAA remains responsible for ensuring the integrity of the Part 13.1 process.

5.7. Coordinating Resolution of the Part 13.1 Informal Complaint. Depending on the nature of the complaint, the ADO or regional airports division should elevate issues and coordinate with other FAA offices. Coordination may include regional counsel, ACO-100, and other FAA headquarters offices as appropriate, as well as appropriate representatives for airports in state block grant states.

a. FAA Internal Review. When the complaining party alleges safety violations or raises issues that are complex, unique, or involve national policy, or when the complaining party is unusually emotional, the ADO or regional airports division will bring the complaint to the attention of the FAA management, which may include the proper FAA office of interest, such as Flight Standards.

b. Regional Counsel, Airport Compliance Division (ACO-100), and FAA Headquarters. When resolution may have national policy implications, the ADO or regional airports division will coordinate the response with the regional counsel, ACO-100, and other affected headquarters offices.

c. Block Grant States. When the allegations affect a sponsor in a block grant state, the ADO or regional airports division will work with the state department of transportation or aeronautics division to evaluate the allegation.

5.8. Evaluate the Complaint. The FAA uses the following procedures to evaluate complaints:

a. Merits of the Report. The ADO or regional airports division will establish whether the FAA has jurisdiction by determining if the allegations relate to the sponsor's federal obligations. If the investigating office decides the issue is outside of the sponsor’s federal obligations or that there was no violation, it should advise the complaining party and the sponsor that it will take no further action on the matter. There is no requirement to investigate a complaint if it is clear that there is no violation of the grant assurances.

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[8] Most general aviation airports receive grants directly from the FAA. However, 49 U.S.C. § 47128 permits FAA to designate seven states to participate in the state block grant program. These states receive a block of AIP money from the FAA. The state aviation agency, not the FAA, decides which airports will receive grant funds. Only general aviation, reliever, and small commercial service airports can receive AIP grant under this program. Participation in the state block grant program does not affect how much money the airports in a state receive. The state block grant program was initially authorized in 1987 with three states allowed to participate. In 1992, DOT issued a report on the program declaring it a success. As a result, the program was reauthorized and expanded to seven states.

Part 13—Investigative and Enforcement Procedures

Subpart A—Investigative Procedures

§ 13.1 Reports of violations.

(a) Any person who knows of a violation of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act relating to the transportation or shipment by air of hazardous materials, the Airport and Airway Development Act of 1970, the Airport and Airway Improvement Act of 1982, the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, should report it to appropriate personnel of any FAA regional or district office.

(b) Each report made under this section, together with any other information the FAA may have that is relevant to the matter reported, will be reviewed by FAA personnel to determine the nature and type of any additional investigation or enforcement action the FAA will take.

(b) For the purpose of investigating alleged violations of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, the Airport and Airway Improvement Act of 1982, the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, the Administrator's authority has been delegated to the various services and or offices for matters within their respective areas for all routine investigations. When the compulsory processes of sections 313 and 1004 (49 U.S.C. 1354 and 1484) of the Federal Aviation Act, or section 109 of the Hazardous Materials Transportation Act (49 U.S.C. 1808) are invoked, the Administrator's authority has been delegated to the Chief Counsel, the Deputy Chief Counsel, [and] each Assistant Chief Counsel.

(c) In conducting formal investigations, the Chief Counsel, the Deputy Chief Counsel, [and] each Assistant Chief Counsel may issue an order of investigation in accordance with Subpart F of this part.

b. Obligating Documents. The investigating FAA office should review the sponsor's obligating documents. Federal obligations may vary depending on the obligating document. Some grant agreements or property transfer documents may contain special covenants or conditions specific to an individual sponsor.

c. Supporting Facts. When evaluating a complaint, the investigating FAA office must identify the facts and separate facts from unsubstantiated allegations. Only complaints supported by facts may be considered in finding an airport in noncompliance for purposes of withholding discretionary funding. The complaining party has the responsibility to provide sufficient factual information to support the allegation(s). A supported fact is one that can be substantiated through corroborating evidence.

The following may be helpful in supporting a fact:

- contracts or leases,
- minutes of meetings
- letters,

- Airport Layout Plan (ALP),
- grant documents,
- financial statements, invoices, receipts,
- visual inspection, photographs,
- policy documents,
- procedures manuals,
- independent analysis,
- records of conversation, sworn testimony, or corroborating statements.

The best evidence will vary depending on the facts surrounding each allegation. The least persuasive allegation is one in which the complaining party fails to present supporting evidence.

In reviewing a complaint, the investigating office may request additional clarifying information from the complaining party or the sponsor. In addition, the investigating office may need to consult with other FAA offices. For example, Flight Standards or Air Traffic may determine that an airspace or safety study is needed to resolve issues pertaining to ultralights, airships, balloons, or parachute jumping.

d. Additional Information Involving a Part 13.1 Complaint. In reviewing a complaint, the investigating FAA office may request additional clarifying information from the complaining party or the sponsor. In addition, the investigating FAA office may need to consult with other FAA Offices. For example, Flight Standards or Air Traffic may determine that an airspace or safety study is needed to resolve issues pertaining to the operation of ultralights, airships, balloons, or parachute jumping. Requesting additional information is encouraged since this will result in a more complete record.

5.9. Attempt to Resolve the Allegation.

a. Informal Approach. Complaining parties and sponsors should regard reports of possible violations as an educational opportunity that permits both sides to resolve a potentially expensive and lengthy proceeding. Consequently, the ADO or regional airports division should initially approach the allegations as a request for information regarding rights and responsibilities of both the complaining party and the sponsor.

b. The FAA Role in Finding a Solution. Complaints generally arise when one or both parties are unable to achieve their individual objectives. Frequently, there is a misunderstanding of the sponsor's federal obligations. Since both the complaining party and sponsor have a stake in finding an equitable solution, the investigating office should:

(1). Contact both sides to discuss the issues.

(2). Clarify and explain the sponsor's federal obligations.

(3). Where appropriate, explain that the FAA's jurisdiction may not extend to helping the complaining party achieve its objectives.

(4). Consider, if appropriate, bringing the parties together for informal resolution. (See below.)

FAA Alternative Dispute Resolution Office (AGC-20)

The Associate Chief Counsel for ADR is the FAA's appointed Dispute Resolution Specialist. He is responsible for implementing the provisions of the Administrative Dispute Resolution Act, developing FAA ADR policy, and increasing the understanding and use of ADR techniques within the FAA. He is a Deputy Dispute Resolution Specialist (DDRS) in the DOT ADR system, and works in partnership with the DOT Dispute Resolution Specialist and the DOT ADR Council.

While the DDRS does not administer a formal dispute resolution process, his office provides ADR policy direction, leadership, expertise, and support for all ADR programs in the FAA.

The DDRS also provides legal guidance related to ADR, coordinates ADR initiatives, is available to assist offices in designing conflict management systems, and provides training on ADR and other collaborative problem-solving issues and methods to managers and employees, as well as to those involved in providing dispute resolution services.

The DDRS and his staff are available to advise and consult with employees and mangers seeking assistance in avoiding or resolving workplace or other conflict. His office also provides, or arranges for the provision of, intervention services, as requested. These services include mediation, conflict coaching, facilitation, neutral evaluation, and other ADR processes.

5.10. Dispute Resolution for Part 13.1 Complaints.

a. Local Level. The ADO or regional airports division may resolve the allegations at any stage provided the parties agree and the resolution is consistent with the sponsor's federal obligations.

b. Dispute Resolution. The investigating office may use a variety of tools and techniques for dispute resolution. Dispute resolution usually involves the use of an objective third party working with the disputants to help them find a mutually acceptable solution. Dispute resolution methods that might be used to resolve an informal complaint include negotiation, facilitation, and mediation.

c. Alternative Dispute Resolution Staff. The Alternative Dispute Resolution Staff (AGC-20) works closely with FAA program offices that are charged with managing FAA alternative dispute resolution (ADR) activities and initiatives. The Alternative Dispute Resolution staff coordinates and issues FAA ADR policy guidance and provides training to FAA personnel in all aspects of ADR. (To learn more about ADR in general or about some of the specific ADR programs being used in the FAA, visit the Dispute Resolution Staff's FAA web site. The web site is intended to be a resource guide to help FAA employees and others learn about ADR. It contains links to ADR information from the FAA, other federal agencies, and private organizations.)

5.11. Determinations on Part 13.1 Complaints and Notification to the Parties. In a Part 13.1 complaint, the ADO or regional airports division will attempt to resolve the dispute informally. If the parties do not come to agreement, the ADO or regional airports division may make a preliminary determination. The determination may be a dismissal or a notice of apparent

noncompliance for each issue. In cases of apparent noncompliance, the preliminary determination should state clearly that it represents the *preliminary* conclusions of the regional airports division or ADO on compliance, and is *not* a formal or final FAA determination of noncompliance. The investigating office should send a letter to both the complaining party and the sponsor explaining the determination. (See a sample Part 13.1 Informal Resolution Preliminary Finding at the end of this chapter.)

5.12. Dismissing a Part 13.1 Complaint. If the evaluation reveals no apparent violation, if the parties come to a satisfactory resolution, or if the sponsor agrees to comply, the ADO or regional airports division should dismiss the complaint after having properly documented the outcome. If either party is dissatisfied, he or she may file a formal complaint under 14 CFR Part 16.

5.13. Notice of Apparent Noncompliance. If the ADO or regional airports division finds the sponsor to be in apparent violation of its federal obligations, it should take appropriate action to bring the sponsor into voluntary compliance. In the absence of voluntary compliance following a written and dated request, the ADO or regional airports division should notify the sponsor in writing of the potential noncompliance and ask for action that would resolve any potential noncompliance before additional discretionary funding is considered. The letter to the sponsor should clearly identify the apparent violation(s), specify the corrective action(s) that would resolve the apparent noncompliance without further agency action, and prescribe a deadline (i.e., 30 or 60 days) for completion of the corrective action. The ADO or regional airports division should also notify the complaining party of this outcome and also notify ACO-100 of any compliance actions needed or taken in response to the dispute.

5.14. Follow up and Enforcement Actions.

a. Follow up on Notices of Noncompliance. The ADO or regional airports division should follow up on notices of apparent noncompliance to determine if the airport completes corrective actions satisfactorily within the prescribed deadline. If the sponsor refuses to implement corrective action, the ADO or regional airports division should coordinate with ACO-100. The ADO should not direct complainants to the Part 16 process without first attempting to resolve the issues at the local level. If warranted, and after consultation with the regional office, ACO-100 may initiate its own investigation under 14 CFR § 16.101.

The National Transportation Safety Board (NTSB) investigates civil aviation accidents in the United States and issues safety recommendations aimed at preventing future accidents. The NTSB determines the probable cause of all U.S. civil aviation accidents and certain public use aircraft accidents. (Photo: NTSB)

5.15. Documentation of FAA Regional Airports Division Determination. There is no specific requirement regarding the type of documentation that the office compiles and relies upon to support a Part 13.1 determination. Generally, the investigating FAA office should prepare a letter to the complaining party and the sponsor detailing the findings and conclusions. This detailed letter, called an informal or initial determination of compliance or apparent noncompliance, its supporting documents, and follow-up actions generally provide a sufficient history of the complaint and resolution. These documents may later assist the Part 16 complainant certify (as is required under 14 CFR § 16.21(b)) that substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint have been made and that there appears no reasonable prospect for timely resolution of the dispute.

5.16. Formal Complaint: 14 CFR Part 16. Section 13.1 applies only to informal complaints; 14 CFR Part 16 contains the agency procedures for filing, investigating, and adjudicating formal complaints against airport operators. Part 16 covers matters within the jurisdiction of the Associate Administrator for Airports involving federal obligations incurred by an airport sponsor in accepting federal property or FAA grants. This primarily involves financial compliance and reasonable and nondiscriminatory access, but includes all obligations in the grant assurances and property deeds. As noted above, the Part 13 process can facilitate a complainant meeting the pre-complaint resolution requirements of 14 CFR § 16.21. Under that section, potential complainants are required to engage in good faith efforts to resolve the disputed matter informally with potentially responsible respondents before filing a formal Part 16 complaint. Informal resolution may include mediation, arbitration, use of a dispute resolution board, or other form of third party assistance, including assistance from the responsible FAA ADO or regional airports division. When filing a Part 16 complaint, the complainant must certify that good faith efforts have been made to achieve informal resolution. (Allegations of revenue diversion, however, may not lend themselves to full resolution in the pre-complaint process unless the proposed resolution addresses the total amounts allegedly diverted by the airport. Nevertheless, a complainant must show that informal resolution was attempted.) The Part 16 process is the formal administrative process by which the FAA may make a formal agency finding regarding an airport sponsor's status of compliance with its federal obligations.

However, there are exceptions:

a. The DOT handles complaints by air carriers regarding the reasonableness of airport fees filed under 49 U.S.C. § 47129. (Refer to 14 CFR Part 302, *DOT Rules of Practice in Proceedings*.) Carriers may choose whether to file a complaint over the reasonableness of airport fees with DOT under Part 302 or with FAA under Part 16.

The FAA regional offices of Civil Rights handle issues involving civil rights, disadvantaged business enterprises, and persons with disabilities.

b. The FAA regional offices of Civil Rights handle airport matters involving civil rights, disadvantaged business enterprises, and persons with disabilities.

c. The Federal Bureau of Investigation (FBI) handles criminal investigations. Matters that appear to involve a criminal violation should be brought to the attention of the FAA Office of Airports (ARP) management, who will forward the information to the DOT Office of the Inspector General for investigation and referral to the FBI.

d. The National Transportation Safety Board (NTSB), as an independent federal agency charged by Congress, investigates civil aviation accidents in the United States and issues safety recommendations aimed at preventing future accidents. The NTSB determines the probable cause of all U.S. civil aviation accidents and certain public use aircraft accidents.

e. Other matters that fall outside of the Associate Administrator's jurisdiction are issues involving flight standards and airspace.

5.17. through 5.20. reserved.

U.S. Department of Transportation
Federal Aviation Administration

Great Lakes Region
Illinois, Indiana, Michigan, Minnesota, North Dakota, Ohio, South Dakota, Wisconsin

Chicago Airports District Office
2300 East Devon Avenue, Suite 312
Des Plaines, Illinois 60018

March 24, 2004

Mr. Joe Harnish, President
Indiana Flight Center
Elkhart Municipal Airport
1211 County Road 6 West
Elkhart, Indiana 46514

Mr. Ross Miller, President
Elkhart Board of Aviation Commissioners
2246 Airport Drive
Elkhart, Indiana 46514

RE: Elkhart Municipal Airport
Harnish Complaint

By letter dated April 22, 2003, as amended May 2, 2003, the FAA Chicago Airports District Office responded to alleged violations brought by Mr. Joe Harnish against the Elkhart Board of Aviation Commissioners (Board) as the owner/operator of the Elkhart Municipal Airport (EKM).

In response to complaint issues Q1 through Q4 as listed in the our April 22, 2003 letter, as amended, the FAA stated that the Elkhart Board of Aviation Commissioners, within 90 days of receipt of the April 22, 2003 letter was to inform the FAA of the actions it was taking and proposing to take, to establish procedures for effective monitoring of its leases and for developing an effective lease enforcement program.

By letter dated June 17, 2003 the airport responded that the issue of establishing effective monitoring and enforcement was under review and by letter dated August 20, 2003 stated that the City of Elkhart was making progress on implementing a computerized system for monitoring leases and providing balance information. This effort is still underway. In recent discussion with the airport, the airport stated that it has assembled in spreadsheet form the current leases and agreements listing the leased premises, payment items, services authorized, etc. They conducted one audit of the tenants last year and will perform and annual audit to check for conformance with the tenant agreements.

In response to complaint issue Q5 as listed in the April 22, 2003 letter, as amended, the FAA stated that the Elkhart Board of Aviation Commissioners, within 90 days of receipt of the April 22, 2003 letter was to inform the FAA of the actions it is presently taking or would propose to take, to develop and implement procedures for effective prompt notification of all airport tenants of changes in the airport minimum standards.

By letter dated June 17, 2003 the airport responded that the airport had retained the firm of McHugh and Associates to aid in the process of revising its Minimum Standards and Rules and Regulations and that a draft of the revised documents was to be distributed to all tenants for review and comment. By letter dated August 20, 2003 the airport stated that the draft Minimum Standards and Rules and Regulations had been distributed for review and comment. In recent discussion with the airport, the airport stated that finally all the comments on the draft had been received and sent to McHugh and Associated and that a revised draft of the Minimum Standards and Rules and Regulations was due to be received before the end of March 2004. After review by the new Board of Aviation Commissioners, if acceptable, the revised Rules and Regulations will need publication in the local newspaper as they are to be made into a city ordinance and adopted by the City Council. This would give the airport enforcement capability on breach of contract issues.

Sample Part 13.1 Informal Resolution Preliminary Finding – Page 1

Sample Part 13.1 Informal Resolution Preliminary Finding – Page 2

In response to complaint issue Q6 as listed in the April 22, 2003 letter, as amended, the FAA stated that the Elkhart Board of Aviation Commissioners, within 60 days of receipt of the April 22, 2003 letter was to advise the FAA how they intended to correct the issue concerning aeronautical services being provided by Goshen Air Center (Goshen) at the airport.

On May 5, 2003 the airport notified the FAA that Goshen had ceased selling fuel and that the airport had contacted McHugh and Associates for guidance. By letter dated June 17, 2003 the airport advised the FAA that the Minimum Standards and Rules and Regulations were being revised to establish a permitting process authorizing aeronautical activities. On June 27, 2003 the FAA received a copy of a permit dated June 24, 2003 issued to Goshen permitting Goshen to provide certain aircraft management activities for a fee.

In review of our letter dated April 22, 2003, as amended, and the actions taken in response to our directives, even though some actions are still in the process of completion, we find that the Elkhart Board of Aviation Commissioners is taking adequate corrective action and at this time is in compliance with their grant assurances.

This constitutes our preliminary finding and concludes our informal review of the complaint brought by Mr. Harnish against the Elkhart Municipal Airport Board of Aviation Commissioners. We are aware that individual airport users and airport operators often view differently the airport's Federal obligations. We also recognize that FAA may be the final arbiter in such disputes, when matters cannot be resolved locally. If either party to the complaint does not agree with the preliminary finding they may file a formal 14 CFR Part 16 complaint with the FAA at the following address:

Office of Chief Counsel
Attention: FAA Part 16 Airport Proceedings Docket
AGL-610
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Sincerely,

Gregory N. Sweeny
Airports Engineer
Chicago Airports District Office

Enclosure

cc: Indiana Department of Transportation

Chapter 6. Rights and Powers and Good Title

6.1. Introduction. This chapter discusses the sponsor's federal obligation to preserve its rights and powers and to maintain good title to the airport property. This chapter also discusses related issues such as transfers to other recipients, delegation of federal obligations, subordination of title, airport management agreements, and airport privatization.

It is the responsibility of the airports district offices (ADOs) and regional airports divisions to ensure the sponsor can fulfill its federal responsibilities at all times. Accordingly, these offices will advise sponsors when the terms of any proposed lease agreements have the effect of limiting the sponsor's ability to fulfill its federal obligations. The FAA headquarters Airport Compliance Division (ACO-100) advises sponsors on the pilot program for airport privatization and approves or denies applications.

6.2. Airport Governance Structures. The sponsor determines the management and organizational structure of an airport. The type of structure employed can vary depending on whether the sponsor is a private entity or public agency, or whether the sponsor delegates all or some of its management responsibilities to a third party.

6.3. Controlling Grant Assurances.

a. Grant Assurance 4, *Good Title*. This grant assurance requires a sponsor to hold good title to the airport satisfactory to the FAA or to give satisfactory assurance to the FAA that good title will be acquired. In some cases, based on information available, the FAA may be unable to determine how the airport property was acquired or if a sponsor has title to all airport property. Adding to the confusion sometimes is an Exhibit "A" property map that may not be current or show all property interests.

Therefore, to determine a sponsor's compliance with Grant Assurance 4, *Good Title*, FAA should request that the sponsor provide the FAA with a complete Title Search Report of all airport property depicted on the current Airport Layout Plan (ALP) and Exhibit "A" maps. This should identify the actual parcels comprising the entire airport property.

When determining initial eligibility, the FAA should require a Title Search Report to ensure that the sponsor has good title to the parcels necessary to achieve the purpose of the grant and the role of the airport. When a sponsor acquires land for a project funded under an Airport Improvement Project (AIP) grant, the FAA and the sponsor must follow the FAA Advisory Circular for land acquisition to ensure the sponsor has acquired sufficient land rights. The FAA may also request a Title Search Report when the FAA has concerns about the documentation of land holdings on an Exhibit "A." Finally, when transferring sponsorship or reviewing an application to the Airport Privatization Pilot Program, the FAA may request a Title Search Report.

A lack of good title can prevent the processing of a grant – even without a finding of noncompliance – because such a sponsor would not be eligible as a threshold requirement. If a sponsor gives away good title, such action might be a violation of Grant Assurance 5, *Preserving*

Rights and Powers. However, the determination of good title does not necessarily require fee simple ownership. Long-term leases may be sufficient rights to allow an AIP improvement grant.

b. Grant Assurance 5, *Preserving Rights and Powers*. A sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. Grant Assurance 5, *Preserving Rights and Powers*, requires a sponsor not to sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit "A" without the prior written approval of the FAA.

Of particular concern to the FAA is granting a property interest to tenants on the airport. These property interests may restrict the sponsor's ability to preserve its rights and powers to operate the airport in compliance with its federal obligations. Providing developers with an option to acquire a fee interest in federally obligated airport property is not acceptable to the FAA under Grant Assurance 5, *Preserving Rights and Powers*. An option to acquire a fee interest in airport property should be considered a sale of airport property for purposes of requiring an FAA release, since the result is potentially the same.

6.4. Interrelationship of Issues. When analyzing lease agreements, FAA personnel must be aware of the interrelationship of material covered in other federal obligations, such as Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights*, Grant Assurance 24, *Fee and Rental Structure*, and Grant Assurance 25, *Airport Revenues*.

6.5. Assignment of Federal Obligations. The sponsor's federal obligations discussed in this chapter apply to both public and private airport sponsors who are obligated under agreements with the federal government. Chapter 22 of this Order, *Releases from Federal Obligations*, discusses the release of federally obligated property.

6.6. Rights and Powers. Grant Assurance 5, *Preserving Rights and Powers,* requires the airport sponsor to preserve its rights and powers to control and operate the airport. The following addresses the six parts of this grant assurance:

a. Sponsor Actions. The sponsor must obtain the Secretary's written approval before taking any action that would deprive it of the rights and powers necessary to perform any terms, conditions, and assurances in the grant agreement. In addition, the sponsor must take the actions necessary to regain its rights and powers, including extinguishing rights of other parties that prevent the sponsor from complying with its federal obligations. A method a sponsor may use in this regard is to place a "subordination clause" in all of its tenant leases and agreements that subordinates the terms of the lease or agreement to the federal grant assurances and surplus property obligations. A subordination clause may assist the sponsor in amending a tenant lease or agreement that otherwise deprives the sponsor of its rights and powers. A typical subordination clause will state that if there is a conflict between the terms of a lease and the federal grant assurances, the grant assurances will take precedence and govern.

b. Disposals. The sponsor must obtain the FAA's written approval before it sells, leases, encumbers, transfers, destroys, or disposes of any of its interest in airport or noise compatibility property. (See chapter 22 of this Order, *Releases from Federal Obligations*, for additional information on releases and disposal of property.)

c. Noise Compatibility Program Projects. For noise compatibility projects where the local government grantee is not the airport sponsor itself, the airport sponsor must enter into an agreement that applies the grant assurance obligations to that other local government entity.

d. Noise Compatibility Program Projects on Privately Owned Land. For noise compatibility projects on private property, the airport sponsor will enter into an agreement with the property owner that contains conditions specified by the FAA.

e. Private Airport Sponsors. If the sponsor is a private sponsor, it will assure the FAA that the airport will continue to function as a public use airport.

During its review, the FAA will look to identify any terms and conditions of the agreement that could prevent the realization of the full benefits for which the airport was constructed or conveyed. For example, as in the case illustrated above at Gillespie Airport in San Diego, a racetrack exists inside the airport without FAA approval. The situation was later corrected. In all cases, the sponsor may not enter into leases permitting nonaeronautical use without FAA concurrence. (Photo: FAA)

If the sponsor arranges for another entity to manage the airport, it must retain sufficient rights and authority to assure that the third-party manager operates and maintains the airport in accordance with the federal obligations and the sponsor's grant agreement.

f. Contracting Out Airport Management. If the sponsor arranges for another entity to manage the airport, it must retain sufficient rights and authority to assure that the third-party manager operates and maintains the airport in accordance with the federal obligations and the sponsor's

grant agreement. As discussed below, the sponsor is not relieved of its responsibility under the grant assurances by such an arrangement.

6.7. Transfer to another Eligible Recipient.

a. Rights and Powers. Grant Assurance 5, *Preserving Rights and Powers*, prohibits the airport sponsor from entering into an agreement that would deprive it of any of its rights and powers that are necessary to perform all of the conditions in the grant agreement or other federal obligations unless another sponsor/operator assumes the obligation to perform all such federal requirements. When an airport sponsor transfers authority to another sponsor, whether public or private, the FAA will review the transfer document to ensure there is no ambiguity regarding responsibility for the federal obligations. Before a transfer to another entity can take place, the FAA must specifically determine the recipient is eligible and willing to perform all the conditions of the grant agreements. Otherwise, the FAA will not permit the transfer to occur. As a condition of release, the FAA will require the new operator to assume all existing grant obligations, and the FAA will review the transfer document to ensure there is no ambiguity regarding responsibility for the federal obligations. In some cases, it may be appropriate to continue the existing sponsor's obligations in effect, in full or in part, especially where the existing sponsor is the only local government entity that could assure compliance. For example, a local municipality with zoning authority may transfer the airport to an airport authority with no off-airport zoning power. In that case it would be appropriate not to release the municipality from its existing obligations to protect the airport environs from incompatible uses and obstructions.

b. Surplus Property Transfers. Although surplus property instruments permit the conveyance to a third party, the sponsor must obtain FAA approval prior to its transfer, and the transferee must assume the federal obligations of the original grantee. In addition, a release deed will also be required. Eligibility to assume these federal obligations is contingent upon the type of sponsor and certain legal and financial requirements.[9] For example:

(1). General. Sponsors must be legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other federal obligations required of sponsors and contained in the obligating documents.

(2). Authority to Act as a Sponsor. FAA will require an opinion of the sponsor's attorney as to its legal authority to act as a sponsor and to carry out its responsibilities under the applicable agreements when deemed necessary or desirable.

(3). Reassignment. The federal government grants deeds of conveyance only to public agencies, but it does not specifically restrict reassignments or transfers of the property conveyed. The donating federal agency may reassign or transfer the property to another public agency for continued airport use. When this occurs, the FAA should assume the lead in the coordination between the affected parties.

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[9] For additional information, see FAA Order 5100.38, *Airport Improvement Program (AIP) Handbook*, which is available online.

6.8. Transfer to the United States Government.

a. Conveyance to a Federal Agency. The FAA cannot prohibit a sponsor from conveying to a federal agency any airport property that was transferred under the Surplus Property Act of 1944, as amended. Such a conveyance, whether voluntary or otherwise, does not place the conveying sponsor in default of any obligation to the United States. Such a conveyance has the effect of a complete release of the conveying owner.

b. FAA Objections. When a sponsor proposes such a conveyance or has accomplished the conveyance without prior notice, the ADO or regional airports division will determine if the transfer adversely impacts civil aviation. If so, it must make any objection immediately known to both the sponsor and the federal agency involved. If the ADO or regional airports division cannot obtain a satisfactory solution, it should submit a full and complete report to the Airport Compliance Division (ACO-100) without delay. ACO-100 will then continue to work with the sponsor and the federal agency to reach a satisfactory solution.

6.9. Delegation of Federal Obligations. Sponsors may enter into arrangements that delegate certain federal obligations to other parties. For example, an airport authority may arrange with the public works department of a local municipality to meet certain maintenance commitments, or a sponsor may contract with a utility company to maintain airfield lighting equipment. More prevalent at small airports are arrangements in which the sponsor relies upon a commercial tenant or franchised operator to cover a broad range of airport operating, maintenance, and management responsibilities.

Airport Management and Operating Agreements. Although the sponsor may delegate or contract with an agent of its choice for maintenance or supervision of operations, such arrangements do not relieve the sponsor of its federal obligations. Such arrangements also have the potential for a conflict of interest. Consequently, any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the sponsor's control over the actions of its agent and ensure the sponsor's ability to meet its federal obligations. The review of such agreements by the FAA ensures that the sponsor will make the airport facilities available to the public on fair and reasonable terms without unjust discrimination consistent with Grant Assurance, 22, Economic Nondiscrimination. (Photo: FAA)

None of these contractual delegations of responsibility absolves or relieves the sponsor of its primary obligations to the federal government. The sponsor should pay particular attention that delegations to other parties do not result in a conflict of interest or a violation of the federal grant assurances. The sponsor shall not delegate or transfer its authority to negotiate and enter into aeronautical

and nonaeronautical leases and agreements (unless released by the FAA in connection with a formal transfer of operating responsibility).

6.10. Subordination of Title.

a. Subordination. The FAA will normally consider subordination of the sponsor's fee interest in airport property by mortgage, easement, or other encumbrance as a transaction that would deprive the sponsor of the rights and powers necessary to fulfill its federal obligations.

However, the sponsor may subordinate its interest in a tenant lease to facilitate tenant financing for development on airport property. In this case, the sponsor agrees only that the mortgage or financing is serviced ahead of the payment to the sponsor for the lease of airport property.

Title with respect to lands to be used for the airfield or building area purposes can be either fee simple title (free and clear of any and all encumbrances) or title with certain rights excepted or reserved, such as a long-term lease of 20 or more years. Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all federal obligations. This includes ensuring that approaches and departure areas are clear of obstacles and incompatible land uses to ensure safe and efficient flight operations as shown in the above photograph during a landing in rapidly worsening weather. (Photo: FAA)

b. Review. If the FAA determines that an encumbrance may deprive a sponsor of its ability to fulfill its federal obligations, the Secretary may withhold approval of grant applications from the sponsor. (See chapter 2 of this Order, *Compliance Program*, paragraph 2.7c.) The ADO or regional airports division should review such encumbrance documents and make a determination on a case-by-case basis. Determinations should be in accordance with Grant Assurance 4, *Good Title*, and Grant Assurance 5, *Preserving Rights and Powers.* It may be appropriate to consult with the Office of Chief Counsel (AGC-610).

c. FAA Determination. The FAA should predicate its concurrence with any lien, mortgage, or other encumbrance to federally obligated property on a factually based and thoroughly documented determination. Ideally, the FAA office working the issue should ask the sponsor to execute a declaration recognizing that the federal grant obligations survive a foreclosure or bankruptcy. The possibility of foreclosure or other action adverse to the airport should be so remote that it reasonably precludes the possibility that such a lien, mortgage, or other encumbrance will prevent the sponsor from fulfilling its federal obligations.

6.11. New Sponsor Document Review. Generally the ADO or regional airports division will determine whether a potential sponsor is capable of assuming federal responsibilities. This review requires that the sponsor be legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other federal obligations required of the sponsor and contained in the Airport Improvement Program (AIP) project application and grant agreement forms.

The sponsor must also show that it has the authority to act as a sponsor. The FAA must also obtain an opinion from the sponsor's attorney as to the sponsor's legal authority to act as a sponsor and whether that authority extends to fulfilling its grant assurance responsibilities.

a. Purpose. The review is intended to ensure that the new sponsor has and will maintain the necessary control of the airport needed to carry out its commitments to the federal government. During its review, the ADO or regional airports division will identify any terms and conditions of a lease, contract, or agreement that could prevent the realization of the full benefits for which the airport was constructed or that could render the sponsor noncompliant with its federal obligations. The sponsor may place a standard clause in all its agreements that the terms and conditions of the agreement shall be subordinate to the federal grant assurances and any surplus property federal obligations.

b. Aeronautical Access to Facilities. The review ensures that the sponsor will make the airport facilities available to the public on reasonable terms without unjust discrimination, as required by Grant Assurance, 22, *Economic Nondiscrimination.* Any lease, contract, or agreement granting a tenant the right to serve the public on the premises of a federally obligated airport should not interfere with the sponsor's ability to maintain sufficient control over the operation of the airport to guarantee that aeronautical users will be given fair access to the airport.

c. Self-sustaining. The review looks to ensure that the sponsor maintains a fee and rental structure for facilities and services that will make the airport as self-sustaining as possible, as required by Grant Assurance 24, *Fee and Rental Structure*.

d. Good Title. The review will ensure that the sponsor has, or will have, good title to the airfield, as required by Grant Assurance 4, *Good Title.*

e. No Granting of Exclusive Rights. The review will ensure that the sponsor has not granted an exclusive right for aeronautical use of the airport, as required by Grant Assurance 23, *Exclusive Rights.*

f. Revenue Use. The review will ensure that the sponsor makes proper use of its airport revenues, per Grant Assurance 25, *Airport Revenues*, and FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999, (*Revenue Use Policy*), found in Appendix E of this Order.

g. Examination of Documents. During the review, the ADO or regional airports division must examine the following documents:

(1). The public agency's enabling legislation or act that gives it the authority to operate and own the airport(s).

(2). The lease, operations, management, or transfer agreements for the specific airport.

(3). The Exhibit "A" map, ALP, and land inventory map identifying grant obligated land.

(4). The assumption agreement for existing grants, federal grant obligations, and disposition and status of transferred grants.

(5). Any other agreements between the parties relating to the terms of the transfer and the new sponsor's operation of the airport.

h. Sponsor Eligibility.

Eligibility to receive funds under the AIP is contingent upon the type of sponsor and the type of activity for which the funds are sought.

6.12. Title and Property Interest.

a. Title Requirement (Grant Assurance 4, *Good Title*).

Section 47106(b)(1) of Title 49 U.S.C. requires that no project grant application for airport development may be approved by the Secretary unless the sponsor, a public agency, or the United States holds good title (satisfactory to the Secretary) to the airfield, or gives assurance to the Secretary that good title will be

The sponsor must maintain the rights and powers to develop or improve the airfield as it sees fit, regardless of the desire and views of its agent or tenants, and without interference or hindrance of same. For example, the airport may choose to install gates to control pedestrian or general public access to ramp areas as shown here at the Lunken Airport in Cincinnati, Ohio. The fact that a tenant sees no reason for the action does not prevent the airport from doing so. (Photo: FAA)

acquired. Good title is a pre-condition for award of an AIP grant, and is usually reviewed in connection with grant applications rather than as a compliance issue for a grant already awarded. The Airports Financial Assistance Division, APP-500, should be advised of any issue regarding good title.

b. Airport Property Interest.

Title with respect to the airport land can be either fee simple title (free and clear of any and all encumbrances) or title with certain rights excepted or reserved, such as a long-term lease of 20 or more years.

Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all federal obligations.

Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all federal obligations. A deed containing a reversionary clause, (e.g., "so long as the property is being used for airport purposes") does not negate good title provided that the other federal conditions or requirements are satisfied.

Where rights exempted or reserved would prevent the sponsor from carrying out its federal obligations under the grant, such rights must be extinguished prior to approval of the project subject to an AIP grant.

c. Determination of Adequate Title.

A certification by a sponsor that it has acquired property interests required for a project may be accepted in lieu of any detailed title evidence. (See FAA Order 5100.37B, *Land Acquisition and Relocation Assistance*, available online.) Without such certification, the sponsor's submission of title evidence must be reviewed to determine adequacy of title. The adequacy of such title is an administrative determination made by FAA Office of Airports personnel and need not be submitted to regional counsel for review unless there is any question about the adequacy of the title.

d. Title Requirement Prior to Notice to Proceed.

Authorization for the sponsor to issue a notice to proceed with grant funded work on property to be acquired by the sponsor should not be given until it has been determined that all property interests on which construction is to be performed have been, or will be, acquired in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). (See Advisory Circular (AC) 150/5100-17, *Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects*, for additional information on this topic.)

6.13. Airport Management Agreements.

a. Responsibility Under Airport Management and Operations Agreements. Although the sponsor may delegate or contract with an agent of its choice for maintenance or supervision of operations, such arrangements do not relieve the sponsor of its federal obligations. Such arrangements also have a high potential for a conflict of interest where the tenant provides aeronautical services itself and at the same time can exercise some control over access and competition at the airport. Consequently, any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the sponsor's control over the actions of its agent. In addition, to avoid conflicts with a sponsor's federal obligations, the FAA strongly encourages a management contract to be a separate agreement from leases or airfield use agreements held by the agent of the sponsor. This makes the respective responsibilities for each activity clear, and also enables the sponsor to deal with a possible default in one activity (i.e., management agreement) without terminating a second, separate activity not subject to a default, such as an unrelated land lease.

b. Total Delegation of Airport Administration. In certain cases a sponsor may consider contracting with a private company for the general administration of a publicly owned airport. Whether this is done by lease, concession agreement, or management contract, it has the effect of placing a private entity in a position of substantial control over airport decisions that may affect the public sponsor's grant compliance. This kind of agreement should include provisions adequately protecting and preserving the owner's rights and powers to assure grant compliance.

c. Lease of Entire Airport. If the sponsor grants a lease for the entire airport, the lease will generally include the right to sublease airport property to third-party tenants for aeronautical services and development. In such cases, the lessee may have the right to conduct a commercial business on the airport directly and also to control the granting of such commercial rights to others. This situation creates a high potential for violating Grant Assurance 23, *Exclusive Rights*, unless mitigated, and the lease should provide for the sponsor to retain sufficient rights to prevent and reverse the granting of any exclusive rights on the airport.

d. Lease Terms that Protect the Sponsor's Rights and Powers. In cases where a management contract or general lease provides a private operator with the ability to make decisions on access by other aeronautical tenants, the inclusion of contract provisions similar to the following can assure that the public sponsor retains the ability to prevent a violation of the grant assurances:

(1). The lessee (second party, manager, etc.) agrees to operate the airport in accordance with the obligations of the lessor (public sponsor) to the federal government under applicable grant agreements or deeds. The lessee agrees to operate the airport for the use and benefit of the public; to make available all airport facilities and services to the public on fair and reasonable terms and without unjust discrimination; to provide space on the airport, to the extent available; and to grant rights and privileges for use of aeronautical facilities of the airport to all qualified persons and companies desiring to conduct aeronautical operations on the airport.

(2). The lessee/management firm specifically understands and agrees that nothing contained in the lease shall be construed as granting or authorizing the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) and § 47107(a)(4).

(3). The lease/management agreement is subordinate to the sponsor's obligations to the federal government under existing and future agreements for federal aid for the development and maintenance of the airport.

6.14. Airport Privatization Pilot Program.

a. Change of Sponsorship from Public to Private. Leases or sales under the airport privatization pilot program, 49 U.S.C. § 47134, transfer the federal obligation as well as the responsibility for operation, management, and development of an airport from a public sponsor to a private sponsor. These leases and sales also transfer the federal obligations to the private operator, although the FAA may require the public agency transferring the airport to retain concurrent responsibility for certain assurances if appropriate.

b. Exemption from Federal Obligations. As an incentive for public airport operators to consider privatization under the privatization pilot program, Congress authorized the FAA to exempt a sponsor from its federal obligations to repay federal grants, to return federally acquired property, and to use the proceeds from the sale or lease of the airport for airport purposes. At commercial airports, the use of proceeds for nonairport purposes is subject to the approval of 65 percent (65%) of the air carriers serving the airport. An agency record of decision identifies all the applicable exemptions. Exemptions under the privatization pilot program are issued by the Administrator. Public inquiries on the pilot program should be referred to the Airport Compliance Division, ACO-100.

6.15 Privatization Outside of the Airport Privatization Pilot Program.

a. General. Sale or lease of a public airport to a private airport operator is not prohibited by law, and the FAA may be requested to approve a transfer of ownership or operating responsibility of a public airport to a private operator without an application for participation in airport privatization pilot program. FAA review of a request for release of the public sponsor from its obligations and for approval of a private operator as the new sponsor is conducted in accordance with the general review procedures in paragraphs 6.7 and 6.11 of this chapter. This review is similar to the review of a transfer between public airport owners and does not involve the specific requirements and findings of 49 U.S.C. § 47134.

b. Private Operator as Airport Sponsor. A privatization of a public airport by sale or long-term lease is distinguished from a management contract by the fact that the private operator becomes the airport sponsor. The private operator is the applicant for grants and is directly responsible to the FAA for compliance with the conditions and assurances in those grants. As with transfers under the privatization pilot program, the FAA may require the public agency transferring the airport to retain concurrent responsibility for certain assurances if appropriate. For example, FAA may require a transferring public agency to maintain its ability to use its local zoning power to protect approaches to the airport.

c. Special Considerations. While reviewing a transfer of responsibility for airport operations to a private operator is in many respects similar to reviewing any transfer of ownership and operation (public or private), reviewing for privatization outside the Airport Privatization Pilot Program should consider the following:

(1). The transfer will not be approved unless the private operator agrees to assume all of the existing obligations of the public sponsor under grant agreements and surplus and nonsurplus property deeds. For future grants, the private operator will agree to the assurances applicable to a private operator, but initially will also be obligated to comply with the public operator's assurances as long as they would have remained in effect for the public operator.

(2). The FAA may not exempt the public sponsor from the requirements of Grant Assurance 25, *Airport Revenues*. Accordingly, the public sponsor may use the proceeds from the sale or lease of the airport only for purposes stated in 49 U.S.C. § 47107(b) and § 47133.

(3). It is not necessary for the public sponsor to return to the FAA the unamortized value of grant-funded projects or surplus or nonsurplus property received from the federal government, as long as the grant-funded facilities and donated property continue to be used for the original airport purposes. To assure this continued use, the private operator should be required to agree specifically to continue the airport uses of grant-funded facilities and federally donated property for the purposes described in FAA grant agreements and property deeds.

(4). The private operator will be subject to the general AIP criteria for grants to private operators, and will not be subject to or benefit from the special provisions of the airport privatization pilot program. Accordingly, the private operator should be advised that it will not be eligible for apportionment of entitlement funds under 49 U.S.C. § 47114(c) or for imposition of a passenger facility charge at the airport.

(5). As with any change of airport owner/operator, FAA certificates do not transfer. If the airport is certificated under 14 CFR Part 139, that certification will not transfer to the private operator and would need to be reissued. Also, if the airport has a security plan in effect in accordance with Transportation Security Administration (TSA) regulations, TSA should be advised of the request for approval of the transfer of airport management responsibility. TSA will advise the airport sponsor if additional amendments are necessary.

6.16. through 6.20. reserved.

Chapter 7. Airport Operations

7.1. Introduction. This chapter contains guidance on sponsor responsibilities for operation and maintenance of their airports. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to ensure that the sponsors under their jurisdiction operate and maintain their airports in accordance with federal grant assurances and federal transfer agreement obligations, including those that implicate aircraft operations and airport safety. This chapter does not cover the additional requirements that Title 14 Code of Federal Regulations (CFR) Part 139, *Certification of Airports*, imposes on airports serving certificated scheduled air carriers. (Contact the FAA Airport Safety and Operations Division, AAS-300, in Washington DC, for additional information on Part 139 compliance matters.) In addition, this chapter does not cover grant agreement special conditions, such as specific project closeout actions.

7.2. Scope of Airport Maintenance Federal Obligations.

a. Agreements Involved. Most airport agreements with the federal government impose on the sponsor a continuing federal obligation to preserve and maintain airport facilities in a safe and serviceable condition. An exception, however, may exist in transfer documents conveying federal lands under the authority of section 16 of the Federal Airport Act of 1946 (1946 Airport Act), section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act), and section 516 of the Airport and Airway Improvement Act of 1982 (AAIA). This current provision is codified at 49 U.S.C. § 47125). However, these transfers are normally followed with development grants that impose federal maintenance obligations.

Where section 16, 23, or 516 conveyances are made under circumstances that do not involve a follow-on development agreement, the maintenance and operation assurances should be incorporated into the transfer document as a special condition.

From a compliance standpoint, airport operations also encompass safety issues. For example, airport sponsors are required to inspect runways, taxiways, and other common-use paved areas at regular intervals to ensure compliance with operational and maintenance standards. Sponsors must make routine repairs, such as filling, sealing cracks, and repainting markings (as shown here) to prevent progressive pavement deterioration. (Photo: FAA)

b. Airport Facilities to be Maintained. This section applies to all airport facilities shown on the Airport Layout Plan (ALP) as initially dedicated to aviation use by an instrument of transfer or federal grant agreement. Essentially this

means that the sponsor cannot discontinue maintenance of a runway or taxiway or any other part of the airport used by aircraft until the FAA formally relieves the sponsor of the federal maintenance obligation. The federal obligations of the sponsor remain in force throughout the useful life of the facility, but no longer than 20 years – except for land that specifically obligates the airport in perpetuity.

However, in all cases, the actual obligating documents should be reviewed to ensure the exact terms of the applicable applications. When a facility is no longer needed for the purpose for which it was developed, the ADO or regional airports division may determine that the facility's useful life has expired in less than 20 years; the FAA may then authorize abandoning the facility or converting it to another compatible purpose.

For private airports, there is a minimum federal obligation of 10 years. If land was acquired with federal assistance, the federal obligation to maintain and operate the airport runs in perpetuity. Grants issued under programs preceding the Airport Improvement Program (AIP) may not always contain a perpetual obligation for land purchase, however, and the actual grant document should be reviewed.

Most airport agreements impose on the sponsor a continuing federal obligation to preserve and maintain airport facilities in a safe and serviceable condition.

7.3. Grant Assurance 19, Operation and Maintenance. Grant Assurance 19, *Operation and Maintenance*, is the most encompassing federal grant assurance related to airport maintenance. It requires the sponsor to operate and maintain the airport's aeronautical facilities – including pavement – in a safe and serviceable condition in accordance with the standards set by applicable federal, state, and local agencies. FAA pavement guidance applies.

7.4. Maintenance Procedures. Generally, airport agreements require the sponsor to carry out a continuing program of preventive and remedial maintenance. The maintenance program is intended to ensure that the airport facilities are at all times in good and serviceable condition to use in the way they were designed. Advisory Circular (AC) 150/5380-7A, *Airport Pavement Management Program*, discusses the Airport Pavement Management System (APMS) concept, its essential components, and how it can be used to make cost-effective decisions about pavement maintenance and rehabilitation. The airport agreement may express or imply such maintenance requirements and include specific federal obligations such as:

a. Frequently check all structures for deterioration and repair.

b. Inspect runways, taxiways, and other common-use paved areas at regular intervals to ensure compliance with operational and maintenance standards, to prevent progressive pavement deterioration, and to make routine repairs such as filling and sealing cracks.

c. Inspect gravel runways, taxiways, and common-use paved areas at regular intervals to ensure compliance with operational and maintenance standards, to prevent progressive deterioration of operation areas, and to make routine repairs including filling holes and grading.

d. Inspect turf airfields at regular intervals to ensure there are no holes or depressions, and otherwise to ensure that all turf areas are preserved through clearing, seeding, fertilizing, and mowing.

e. Maintain field lighting and Visual Approach Slope Indicators (VASIs) in a safe and operable condition at all times. When conditions dictate, realign VASIs on a regular basis.

f. Maintain airfield signage in a safe and operable condition at all times.

g. Frequently inspect segmented circles and wind cones to ensure accurate readings and proper functioning.

h. Frequently inspect all drainage structures including subdrain outlets to ensure unobstructed drainage.

i. Frequently check all approaches to ensure conformance with federal obligations.

7.5. Criteria for Satisfactory Compliance with Grant Assurance 19, Operation and Maintenance.

Although an acceptable level of maintenance is difficult to express in measurable units, the FAA will consider a sponsor compliant with its federal maintenance obligation when the sponsor does the following:

a. Fully understands that airport facilities must be kept in a safe and serviceable condition.

b. Makes available the equipment, personnel, funds, and other resources, including contract arrangements, to implement an effective maintenance program.

c. Adopts and implements a detailed program of cyclical preventive maintenance adequate to carry out this commitment.

7.6. Airport Pavement Maintenance Requirement. A parallel assurance to Grant Assurance 19, *Operation and Maintenance*, is the airport sponsor's federal obligation to maintain a pavement preventive maintenance program under Grant Assurance 11, *Pavement Preventive Maintenance*. This assurance requires sponsors with federally funded pavement projects for replacement or reconstruction approved after January 1, 1995, to implement an effective pavement maintenance and management program that runs for the useful life of any pavement constructed, reconstructed, or repaired with federal financial assistance. The program, at a minimum, must include (a) a pavement inventory, (b) annual and periodic inspections in accordance with AC 150/5380-6B, *Guidelines and Procedures for Maintenance of Airport*

Pavements, (c) a record keeping and information retrieval system, and (d) identification of maintenance program funding.[10]

a. Guidelines for Inspecting Pavement. FAA places a high priority on the upkeep and repair of all pavement surfaces in the aircraft operating areas. This ensures continued safe aircraft operations. While deterioration of pavement due to usage and exposure to the environment cannot be completely prevented, a timely and effective maintenance program can reduce this deterioration. Lack of adequate and timely maintenance is the greatest single cause of pavement deterioration and, as a result, loss of federal investment.

Many failures of airport pavement and drainage features have been directly attributed to inadequate maintenance characterized by the absence of an inspection program. FAA recognizes that a maintenance program, no matter how effectively carried out, cannot overcome or compensate for a major design or construction inadequacy. Nonetheless, an effective maintenance program can prevent total and possibly disastrous failure that may result from design or construction deficiencies. Maintenance inspection can reveal problems at an early stage and provide timely warning to permit corrective action. Postponement of minor maintenance can develop into a major pavement repair project. Failing to provide basic pavement maintenance can be a compliance concern to the FAA.

A high priority should be given to the upkeep and repair of all pavement surfaces in the aircraft operating areas to ensure continued safe aircraft operations. While deterioration of the pavements due to usage and exposure to the environment cannot be completely prevented, a timely and effective maintenance program can reduce this deterioration to a minimum level. Properly maintaining airport pavement and marking is essential to preserving the pavement's life and ensuring safety. (Photos: FAA)

This chapter presents guidelines and procedures for inspecting airport pavements.

b. Inspection Procedures. Maintenance is a continuous function and a continuous responsibility of the airport sponsor. A series of

[10] See Appendix A of Advisory Circular (AC) 150/5380-6B for program funding requirements.

scheduled, periodic inspections or surveys conducted by experienced engineers, technicians, or maintenance personnel must be carried out for an effective maintenance program. These surveys must be controlled to ensure that (i) each element or feature being inspected is thoroughly checked, (ii) potential problem areas are identified, and (iii) proper corrective measures are recommended. The maintenance program must provide adequate inspection follow-up to ensure corrective work is expeditiously accomplished and recorded. Although the organization and scope of maintenance activities will vary in complexity and degree from airport to airport, the general types of maintenance are relatively the same regardless of airport size or extent of development.

The obligation to maintain the airport does not extend to major rehabilitation of a facility that has become unusable due to normal and unpreventable deterioration or through acts of God, including earthquakes, as seen here in Alaska in 2002. Northway (ORT) runway was destroyed by a 7.9 magnitude earthquake. (Photo: FAA)

c. Inspection Schedules. The airport sponsor (often the supervisor of airport maintenance) is responsible for establishing a schedule for inspections. The inspection should be scheduled to ensure that all areas, particularly those that may not come under day-to-day observation, are thoroughly checked. Thorough inspections of all paved areas should be scheduled at least twice a year. In temperate climates, one inspection should be scheduled for spring and one for fall. Any severe storms or other conditions that may have an adverse effect on the pavement may also necessitate a thorough inspection. In addition, daily ride-down type inspections should be conducted.

d. Pavement Recordkeeping. Complete information concerning all inspections and maintenance performed should be recorded and kept on file. The severity level of existing distress types, their locations, their probable causes, remedial actions, and results of follow up inspection and maintenance should be documented. In addition, the file should contain information on potential problem areas and preventive or corrective measures identified. Records of materials and equipment used to perform all maintenance and repair work should also be kept on file for future reference. Such records may be used later in identifying materials and remedial measures that may reduce maintenance costs and improve pavement serviceability.

AC 150/5320-6D, *Pavement Design and Evaluation*, and AC 150/5380-7, *Airport Pavement Management Program* suggests procedures for performing a pavement condition survey.

(Copies of FAA Advisory Circulars are available on the FAA web site.) The pavement condition survey in conjunction with the Pavement Condition Index (PCI) may be used to develop pavement performance data. The PCI is a rating of the surface condition of a pavement and is a measure of functional performance with implications of structural performance. Periodic PCI determinations on the same pavement will show the changes in performance level with time.

7.7. Major Pavement Repairs.

a. Unpreventable Deterioration. The federal obligation to maintain the airport does not extend to major rehabilitation of a facility that has become unusable due to normal and unpreventable deterioration or through acts of God. Therefore, a sponsor's federal maintenance obligations do not include such requirements as restoring a building destroyed by fire, earthquake, or hurricane winds, nor do they include undertaking a major rehabilitation of a portion of the airfield inundated by floods. Likewise, airport sponsor federal obligations do not include the complete resurfacing of a runway unless it is the result of obvious neglect of routine maintenance over time. Failure to perform day-to-day airport maintenance, however, may have a cumulative effect resulting in major repairs and reconstruction that will fall under the sponsor's federal obligations.

b. Pavement Overstressing. The sponsor has a commitment to prevent gross overstressing of the airport pavement beyond the load bearing capacity. If the airport pavement deteriorates and the sponsor is not prepared to strengthen the pavement, then the sponsor must limit the pavement's use to aircraft operations that will not overstress the pavement. (For additional information limiting this course of action, refer to Appendix S of this Order, *FAA Weight-Based Restrictions at Airports*.) Should failure occur because the sponsor failed to take timely corrective action after being advised of the pavement limitations, restoration of the failed pavement to a satisfactory condition may not be eligible for AIP funding.

c. Sponsor Determines the Level of Airport Design Standards. The sponsor – through preparation of an FAA-approved ALP – may determine the level of design standards for new construction, i.e., the aircraft design category of the airport, based generally on the critical type of aircraft to be served at the airport, as long as the sponsor applies these standards consistently and in a manner that supports the development and operation of the airport over a period of time. However, introducing weight limitations after a runway or taxiway is constructed to FAA standards may be considered an access restriction. Accordingly, coordination with the FAA headquarters Airport Compliance Division (ACO-100) is highly recommended to ensure compliance with federal obligations.

7.8. Requirement to Operate the Airport. A fundamental obligation on the sponsor is to keep the airport open for public use. Grant Assurance 19, *Operation and Maintenance*, requires the sponsor to protect the public using the airport by adopting and enforcing rules, regulations, and ordinances as necessary to ensure safe and efficient flight operations. Accordingly, the sponsor is more than a passive landlord because the assurance federally obligates it to maintain and operate the aeronautical facilities and common-use areas for the benefit of the public. This responsibility includes the following:

a. Field Lighting. If field lighting is installed, the sponsor must ensure that the field lighting and associated airport beacon and lighted wind and landing direction indicators are operated every night of the year or when needed. (See paragraph 7.12, *Part-time Operation of Airport Lighting*, in this chapter.) Properly maintaining marking, lighting, and signs can reduce the potential for pilot confusion and prevent a pilot deviation or runway incursion.

b. Warnings. If any part of the airport is closed or if the use of any part of the airport is hazardous, the sponsor must provide warnings to users, such as adequate marking and issuing a Notice to Airmen (NOTAM).

c. Safe Operations. The sponsor should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure safety and efficiency of aircraft operations and to protect the public using the airport. When a proposed action directly impacts the flight of an aircraft, that action should be coordinated with FAA Flight Standards and/or Air Traffic Control.

7.9. Local Rules and Procedures. One of the most important functions of local regulations is to control the use of the airport in a manner that will eliminate hazards to aircraft and people and structures on the ground.

For example, if aircraft are allowed to park too close to an active runway, aircraft themselves become a hazard to other aircraft. Rules and procedures that implement FAA airport design standards will ensure adequate separation of aircraft during ground operations. To keep motorists, cyclists, pedestrians, and animals from inadvertently wandering onto the airfield or areas designated for aircraft maneuvering, the sponsor should install adequate controls such as fencing and signage.

As in the operation of any public service facility, there should be adequate rules covering vehicular traffic, sanitation, security, crowd control, access to certain areas, and fire protection. The sponsor is also expected to control services such as fueling aircraft, storing hazardous materials, and spray painting at a public airport to protect the public.

Sometimes, measures are needed to reduce the likelihood of a runway incursion. For example, if a runway safety problem is identified at an airport, FAA compliance personnel should coordinate corrective action not only with the airport, but also with other FAA lines of businesses, including Flight Standards and/or Air Traffic. When possible, action should also be coordinated with the local Runway Safety Action Team (RSAT).

Often, local air traffic patterns are needed to establish uniform and orderly approaches and departures from the airport. Controlling aircraft operation is an area preempted under federal law and is the exclusive responsibility of the FAA. When working on local air traffic procedures, the sponsor must coordinate with FAA Flight Standards or/and Air Traffic to ensure safe operations.

Controlling aircraft operation is an area preempted under federal law and is the exclusive responsibility of the FAA.

The FAA has a number of initiatives underway to prevent runway incursions. Several FAA documents address the airport operator's opportunity to help reduce the potential for runway incursions. These discuss runway incursion prevention measures airport operators should consider implementing.

A sponsor's obligation to maintain the airport does not impose any specific responsibility to remove snow or slush or to sand icy pavements. To the extent possible, snow removal should be accomplished in those areas where public access is more likely. The sponsor, however, is responsible for providing a safe, usable facility. Where climatic conditions render the airport unsafe, the airport sponsor must promptly issue a Notice to Airmen (NOTAM). (Photo: FAA)

7.10. Operations in Inclement Weather. The federal obligation to maintain the airport does not impose any *specific* responsibility to remove snow or slush or to sand icy pavements. The sponsor is responsible, however, for providing a safe, usable facility. A safe and usable facility includes protection of runway safety areas and other areas that may be compromised if snow berms are left adjacent to the pavement edge. (See AC 150/5200-30C, *Airport Winter Safety and Operations*.) Where climatic conditions render the airport unsafe, the sponsor must promptly issue a NOTAM and, if necessary, close all or parts of the airport until unsafe conditions are remedied. The sponsor should correct unsafe conditions within a reasonable amount of time.

7.11. Availability of Federally Acquired Airport Equipment. The sponsor must use its AIP-funded equipment for the purpose specified in the grant agreement. It must maintain the equipment in accordance with appropriate advisory circulars. Refer to the actual grant agreements to confirm that the equipment under scrutiny is the same as listed in the sponsor's grant agreements.

7.12. Part-time Operation of Airport Lighting.

a. Field Lighting When Needed. The airport must operate field lights whenever needed. This means that the lights must be on during the hours of darkness (dusk to dawn) every night or be

available for use upon demand. This requirement can be effectively met by an attendant to turn on the proper lights when requested to do so by radio or other signal. The airport can also install an electronic device that permits remote activation of field lighting by radio equipment in an aircraft.[11]

b. Part-time Operation. At some locations, the airport may not need to operate the lights all night. This might occur where the aeronautical demand is seasonal or where demand ceases after a certain hour each night because the airport's location is not likely to be needed in an emergency. Also, many airports have in place pilot operated or on-demand lighting that is controlled via radio signals from the aircraft operating out of or into the airport in question.

In very rare cases, circumstances may make using an airport undesirable during certain hours of darkness, such as when air traffic control is suspended during some part of the night and the local environment (obstructions or heavy en route traffic) makes using the airport hazardous during that period. Under such circumstance, the FAA may consent to a part-time operation of field lights. In cases involving safety related hours of operations, it is essential that FAA Flight Standards be involved in any validation process.

7.13. Hazards and Mitigation. Grant Assurance 20, *Hazard Removal and Mitigation,* requires airport sponsors to protect terminal airspace. Accordingly, the sponsor must protect instrument and visual flight operations, including established minimum flight altitudes. Adequate protection includes the clearing, removing, lowering, relocating, marking, lighting, or mitigating of existing airport hazards. It also includes protecting against establishment or creation of future airport hazards, including wildlife hazards.

NOTE: Zoning is one means for protecting against obstructions, but may not be the best means since zoning can change and property owners may receive variances. Avigation and clearing easements may be a more effective means of protection.

If a sponsor has zoning authority and permits an obstruction to be erected near the airport that is found to be a hazard under 14 CFR Part 77, *Objects Affecting Navigable Airspace*, or that results in penetration or in any other impact upon the airport's approaches or use, the FAA may find that the sponsor is in violation of Grant Assurance 20, *Hazard Removal and Mitigation*.

a. Obstruction Hazards. Airports developed by or improved with federal funds are federally obligated to prevent the growth or establishment of obstructions in the aerial approaches to the airport. (See Grant Assurance 20, *Hazard Removal and Mitigation*.) The term "obstruction" refers to natural or manmade objects that penetrate surfaces defined in 14 CFR Part 77, *Objects Affecting Navigable Airspace*, or other appropriate citations applicable to the agreement applied to the particular airport.

In agreements issued prior to December 31, 1987, sponsors agreed to prevent as much as reasonably possible the construction, erection, alteration, or growth of an obstruction either by obtaining control of the land involved through the acquisition and retention of easements or other

[11] See Advisory Circular (AC) 150/5340-30D, *Design and Installation Details for Airport Visual Aids*.

land interests or by the adoption and enforcement of zoning regulations. In many cases, uncontrolled growth of trees and vegetation can be a hazard. These hazards must be dealt with in conjunction with any applicable local or state requirements. The airspace allocated for protecting the airport will vary from airport to airport. FAA regional airports compliance staff should contact FAA Airspace Systems Support Group in the Air Traffic Organization (ATO) Service Area for the appropriate region for guidance on how to apply this provision when an issue is raised.

b. FAA Guidance. The FAA published the following advisory circulars relating to obstruction hazards:

(1). *A Model Zoning Ordinance to Limit Height of Objects Around Airports*, AC 150/5190-4A. This advisory circular provides airport sponsors with an effective zoning ordinance that can be used at the local level to protect the airport from obstructions.

AC 150/5190-4A, A Model Zoning Ordinance to Limit Height of Objects around Airports provides airport sponsors with an effective zoning ordinance that can be used at the local level to protect the airport from obstructions.

(2). *Procedures for Handling Airspace Matters, FAA Order* JO 7400.2G, provides information regarding the requirements for notifying the FAA of proposed construction or alteration under 14 CFR § 77.13. (See also FAA Order 8260.3, *United States Standard for Terminal Instrument Procedures (TERPS)* for Obstacle Clearance Surfaces.)

(3). *Obstruction Marking and Lighting*, AC 70-7460-1K. This advisory circular describes the standards for marking and lighting structures such as buildings, chimneys, antenna towers, cooling towers, storage tanks, and supporting structures of overhead wires. This advisory circular is available in the Air Traffic Division of any FAA regional office and on the FAA website.

c. Federal Communications Commission (FCC) Guidance and the Obstruction Evaluation Process.

(1). Title 47 CFR Part 17, *Construction, Marking, and Lighting of Antenna Structures*. Title 47 CFR Part 17 vests authority in the Federal Communications Commission (FCC) to issue public radio station licenses and prescribes procedures for antenna structure, registration, and standards. Part 17 provides the rules issued pursuant to the authority contained in Title III of the Communications Act of 1934, as amended. If the FAA determines that an antenna structure constitutes a hazard to air navigation – or there is a reasonable possibility it will constitute a hazard – Part 17 requires painting or illuminating the antenna structure. Part 17 requires notification to the FAA of certain antenna structures, including:

(a). When requested by FAA, any construction or alteration that would be in an instrument approach area[12] or when available information indicates it might exceed an obstruction standard of the FAA.

(b). Any construction or alteration on any of the following airports, including heliports:

(i). An airport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement.

(ii). An airport under construction that is the subject of a notice or proposal on file with the FAA (except for military airports) and it is clearly indicated that the airport will be available for public use.

(iii). An airport that is operated by an armed force of the United States.

Aeronautical facilities that do not exist at the time the application for a radio facility is filed will only be considered if the proposed airport construction or improvement plans are on file with the FAA as of the application filing date for the radio facility. Additional information regarding Title 47 CFR Part 17 is available online.

(2). Obstruction Evaluation/Airport Airspace Analysis (OE/AAA). In administering Title 14 CFR Part 77, *Objects Affecting Navigable Airspace*, the FAA's prime objectives are to promote air safety and the efficient use of navigable airspace. To accomplish this mission, anyone proposing to construct or alter an object that affects airspace must notify the FAA prior to construction by filing FAA Form 7460-1, *Notice of Proposed Construction or Alteration* in accordance with 14 CFR Part 77. Instructions for filing FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, are described on the FAA web site. The same filing contact information is used to notify the FAA of actual construction using FAA Form 7460-2,

A Model Zoning Ordinance to Limit Height of Objects Around Airports

AC: 150/5190-4A
DATE: 12/14/87

Advisory Circular

A Model Zoning Ordinance to Limit Height of Objects Around Airports, AC 150/5190-4A. This advisory circular provides airport sponsors with an effective zoning ordinance that can be used at the local level to protect the airport from obstructions. This AC and additional information on this important subject can be found on the FAA web site.

[12] The instrument approach area is defined in Advisory Circular (AC) 150/5300-13, *Airport Design*, Appendix 16, *New Instrument Approach Procedures*.

Notice of Actual Construction or Alteration. The proponent filing the form must submit very specific information about the project, such as a complete description of the proposed project, the latitude and longitude coordinates locating the object, height above ground level (AGL), site elevation above mean sea level (AMSL), total height, and the nearest airport.

Chapter 20 of this Order, *Compatible Land Use and Airspace Protection*, provides additional information relating to Grant Assurance 20, *Hazard Removal and Mitigation*, and obstruction protection. Typical projects include cell phone towers, top-mount antennas, buildings, power lines, radio broadcast towers, and temporary construction equipment such as cranes.

If the proposal is going to emit any electromagnetic broadcast signals, the proponent must also specify which radio frequencies will be used. The purpose of Form 7460-1 notification is to allow the FAA to conduct an airspace analysis on the proposal to determine whether or not the object will adversely affect airspace or navigational aids (NAVAIDS). If the FAA determines that the proposed object will penetrate airspace or adversely affect NAVAID equipment, the FAA can require, as a condition to a no-hazard determination, that the proponent reduce the height of the object, change the broadcast frequency, or outfit the object with obstruction marking and lighting. In cases where the FAA determines the object will be a hazard to air navigation, the FAA can issue a hazard determination, which may have the effect of prohibiting the project from being constructed. A determination of "no hazard," however, does not ensure a safe environment. Many areas may not be addressed following a federal analysis that may affect visual flight rule (VFR) flight operations. It is the role of the state to work to address those areas, ultimately striving for the highest level of safety between the pilot and the obstruction.

(3). Guidance for Obstruction Evaluation. *Procedures for Handling Airspace Matters,* JO 7400.2G, provides information regarding the requirements for notifying the FAA of proposed construction or alteration under 14 CFR § 77.13. AC 70/7460-1K*, Obstruction Marking and Lighting,* describes the standards for marking and lighting structures such as buildings, chimneys, antenna towers, cooling towers, storage tanks, supporting structures of overhead wires, etc. These circulars may be obtained by contacting the Air Traffic Division of any FAA regional office.

(4). Filing for Proposed and Actual Construction. FAA Form 7460-1, *Notice of Proposed Construction or Alteration* must be filed with the FAA Air Traffic Division of the appropriate FAA regional office for proposed construction. To notify the FAA of actual construction, Form 7460-2, *Notice of Actual Construction or Alteration,* must be filed with the FAA Air Traffic Division of the appropriate FAA regional office.

d. Preexisting Obstructions.

(1). Federal Government Recognition. Some airports were developed at locations where preexisting structures or natural terrain (e.g., hill tops) would constitute an obstruction by currently applicable standards. If the grant agreement did not specify the removal of such obstructions as a condition of the grant, its execution by the federal government constitutes a recognition that the removal was not reasonably within the power of the sponsor.

(2). Threshold Displacement. There are many former military airports acquired as public airports under the Surplus Property Act where the existence of obstructions at the time of development was considered acceptable. At such airports where these obstructions in the approach area cannot feasibly be removed, relocated, or lowered but are declared hazardous, the FAA may consider approving a displacement or relocation of the threshold. Threshold displacement requires FAA approval.

e. Wildlife Hazards. Information about the risks posed to aircraft by certain wildlife species has increased a great deal in recent years. Improved reporting, studies, documentation, and statistics clearly show that aircraft collisions with birds and other wildlife pose a serious public safety problem. Most public use airports have large tracts of open, undeveloped land that provide added margins of safety and noise mitigation. These areas can also present potential hazards to aviation if they encourage wildlife to enter an airport's approach or departure airspace or air operations area (AOA). Constructed or natural areas – such as poorly drained locations, detention/retention ponds, roosting habitats on buildings, landscaping, odor-causing rotting organic matter disposal operations, wastewater treatment plants, agricultural or aquaculture activities, surface mining, or wetlands – can provide wildlife with ideal habitat locations. Hazardous wildlife attractants on or near airports can jeopardize future airport expansion, which makes proper community land use planning essential.

AC 150/5200-33B, *Hazardous Wildlife Attractants on or Near Airports*, provides guidance to assess and address potentially hazardous wildlife attractants when locating new facilities and implementing certain land use practices on or near public use airports. Additional information, including accident data and *Wildlife Strikes to Civil Aircraft in the United States 1990-2007*,[13] is available on the FAA web site.

Land use practices that attract or sustain hazardous wildlife populations on or near airports can significantly increase the potential for wildlife strikes.

When considering proposed land uses, airport operators, local planners, and developers must take into account whether the proposed land uses, including new development projects, will increase wildlife hazards. Land use practices that attract or sustain hazardous wildlife populations on or near airports can significantly increase the potential for wildlife strikes. As such, the airport sponsor must take appropriate action to mitigate those hazards.

(1). Airports Serving Piston-powered Aircraft. For airports serving only piston-powered aircraft, FAA recommends a separation distance of 5,000 feet between an AOA and a hazardous wildlife attractant. This distance applies from the hazard to the existing AOA, as well as to any new and planned airport development projects meant to accommodate aircraft movement. AC 150/5200-33B, *Hazardous Wildlife Attractants on or Near Airports*, has more detail on this recommended separation.

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[13] As of the date of this publication, “1990-2007” was the current version. A new version is expected soon.

(2). Airports Serving Turbine-Powered Aircraft. For airports selling Jet-A fuel, FAA recommends a separation distance of 10,000 feet between an AOA and a hazardous wildlife attractant. This distance applies from the hazard to the existing AOA, as well as to any new and planned airport development projects meant to accommodate aircraft movement. AC 150/5200-33B, *Hazardous Wildlife Attractants on or Near Airports*, has more detail on this recommended separation.

Hazardous wildlife attractants on or near airports can jeopardize future airport expansion. Proper community land use planning is essential. (Photo: FAA)

(3). Protection of Approach, Departure, and Circling Airspace. For all airports, the FAA recommends a distance of five (5) statute miles between the farthest edge of the AOA and the hazardous wildlife attractant if the attractant could cause hazardous wildlife movement into or across the approach or departure airspace.

(4). Special Requirements for Certain Landfills. Under 49 U.S.C. § 44718(d), more stringent requirements apply to the establishment of landfills near certain airports. This requirement applies to landfills constructed or established after April 5, 2000, that would be within six (6) miles of an airport that primarily serves general aviation aircraft and scheduled air carrier operations using aircraft with less than 60 passenger seats. While this situation is uncommon, it is a statutory prohibition on a new landfill. See AC 150/5200-34A for more detailed information on the application of this requirement.

7.14. Use of Airports by Federal Government Aircraft. Through various agreements, the federal government retains the right to use airport facilities jointly, either with or without charges.

a. Under Grant Agreements. Grant Assurance 27, *Use by Government Aircraft*, provides that all airport facilities developed with federal aid and usable for air operations will be available to the federal government at all times without charge. When the sponsor deems that federal government use is substantial, the assurance permits the sponsor to charge reasonable fees that are in proportion to the government's use. Substantial use is defined in the assurances as the existence of one of the following conditions:

- Five (5) or more federal government aircraft are regularly based at the airport or on land adjacent to the airport;

- Federal government aircraft make 300 or more total calendar month operations (counting each landing and each takeoff as a separate operation);
- The gross cumulative weight of federal government aircraft using the airport in a calendar month (the total operations of federal government aircraft multiplied by gross certified weights of such aircraft) exceeds of five (5) million pounds.

The Surplus Property Act gives the federal government the right to make nonexclusive use of the airfield without charge – except the use may not unduly interfere with other authorized aircraft, and the federal government shall pay for damage caused by its use.

b. The Surplus Property Act. Title 49 U.S.C. § 47152, *Surplus Property Act*, gives the federal government the right to make nonexclusive use of the airfield without charge – except the use may not unduly interfere with other authorized aircraft. The federal government will pay for damage caused by its use and may contribute to maintaining and operating the airfield in proportion to its use.

Surplus Airport Property Instruments of Transfer issued under War Assets Administration Regulation 16 provide that the federal government shall at all times have the right to use the airport in common with others. Such use may be limited as necessary to prevent interference with use by other authorized aircraft, so long as such limitation does not restrict federal government use to less than 25 percent (25%) of the capacity of the airport. The regulation further provides that federal government use of the airport to this extent shall be without charge of any nature, other than payment for any damage caused.

c. Federal Government Aircraft Classification. All federal government aircraft are classified as airport users under federal obligations. Federal government aircraft include aircraft operated by the U.S. Army, U.S. Navy, Marine Corps, Air Force Reserve, all Air National Guard units, Coast Guard, National Oceanic and Atmospheric Administration (NOAA), National Aeronautics and Space Administration (NASA), Forest Service, and U.S. Customs Service.

7.15. Negotiation Regarding Charges. In all cases where the airport sponsor proposes to charge the federal government for use of the airport under the joint-use provision, the sponsor should negotiate directly with the using federal government agency or agencies in question. In other words, the FAA does not assume the role of negotiator when it comes to rates and charges imposed upon other federal government agencies; rather, it oversees compliance with applicable requirements such as those under Grant Assurance 27, *Use by Government Aircraft*. It is important to remember that in cases involving military units, the military entity in question may be subject to military regulations relating to fee negotiations. For example, Appendix J-1 of this Order provides *Air National Guard Pamphlet 32-1001, 8 April 2003*, entitled *Airport Joint Use*

Agreements for Military Use of Civilian Airfields. This pamphlet implements AFPD 10-10, *Civil Aircraft Use of United States Air Force Airfields*, and AFPD 32-10, *Installations and Facilities*, and applies to Air National Guard (ANG) flying units that operate on public airports. This pamphlet provides guidance for negotiating fair and reasonable charges to the government for joint use of the public airport's flying facilities.

7.16. Land for Federal Facilities.

a. Grant Agreements. Grant Assurance 28, *Land for Federal Facilities*, requires the sponsor to provide facilities for air traffic control and weather and communication activities. There are subtle differences in the terms of these assurances under the various grant programs. Therefore, when questions arise regarding the use of space, refer to the most current grant agreement.

b. No Requirement for Free Rent. Under the Airport Development Aid Program (ADAP) and the Airport Improvement Program (AIP), sponsors are not federally obligated to furnish space rent-free. However, the sponsor is required to furnish to the federal government without cost any land necessary for the construction at federal expense of facilities to house any air traffic control activities, such as very high frequency omni-directional radio range facilities (VORs),[14] Air Traffic Control (ATC) Towers or Terminal Radar Approach Controls (TRACONs), or weather reporting and communication activities related to air traffic control. This may include utility easements. The airport sponsor is not required to furnish land rent-free for parking or roads to serve the facility.

c. Other Federal Agencies. Sponsors on occasion do provide space to other federal government agencies such as postal, customs, FBI, or immigration services at no cost or at nominal rent. FAA does not view leasing space at these rates for activities that complement or support aeronautical operations as violating the self-sustaining grant assurance. However, federal agencies may not lease airport property for administrative purposes beyond the federal agencies' operational needs at no cost or nominal rent; airports should limit the leasehold to just the space necessary to conduct the federal operations, which may include some administrative space necessary to serve the operations. In most cases, an airport does not bear the expense for the space leased for customs, immigration, or agriculture operations, but rather the costs are built into the airlines' cost structure and are assessed to the airlines.

7.17. Federal Government Use during a National Emergency or War.

a. Airports Subject to Surplus Property Instruments of Transfer. The primary purpose of the Surplus Property Act is to make the property available for public airports. The Surplus Property Act also intended the transferred property and the entire airport to be available to the United States in times of a war or national emergency. Other transfer documents also reserve to the federal government the right of exclusive possession and control of the airport during war or national emergency.

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[14] A VOR is a ground based navigational facility.

b. Airports Subject to Grant Agreements. Grant agreements do not contain any provision authorizing military agencies to take control of the airport during a national emergency.

c. Negotiation Regarding Charges. Negotiations under war or national emergency clauses will be between the agency requiring the airport and the sponsor. The only compliance responsibility the FAA has with regard to such clauses is releasing the property from its federal obligations.

Appendix J-1 of this Order provides AIR NATIONAL GUARD PAMPHLET 32-1001, 8 APRIL 2003, entitled "Airport Joint Use Agreements for Military Use of Civilian Airfields." This pamphlet implements AFPD 10-10, Civil Aircraft Use of United States Air Force Airfields, and AFPD 32-10, Installations and Facilities, and applies to Air National Guard (ANG) flying units that operate on public airports. (Photo: ANG)

7.18. Airport Layout Plan (ALP). Grant Assurance 29, *Airport Layout Plan*, requires the sponsor to depict the airport's boundaries, including all facilities, and to identify plans for future development on its ALP. An FAA-approved ALP (signed and dated) is a prerequisite to the grant of AIP funds for airport development or for the modification of the terms and conditions of a surplus property instrument transfer. (See Appendix R of this Order, *Airport Layout Plan*, for additional information.)

FAA approval of the ALP represents the concurrence of the FAA in the conformity of the plan to all applicable design standards and criteria. It also reflects the agreement between the FAA and the sponsor regarding the proposed allocation of airport areas to specific operational and support functions. It does not, however, represent FAA release of any federal obligations attached to the land or properties in question. In addition, it does not constitute FAA approval to use land for nonaeronautical purposes. This requires a separate approval from the regional airports division.

In any event, the approved ALP becomes an important instrument for controlling the subsequent development of airport facilities. Any construction, modification, or improvement that is inconsistent with the plan requires additional FAA approval.

a. Compliance Requirements. Federal grant agreements require sponsors to conform airport use and development to the ALP. The erection of any structure or any alteration in conflict with the plan as approved by the FAA may constitute a violation of this federal obligation under Grant Assurance 29, *Airport Layout Plan*. The Airport and Airway Safety and Capacity Expansion Act of 1987 (1987 Airport Act) further strengthened the Airport Layout Plan assurance language.

If the sponsor makes a change in the airport or its facilities that is not reflected in the ALP, and the FAA determines the change will adversely affect the safety, utility, or efficiency of any federally owned or leased or funded property on or off the airport, the FAA may require the airport to eliminate the adverse effect or bear the cost of rectifying the situation.

Federal grant agreements require sponsors to conform their actions to the Airport Layout Plan. The erection of any structure or any alteration in conflict with the plan as approved by the FAA may constitute a violation of Grant Assurance 29, Airport Layout Plan.

In some cases, it is acceptable to close an airport temporarily for an aeronautical activity, such as an air show. Such closing should be well publicized in advance including issuing notices to airmen (NOTAMs) to minimize any inconvenience to the flying public. (Photo: U.S. Navy)

b. Abandonment. The sponsor may not abandon or suspend maintenance on any operational facility currently reflected on an approved ALP as being available for operational use. The conversion of any area of airport land to a substantially different use from that shown in an approved ALP could adversely affect the safety, utility, or efficiency of the airport and constitute a violation of the federal obligation assumed. For example, the construction of a corporate hangar on a site identified on the ALP for future apron and taxiway use would be a departure from the controlling ALP. This could impair the utility of the airport and violate sponsor federal obligations. When making a periodic compliance review of an ALP, the inspector should consider whether grant acquired land is still needed for airport purposes, particularly when it is separated from the airport property by a highway or railway.

7.19. Exhibit "A" and Airport Property Map. Grant Assurance 29, *Airport Layout Plan*, requires the sponsor to submit an ALP. Airports also must have an airport property map, commonly referred to as Exhibit "A." The airport property map indicates how various tracts of airport property were acquired, including the funding source. The primary purpose of the airport property map is to provide information on the use of land acquired with federal funds and/or the use of surplus property. The airport property map is important for determining land needed for airport purposes and the proper use of land sale proceeds. In many instances, but not all, the Exhibit "A" to the ALP will include the land inventory requirements. The Exhibit "A" map delineates all airport property owned, or to be acquired, by the sponsor regardless of whether the federal government participated in the cost of acquiring any or all such land. The FAA relies on this map when considering any subsequent grant of funds. In fact, The FAA AIP Handbook, Order 5100.38, requires a review of the ALP during project formulation. Any land identified on the Exhibit "A" map may not be disposed of or used for any different purpose without FAA consent.

a. Land Accountability. For compliance purposes, the airport needs to be able to account for land acquired with federal funds. The ALP and Exhibit "A" together may serve this purpose. The airport sponsor may have a separate airport property map or land inventory map if the ALP and Exhibit "A" do not include all required information regarding how various tracts of land were acquired and what federal grant or federal assistance program was used to acquire the land.

b. Excess Land. If any grant-acquired land is found to be in excess of airport needs, both present and future, the sponsor must dispose of the excess land and comply with FAA direction for returning or using the grant funds.

7.20. Access by Intercity Buses. Grant Assurance 36, *Access by Intercity Buses*, requires the airport sponsor to permit, to the maximum extent practicable, access to the airport by intercity buses or other modes of transportation. However, the airport sponsor has no federal obligation to fund special facilities for intercity buses or other modes of transportation.[15]

7.21. Temporary Closing of an Airport.

a. Closing for Hazardous Conditions Airport owners are required to mark any temporary hazardous conditions physically and to warn users adequately through the use of NOTAMs. This implies a duty to provide similar warning notices when an airport is completely closed to air traffic as a result of temporary field conditions that make using the airport hazardous. Prompt action should be taken to restore the airport facilities to a serviceable condition as soon as possible.

b. Closing for Special Events. 49 U.S.C. § 47107(a)(8), implemented by Grant Assurance 19.a, *Operation and Maintenance*, requires that any proposal to close the airport temporarily for nonaeronautical purposes must be approved by the FAA.

(1). Nonaeronautical Events. An airport developed or improved with federal funds may not be closed to use the airport facilities for special outdoor events, such as sports car races, county fairs, parades, car testing, model airplane events, etc., without FAA approval. This has been the FAA policy since 1961 as outlined in *Compliance Requirements Part 6.00* (July 1961). In certain circumstances where promoting aviation awareness through such nonaeronautical activities as model airplane flying, etc., the FAA does support the limited use of airport facilities so long as there is not total closure of the airport. In these cases, safeguards need to be established to protect the aeronautical use of the airport while the nonaeronautical activities are in progress and to ensure that safety is not compromised.

(2). Aeronautical Events. There will be occasions when airports may be closed for brief periods for aeronautical events. Examples include an air show designed to promote a particular segment of aviation, or annual fly-ins, and aviation conventions. In such cases, airport management should limit the period the airport will be closed to the minimum time consistent with the activity. Such closing should be well publicized in advance including issuing NOTAMs to minimize any inconvenience to the flying public.

[15] For related information, refer to Intermodal Ground Access to Airports: A Planning Guide, DOT, December 1996.

c. Closing Part of an Airport. In some instances, there may be sufficient justification to use part of an airport temporarily for an unusual event of local significance that does not involve closing the entire airport. *All* of the following conditions must be met:

(1). The event is to be held in an area of the airport that is not required for the normal operation of aircraft and where the event would not interfere with the airport's normal use, or in a limited operational area of an airport having a relatively small traffic volume and where it has been determined that the event can be conducted in the area without interfering with aeronautical use of the airport.

(2). Adequate facilities for landing and taking off will remain open to air traffic, and satisfactory arrangements are made to ensure the safe use of the facilities remaining open.

(3). Proper NOTAMs are issued in advance.

(4). Necessary steps are taken by the airport owner to ensure the proper marking of the portion of the airport to be temporarily closed to aeronautical use.

(5). The airport owner notifies the appropriate FAA Flight Standards office in advance, as well as any air carrier using the airport.

(6). The airport owner agrees to remove all markings and repair all damage, if any, within 24 hours after the termination of the event, or issues such additional NOTAMs as may be appropriate.

(7). The airport owner coordinates the special activities planned for the event with local users of the airport before the event and with the Department of Defense (DoD) if there are any military activities at the airport.

(8). No obstructions determined by FAA to be hazards, such as roads, timing poles, or barricades, will be constructed for the remaining operational area of the airport.

(9). The airport sponsor is reimbursed for all additional costs incurred as a result of the event.

d. Air Show Coordination. Air shows at any airport require a Certificate of Waiver or Authorization (FAA Form 7711-1) that has been approved and issued by the appropriate FAA Flight Standards District Office (FSDO). Flight Standards, however, will not issue a Certificate or Waiver or Authorization to airports certificated under 14 CFR Part 139 until the FAA regional airports division has reviewed and concurred with the air show event.

(1). Ground Operations Plan. There must be a ground operations plan that addresses the Part 139 related requirements impacted by the air show. An airport certification inspector must approve this plan. Unless temporary arresting gear needs to be installed for military flight demonstrations, this requirement should have minimal impact on airport operators. Once the ground operations plan is approved, the airport certification inspector will send a letter to the airport operator and notify the appropriate FAA FSDO.

(2). Other Issues. Other issues to be addressed in coordinating an air show include:

(a) Air show ground operations plan guidelines,

(b) Airline operations,

(c) Aircraft rescue and fire fighting (ARFF) capability,

(d) Special emergency response procedures,

(e) Temporary arresting gear installed in a runway safety area,

(f) Integrity of runway safety areas, taxiway safety areas, and object free areas,

(g) Pyrotechnic devices,

(h) Temporary closures of runways and taxiways,

(i) Movement area maintenance,

(j) Public protection,

(k) Fueling operations,

(l) Air show ground vehicle operations,

(m) Impact to NAVAIDs,

(n) NOTAMs, and

(o) Mitigation of wildlife hazards.

7.22. Transportation Security Administration (TSA) Security Requirements.

a. General Information. The Transportation Security Administration (TSA) has instituted guidelines for general aviation (GA) airports. These guidelines provide a set of federally endorsed security enhancements, as well as a method for determining when and where these enhancements may be appropriate.

b. The Twelve-Five Rule. The Twelve-Five Rule requires that certain aircraft operators using aircraft with a maximum certificated takeoff weight (MTOW) of 12,500 pounds or more carry out a security program. Operators were required to be in compliance with the program effective April 1, 2003.

c. Private Charter Rule. The Private Charter Rule is similar to the Twelve-Five Rule, but adds requirements for aircraft operators using aircraft with an MTOW of greater than 45,500 kg

(100,309.3 pounds) or with a seating configuration of 61 or more. Operator compliance was required effective April 1, 2003.

d. Compliance. The relevant compliance implications of TSA security for GA are in the form of security requirements imposed by an airport sponsor upon airport users. When a complaint is brought to FAA attention, the FAA will attempt informal resolution. This process should involve the airport, TSA, and the impacted users. The FAA may be asked to render a preliminary decision on whether the security requirements imposed by the airport are consistent with the airport's other federal obligations. Most likely, this will involve the requirements for reasonable and not unjustly discriminatory terms and conditions for using the airport.

Compliance personnel may need to assess whether security requirements are consistent with TSA requirements and recommendations. The compliance implications of security at federally obligated airports may be in the form of security requirements covered by TSA. Coordination with ACO-100 is recommended when encountering complaints involving TSA requirements.

7.23. through 7.26. reserved.

Chapter 8. Exclusive Rights

8.1. Introduction. This chapter describes the sponsor's federal obligations under Grant Assurance 23, *Exclusive Rights*, which prohibits an airport sponsor from granting an exclusive right for the use of the airport, including granting an exclusive right to any person or entity providing or intending to provide aeronautical services to the public.

In particular, the sponsor may not grant a special privilege or a monopoly to anyone providing aeronautical services on the airport or engaging in an aeronautical use. The intent of this restriction is to promote aeronautical activity and protect fair competition at federally obligated airports.

It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to ensure that the sponsor has not extended any exclusive right to any airport operator or user.

8.2. Definition of an Exclusive Right. An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege or right. An exclusive right may be conferred either by express agreement, by imposition of unreasonable standards or requirements or by another means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or right, would be an exclusive right.[16]

8.3. Legislative and Statutory History.

a. General. Through the years, the exclusive rights provision has become a federal obligation that applies in cases involving airport development grants, and surplus and nonsurplus conveyances of federal property.[17]

The prohibition against exclusive rights is contained in section 303 of the Civil Aeronautics Act of 1938 (P.L. No. 75-706, 52 Stat. 973) and applies to any airport upon which any federal funds have been expended.

b. 1938 to Date. The exclusive rights provision is the oldest federal obligation affecting federally funded airports. The legislative background for the exclusive rights provisions began in l938. The prohibition against exclusive rights was first contained in section 303 of the Civil Aeronautics Act of 1938 (Public Law (P.L.) No. 75-706, 52 Stat. 973 recodified at 49 United States Code (U.S.C.) 40103(e)) and applies to any airport upon which any federal funds have been expended.

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[16] 30 Fed. Reg. 13661, see also AC 150/5190.6, Appendix 1.

[17] The applicable grant programs were the Federal Aid to Airports Program (FAAP), Airport Development Aid Program (ADAP), and Airport Improvement Program (AIP).

To develop and improve airports between 1939 and 1944, Congress authorized the *Development of Landing Areas National Defense* (DLAND) and the *Development of Civil Landing Areas* (DCLA) programs. In accordance with these programs, the federal government and the sponsor entered into an agreement, called an AP-4 Agreement, by which the sponsor provided the land and the federal government developed the airport. AP-4 Agreements contained a covenant stating that the sponsor would operate the airport without the grant or exercise of any exclusive right for the use of the airport within the meaning of section 303 of the Civil Aeronautics Act of 1938. Although the useful life of all AP-4 improvements expired by 1969, the airports that entered into these agreements continue to be subject to the exclusive rights prohibition. An airport remains federally obligated as long as the airport continues to be operated as an airport – regardless of whether it remains under the same sponsor or not.

Following World War II, under the provisions of the Surplus Property Act of 1944 (section 13(g)) (as codified and amended by 49 U.S.C. §§ 47151-47153), large numbers of military installations were conveyed without monetary consideration to public agencies. However, in 1947, Congress amended the Surplus Property Act (Public Law (P.L.) No. 80-289 to require the following language:

"No exclusive right for the use of the airport at which the property disposed of is located shall be vested (either directly or indirectly) in any person or persons to the exclusion of others in the same class. For the purpose of this condition, an exclusive right is defined to mean: (1) any exclusive right to use the airport for conducting any particular aeronautical activity requiring the operation of aircraft; (2) any exclusive right to engage in the sale of supplying of aircraft, aircraft accessories, equipment or supplies (excluding the sale of gasoline or oil), aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, and propellers appliances)."

Following World War II, under the provisions of the Surplus Property Act of 1944 (section 13(g)) (as amended by 49 U.S.C. §§ 47151-47153), large numbers of military installations were conveyed without monetary consideration to public agencies. (Photo: US Navy)

In accordance with the Airport and Airway Improvement Act of 1982 (AAIA), 49 U.S.C. § 47101, et seq., the Federal Aviation Act of 1958 (FAA Act) 49 U.S.C. § 40103(e), and the Airport Improvement Program (AIP) grant assurances, the owner or operator of any airport that has been developed or improved with federal grant assistance is required to operate the airport for the use and benefit of the

public and to make it available for all types, kinds, and classes of aeronautical activity and without granting an exclusive right. The same obligation was required in previous grant programs such as the Federal Aid to Airports Program (FAAP), in effect between 1946 and 1970, and the Airport Development Aid Program (ADAP), which was in use between 1970 and 1982.

Finally, the exclusive rights obligation also exists for airports that have received nonsurplus government property under 49 U.S.C. § 47125 and previous corresponding statutes.

c. Governing Statutes. Today, Title 49 U.S.C. subtitle VII, *Aviation Programs*, contains the prohibition against exclusive rights in three locations:

(1). 49 U.S.C. § 40103(e), *No Exclusive Rights at Certain Facilities.*

(2). 49 U.S.C. § 47107(a), *General Written Assurances.*

(3). 49 U.S.C. § 47152, *Terms of Conveyances.*

An airport remains federally obligated as long as the airport continues to be operated as an airport – regardless of whether it remains under the same sponsor.

d. Prohibition Applies Only to Aeronautical Activities. When called upon to interpret the application of section 303, the Attorney General of the United States affirmed the prohibition against exclusive rights. In an opinion dated June 4, 1941, the Attorney General stated "…it is my opinion that the grant of an exclusive right to use an airport for a particular aeronautical activity, such as an air carrier, falls within the provision of section 303 of the Civil Aeronautics Act precluding any exclusive right for the use of any landing area."

If an airport sponsor prohibits an aeronautical activity without a commercial component, coordination with ACO-1 and the Office of Chief Counsel is necessary.

8.4. Development of the Exclusive Rights Prohibition into FAA Policy.

a. Implementation of the Federal Airport Act. During the immediate post-war years, the Civil Aeronautics Board (CAB) was simultaneously engaged in processing the first Federal Aid to Airports Program (FAAP) development projects and working with the military to convey former military installations to public entities.

b. Interpretations of Aeronautical Activity.

Granting options or preferences on future airport lease sites to a single service provider may be construed as the intent to grant an exclusive right. Therefore, the use of leases with options or future preferences, such as rights of first refusal, must generally be avoided. This is because a right of first refusal could allow an existing tenant to hold a claim on airport land at little or no cost that could be used by a competing aeronautical entity. It could then exercise the option when there is a prospect of competition. (Photo: FAA)

(1). Airfield. When approving grants for airport development, the CAB (and later the FAA) interpreted the exclusive rights prohibition principally in terms of the airfield. Accordingly, they considered activities that used the airfield (e.g., air carriers, flight schools, and charter service) as subject to the prohibition. All nonaeronautical activities, such as restaurants and other terminal concessions, ground transportation, and car rentals are excluded from the prohibition.

(2). Inclusion of Aeronautical Supporting Activities. In 1962, the FAA published its *Policy on Exclusive Rights* in the *Federal Register*. The policy extended the prohibition to all aeronautical activities. Such aeronautical activities are those that involve, make possible, or are required for the operation of aircraft; or that contribute to, or are required for the safety of such operations.[18] The FAA further clarified the application of the prohibition in FAA Order 5190.1, *Exclusive Rights*, on October 12, 1965.

c. Current Agency Policy. The FAA has taken the position that the existence of an exclusive right to conduct any aeronautical activity at an airport limits the usefulness of the airport and deprives the public of the benefits of competitive enterprise. The FAA considers it inappropriate to provide federal funds for improvements to airports where the benefits of such improvements will not be fully realized by all users due to the inherent restrictions of an exclusive monopoly on aeronautical activities.

Advisory Circular (AC) 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, provides airport sponsors with the information they need to comply with their federal obligation regarding exclusive rights.

[18] AC 150/5190-6, Appendix 1, § 1.1(a).

d. Effect of the Prohibition on Airport Improvement Program (AIP) Grants. Federal statutory law prohibits sponsors from granting an exclusive right. Consequently, it does not matter how the sponsor granted the exclusive right (e.g., express agreement, unreasonable minimum standards, action of a former sponsor, or other means). The FAA will not award a sponsor an Airport Improvement Program (AIP) grant until that exclusive right is removed from the sponsor's airport. The FAA may also take other actions to return the sponsor to compliance with its federal obligations.

Federal statutory law prohibits sponsors from granting an exclusive right. Consequently, it does not matter how the sponsor granted the exclusive right – express agreement, unreasonable minimum standards, action of a former sponsor, or other means.

e. Duration of Prohibition Against Exclusive Rights. Once federal funds have been expended at an airport, including through a surplus property conveyance, the exclusive rights prohibition is applicable to that airport for as long as it is operated as an airport. In other words, it runs in perpetuity at the airport even though 20 years may have passed since the airport received its last AIP grant. In fact, there are airports today where the only federal obligation is the exclusive rights prohibition.

f. Grant Assurance 23, *Exclusive Rights*. Since enactment of the AAIA, sponsor grant agreements have included the exclusive rights assurance. The grant assurance applies to public and private airport sponsors alike for as long as the airport remains an airport. It also applies to sponsor airport development and noise mitigation projects. The assurance does not extend to planning projects or to nonsponsor noise mitigation projects.

8.5. Aeronautical Operations of the Sponsor. The exclusive rights prohibition does not apply to services provided by the sponsor itself. The airport sponsor may elect to provide any or all of the aeronautical services at its airport, and to be the exclusive provider of those services. A sponsor may exercise – but may not grant – the exclusive right to provide any aeronautical service. This exception is known as the airport's "proprietary exclusive" right.[19] See paragraph 8.9.a of this chapter.

The sponsor may exercise a proprietary exclusive right provided the sponsor engages in the aeronautical activity as a principal using its own employees and resources. The sponsor may not designate an independent commercial enterprise as its agent. In other words, the sponsor may not rely on a third party or a management company to provide the services under its proprietary

[19] The airport's proprietary exclusive right, however, may not interfere with an aeronautical users' right to self-service or self-fuel. (AC 150/5190-6, paragraph 1.3(a)(2).) Such activity must conform to an airport's minimum standards or reasonable rules and regulations.

exclusive right. These airport sponsors must engage in such activities using their own employees.[20]

8.6. Airports Having a Single Aeronautical Service Provider. Where the sponsor has not entered into an express agreement, commitment, understanding, or an apparent intent to exclude other reasonably qualified enterprises, the FAA does not consider the presence of only one provider engaged in an aeronautical activity as a violation of the exclusive rights prohibition.[21] The FAA will consider the sponsor's willingness to make the airport available to additional reasonably qualified providers. (See paragraph 8.9.b of this chapter.)

8.7. Denying Requests by Qualified Providers.

a. Conditions for Denial. The assurance prohibiting the granting of an exclusive right does not penalize a sponsor for continuing an existing single provider when both of the following conditions exist:

(1). It can be demonstrated that it would be unreasonably costly, burdensome, or impractical for more than one entity to provide the service, and

(2). The sponsor would have to reduce the leased space that is currently being used for an aeronautical purpose by the existing provider in order to accommodate a second provider. In the case of denying additional providers, the sponsor must have adequate justification and documentation of the facts supporting its decision acceptable to the FAA.

Both conditions must be met. (See 49 U.S.C. § 47107(a)(4)(A and B).)

b. Demonstrable Need. When the service provider has space in excess of its *reasonable* needs and the sponsor claims it is justified based on the service provider's *future* needs, the FAA may find the sponsor in violation of the exclusive rights prohibition if the service provider is banking land and/or facilities that it cannot put to gainful aeronautical use in a reasonable period of time and/or the vacant property controlled by the service provider denies a competitor from gaining entry onto the airport.

A sponsor may exclude an incumbent on-airport service provider from responding to a request for proposals based on the sponsor’s desire to increase competition in airport services. That action is not a violation of Grant Assurance 22, Economic Nondiscrimination, since the sponsor is taking a necessary step to preclude the granting of an exclusive right.

[20] An aeronautical user exercising its right to self-service or self-fuel is also required to use its own employees and equipment.

[21] See 49 U.S.C. §§ 40103(e) and 47107(a)(4).

An airport sponsor is under no obligation to permit aircraft owners or operators to introduce fueling equipment or practices on the airport that would be unsafe or detrimental to the public welfare or that would affect the efficient use of airport facilities by the public. An aircraft hangar is to house an aircraft and related equipment, not to be used as general storage space. (Photo: FAA)

(1). Granting options or preferences on future airport lease sites to a single service provider may be construed as intent to grant an exclusive right. Therefore, the use of leases with options or future preferences, such as rights of first refusal, must generally be avoided. This is because a right of first refusal could allow an existing tenant to hold a claim on airport land at little or not cost. Then, when faced with the prospect of competition, that leaseholder could exercise its option to inhibit access by others and limit or prevent competition.

(2). A sponsor may exclude an incumbent on-airport service provider from responding to a Request for Proposal (RFP) by eliminating the provider from eligibility for the RFP based on the sponsor's desire to increase competition in airport services. The FAA will not consider that action a violation of Grant Assurance 22, *Economic Nondiscrimination,* since the sponsor is taking a necessary step to preclude granting of an exclusive right.

(3). When a sponsor denies a request by a service provider to conduct business on the airport based on the lack of available space, the ADO or regional airports division should conduct a site visit to confirm that the space and/or facilities leased to service providers only represent their reasonable demonstrable need and are not being banked for the long-term future.

8.8. Exclusive Rights Violations.

a. Restrictions Based on Safety and Efficiency. An airport sponsor can deny an individual or prospective aeronautical service provider the right to engage in an on-airport aeronautical activity for reasons of safety and efficiency if the kind of activity (e.g., skydiving, sailplanes, ultralights) would adversely impact the safety and efficiency of another aeronautical activity at the airport, typically fixed-wing operations. An aeronautical operator holding an FAA certificate is presumed to be a safe operator, and the airport sponsor may not deny access to an individual certificated operator on the basis of safety of its aeronautical operations. Any safety concerns with an operator would need to be brought to the attention of the FAA. However, the airport sponsor may find that an aeronautical activity as a whole is inconsistent with the safety and efficiency of the airport and may, therefore, not permit that activity at all, subject to concurrence by the FAA. The airport sponsor may also prohibit access by an individual or individual service provider that has not complied with the airport's minimum standards or operations rules for safe use of airport property.

Any denial based on safety must be based on reasonable evidence demonstrating that airport safety will be compromised if the applicant or individual is allowed to engage in the proposed aeronautical activity. Airport sponsors should carefully consider the safety reasons for denying an aeronautical service provider or individual the opportunity to engage in an aeronautical activity if the denial has the possible effect of limiting competition or access.

The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. As such, an airport sponsor that is contemplating the denial of a proposed on-airport aeronautical activity or access is encouraged to contact the local ADO or regional airports division. Those offices will then seek assistance from FAA Flight Standards (FS) and Air Traffic (AT) to assess the reasonableness of the proposed action because of safety and efficiency, and to determine whether unjust discrimination or an exclusive rights violation results from the proposed restrictions.

Safety concerns are not limited to aeronautical activities but may include Occupational Safety and Health Administration (OSHA) standards, fire safety standards, building codes, or sanitation considerations. Restrictions on aeronautical operators by airport sponsors for safety must be reasonable. Examples of reasonable restrictions include, but are not limited to: (1) restrictions placed on the handling of aviation fuel and other flammable products, including aircraft paint and thinners; (2) requirements to keep fire lanes open; and (3) weight limitations placed on vehicles and aircraft to protect pavement from damage.[22] (See Chapter 14 of this Order, *Restrictions Based on Safety and Efficiency Procedures and Organization*.)

b. Restrictions on Self-service. An aircraft owner or operator[23] may tie down, adjust, repair, refuel, clean, and otherwise service his/her own aircraft, provided the service is performed by the

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[22] See FAA proposed policy at 68 Fed. Reg. 39176 (July 01, 2003), *Weight-Based Restrictions at Airports.* (See Appendix S of this Order).

[23] For many purposes, the FAA has interpreted an aircraft owner's right to self-service to include operators with long-term possession rights. For example, a significant number of aircraft operated by airlines are not owned, but

aircraft owner/operator or his/her employees with resources supplied by the aircraft owner or operator.

Moreover, the service must be conducted in accordance with reasonable rules, regulations or standards established by the airport sponsor. Any unreasonable restriction imposed on the owners or operators of aircraft regarding the servicing of their own aircraft may be construed as an exclusive rights violation. In accordance with the federal grant assurances:

(1). An airport sponsor may not prevent an owner or operator of an aircraft from performing services on his/her own aircraft with his/her own employees and equipment. Restrictions imposed by an airport sponsor that have the effect of channeling self-service activities to a commercial aeronautical service provider may be an exclusive rights violation.

An airport sponsor may not prevent an owner or operator of an aircraft from performing services on his/her own aircraft with his/her own employees and equipment.

(2). An airport sponsor must reasonably provide for self-servicing activity, but is not obligated to lease airport facilities and land for such activity. That is, the airport sponsor is not required to encumber the airport with leases and facilities for self-servicing activity.

(3). An airport sponsor is under no obligation to permit aircraft owners or operators to introduce

The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation. An exclusive rights violation is the denial by the airport sponsor to afford other qualified parties an opportunity to be an on-airport aeronautical service provider. The airport sponsor may issue a Request for Proposal (RFP)in a competitive offering for all qualified parties to compete for the right to be an on-airport service provider. (Photo: FAA)

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are leased under terms that give the operator airline owner-like powers. This includes operational control, exclusive use, and long-term lease terms. The same is true for other aeronautical operators such as charter companies, flight schools, and flying clubs, all of which may very well lease aircraft under terms that result in owner-like powers. If doubt exists on whether a particular "operator" can be considered as the owner for the purpose of this guidance, the ADO will make the determination. (A listing of ADOs can be found on the FAA web site.)

fueling equipment or practices on the airport that would be unsafe or detrimental to the public welfare or that would affect the efficient use of airport facilities by the public.

NOTE: Fueling from a pull-up commercial fuel pump is not considered self-fueling under the federal grant assurances since it involves fueling from a self-service pump made available by the airport or a commercial aeronautical service provider.

8.9. Exceptions to the General Rule.

a. Aeronautical Activities Provided by the Airport Sponsor (Proprietary Exclusive Right). The owner of a public use airport may elect to provide any or all of the aeronautical services needed by the public at the airport. The airport sponsor may exercise, but not grant, an exclusive right to provide aeronautical services to the public. If the airport sponsor opts to provide an aeronautical service exclusively, it must use its own employees and resources. Thus, an airport owner or sponsor cannot exercise a proprietary exclusive right through a management contract. Note that while the policy technically extends to private owners of public use airports, private owners may not have the same immunity from antitrust laws as public agencies. A proprietary exclusive can be exercised only for fuel sales and support services, not for use of the landing area itself.

As a practical matter, most airport sponsors recognize that aeronautical services are best provided by profit-motivated, private enterprises. However, there may be situations that the airport sponsor believes would justify providing aeronautical services itself. For example, in a situation where the revenue potential is insufficient to attract private enterprise, it may be necessary for the airport sponsor to provide the aeronautical service. The reverse may also be true. The revenue potential might be so significant that the airport sponsor chooses to perform the aeronautical activity itself in order to become more financially self-sustaining. Aircraft fueling is a prime example of an aeronautical service an airport sponsor may choose to provide itself. While the airport sponsor may exercise its proprietary exclusive to provide fueling services, aircraft owners may still assert the right to obtain their own fuel and bring it onto the airport to service their own aircraft, but only with their own employees and equipment and in conformance with reasonable airport rules, regulations, and minimum standards.

b. Single Activity. The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation. An exclusive rights violation is the denial by the airport sponsor to afford other qualified parties an opportunity to be an on-airport aeronautical service provider. The airport sponsor may issue a competitive offering for all qualified parties to compete for the right to be an on-airport service provider.[24] The airport sponsor is not required to accept all qualified service providers without limitation. The fact that only one qualified party pursued an opportunity in a competitive

[24] The grant assurances do not prohibit an airport sponsor from entering into long-term leases with commercial entities, by negotiation, solicitation, or other means. An airport sponsor may choose to select fixed-base operators (FBOs) or other aeronautical service providers through a request for proposals (RFP) process. If it chooses to do so, the airport sponsor may use this process each time a new applicant is considered. This action, in and by itself, is not unreasonable or contrary to the federal obligations.

offering would not subject the airport sponsor to an exclusive rights violation. However, the airport sponsor cannot, as a matter of convenience, choose to have only one fixed-base operator (FBO)[25] to provide services at the airport regardless of the circumstances at the airport.

c. Statutory Requirement Relating to Single Activities. Since 1938, there has been a statutory prohibition on exclusive rights (49 U.S.C. § 40103(e)) [independent of the parallel grant assurance requirement at 49 U.S.C. § 47107(a)(4)]. It currently states, "A person does not have an exclusive right to use an air navigation facility on which Government money has been expended." (An "air navigation facility" includes, among other things, an airport. *See* "Definitions" at 49 U.S.C. § 40102.)

This prohibition predates the parallel statutory grant assurance requirement enacted as part of the AAIA. It is independent of the grant assurance requirement.

Both statutory prohibitions contain an exception to permit single FBOs if it is unreasonably costly, burdensome, or impractical for more than one FBO to provide services, and allowing more than one FBO to provide services would reduce the space leased under an existing agreement between the airport and single FBO. Both conditions must be met for the exception to apply.

d. Space Limitation. A single enterprise may expand as needed, even if its growth ultimately results in the occupancy of all available space. However, an exclusive rights violation occurs when an airport sponsor unreasonably excludes a qualified applicant from engaging in an on-airport aeronautical activity without just cause or fails to provide an opportunity for qualified applicants to be an aeronautical service provider. An exclusive rights violation can occur through the use of leases where, for example, all the available airport land and/or facilities suitable for aeronautical activities are leased to a single aeronautical service provider who cannot put it into productive use within a reasonable period of time, thereby denying other qualified parties the opportunity to compete to be an aeronautical service provider at the airport. An airport sponsor's refusal to permit a single FBO to expand based on the sponsor's desire to open the airport to competition is not a violation of the grant assurances. Additionally, an airport sponsor may exclude an incumbent FBO from participating under a competitive solicitation in order to bring a second FBO onto the airport to create a more competitive environment.

A lease that confers an exclusive right will be construed as having the intent to do so and, therefore, constitute an exclusive rights violation. Airport sponsors are better served by requiring that leases to a single aeronautical service provider be limited to the amount of land the service provider can demonstrate it actually needs and can be put to immediate productive use. In the event that additional space is required later, the airport sponsor may require the incumbent service provider to compete along with all other qualified service providers for the available airport land.

25 A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc. to the public.

The grant of options or preferences on future airport lease sites to a single service provider may be construed as intent to grant an exclusive right. Leases with options or future preferences, such as rights of first refusal, should generally be avoided.

The grant of options or preferences on future airport lease sites to a single service provider may be construed as intent to grant an exclusive right. Therefore, leases with options or future preferences, such as rights of first refusal, should generally be avoided.

8.10. UNICOM.

The Federal Communications Commission (FCC) authorizes use of special UNICOM[26] frequencies for air-to-ground communication at airports. The primary purpose of the communications station is to disseminate aeronautical data, such as weather, wind direction, and runway information. They are used by aircraft in the air and on the ground for both preflight and post flight activities. Since UNICOM is supposed to be subject to the airport owner's control, its use by the airport, and the airport only, does not constitute a grant of exclusive rights to which the statutory prohibition of section 40103(e) would apply.

Since most federally owned airports are maintained and operated with federal funds appropriated for purposes other than the support of civil aviation (usually to accommodate a military or defense mission), the federal government is not subject to the exclusive rights prohibition. Such airports do not receive AIP funds and are not subject to grant assurances. Consequently, when the base commanders (or other federal government entities) grant operating rights to airlines and other aeronautical activities to meet their own transportation and civil aviation requirements (such as moving personnel and equipment), they are not subject to sponsor federal obligations. Similarly, the base commander of an active military base has no federal obligation to permit civilian operations at the air base. (Photo: USAF)

[26] UNICOM is a nongovernment air/ground radio communication station. It may provide airport information at public use airports where there is neither a tower nor a Flight Service Station (FSS).

To prevent conflicting reports, the FCC will not license more than one UNICOM station at the same airport. However, unless properly controlled, allowing an aeronautical service provider to operate the sponsor's UNICOM station on behalf of the airport sponsor could result in an advantage over competitors in attracting aeronautical users. When the sponsor fails to retain the station license in its own name and turns control of the license to a single service provider, the FAA may find the sponsor in violation of the prohibition against exclusive rights.

The FAA will not license more than one UNICOM station at the same airport.

8.11. Implementation of Policy.

a. Voluntary Compliance. When the sponsor engages in – or fails to extinguish – an exclusive right voluntarily, the FAA will find the sponsor in violation of the prohibition against exclusive rights and its federal obligations.

b. Remedies. When the FAA finds the sponsor in violation of the exclusive rights provision, and the situation remains uncorrected, FAA may withhold AIP grant assistance. In addition, FAA may withhold Facilities and Equipment (F&E) funding, except for equipment needed for safety or, generally as a last resort, seek reversion of the airport under the Surplus Property Act. (Chapter 2 of this Order, *Compliance Program*, discusses handling of grant assurance violations.)

Under certain circumstances, the FAA may also issue any orders it deems necessary. These orders are enforced through the federal courts.

c. FAA Exception. Where required for the national defense or deemed essential to national interest, the FAA may grant an exception to the remedies above.

8.12. Military and Special Purpose Airports.

a. Applicability to the Federal Government. The federal government is not subject to the exclusive rights prohibition. Since most federally owned airports are maintained and operated with federal funds appropriated for purposes other than the support of civil aviation (usually to accommodate a military or defense mission), such airports do not receive AIP funds and are not subject to grant assurances.

Consequently, when the federal government entity that owns the facility allows operating rights to airlines and other aeronautical activities to meet the government's own transportation and civil aviation requirements (such as moving personnel and equipment), the government is not subject to sponsor federal obligations. Similarly, the base commander of an active military base has no federal obligation to permit civilian operations at the air base.

b. Joint Use Airports. When a civilian airport sponsor obligates itself under FAA grant agreements or property conveyance agreements, that entity becomes subject to the same federal obligations as other sponsors regardless of whether the facilities are located on federal installations or whether they are operated under joint-use agreements with the Department of Defense (DoD) or other federal agencies. At joint-use airports, federal grant assurance obligations do not apply to areas within exclusive DoD control.

8.13. through 8.18. reserved.

Chapter 9. Unjust Discrimination between Aeronautical Users

9.1. Introduction. This chapter contains guidance on the sponsor's responsibility to make the airport available on reasonable terms and without unjust discrimination. This guidance is primarily economic and focuses on charging comparable rates to similarly situated aeronautical users. Issues of unjust discrimination arising from access restrictions are addressed in chapters 13, *Airport Noise and Access Restrictions*, and 14, *Restrictions Based on Safety and Efficiency Procedures and Organization*, respectively. It is the responsibility of the airports district offices (ADOs) and regional airports divisions to advise sponsors on their obligations in this area.

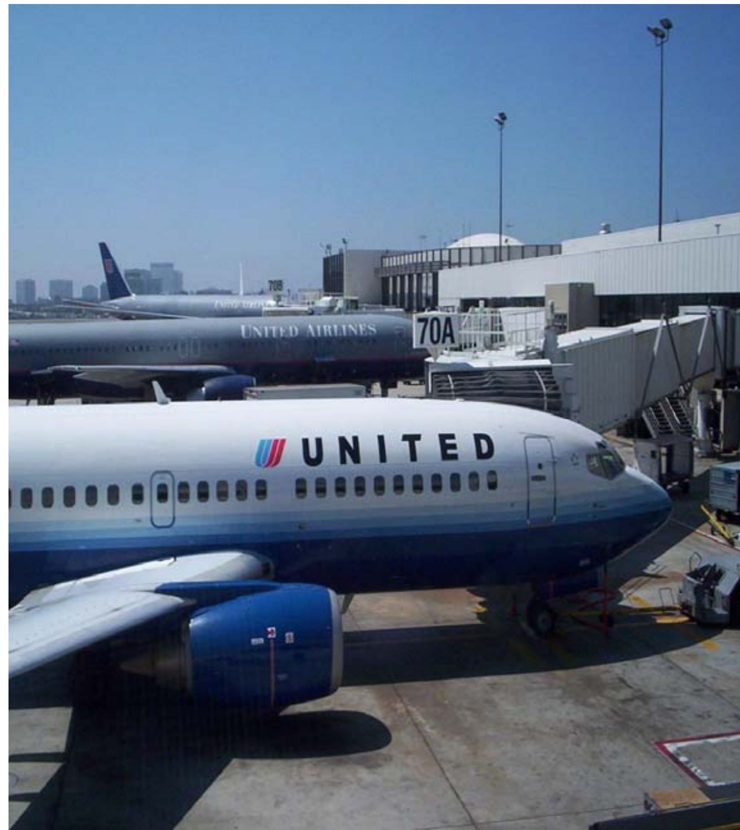
a. Federal Grant Obligations. Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to make its aeronautical facilities available to the public and its tenants on terms that are reasonable and without unjust discrimination. This federal obligation involves several distinct requirements.

First, the sponsor must make the airport and its facilities available for public use.

Next, the sponsor must ensure that the terms imposed on aeronautical users of the airport, including rates and charges, are reasonable for the facilities and services provided.

Finally the terms must be applied without unjust discrimination.

The prohibition on unjust discrimination extends to types, kinds and classes of aeronautical activities, as well as individual members of a class of operator. This is true whether these terms are imposed by the sponsor or by a licensee or tenant offering services or commodities normally required at the airport. The tenant's commercial status does not relieve the sponsor of its obligation to ensure the terms for services offered to aeronautical users are fair and reasonable and without unjust discrimination. (See



An air carrier that assumes the same obligations imposed on other tenant air carriers shall enjoy the same classification and status. This applies to rates, fees, rentals, rules, regulations, and conditions covering all the airport's aeronautical activities. (Photo: FAA)

paragraph 12.5.a of this Order.) [27]

b. Other Federal Obligations. These same requirements apply to the Federal Aid to Airports Program (FAAP) and the Airport Development Aid Program (ADAP) agreements. These requirements are also reflected in surplus property and nonsurplus property agreements.

9.2. Rental Fees and Charges: General.

a. Comparable Rates, Fees, and Rentals. For facilities that are directly and substantially related to air transportation, regardless of whether an air carrier or user is a tenant, subtenant, or nontenant, the sponsor must impose nondiscriminatory and substantially comparable rates, fees, rentals, and charges on all air carriers and users that assume similar obligations, use similar facilities, and make similar use of the airport.

Aside from rates, fees, and rentals, the sponsor must also impose comparable rules, regulations, and conditions on the use of the airport by its air carriers and users, regardless of whether they are tenants, subtenants, or nontenants.

An airport might have fixed-base operators (FBOs) that provide commercial services such as the sale of aviation fuel and oil, tie-down and aircraft parking facilities, ramp services, flight training, aircraft sales, or avionics repair. Some FBOs may not be similarly situated, especially in regard to investment in facilities. A sponsor may have different fee schedules for FBOs not similarly situated. One of the most common and needed aeronautical services is aircraft parking. In the photograph above, the typical tie-down spot and rigging is illustrated. Another common aeronautical service is aircraft sales, shown below. (Photos: FAA)

b. Signatory and Nonsignatory Air Carriers. The sponsor may establish a separate rate, fee, and rental structure for the use of airport facilities depending on whether an air carrier chooses to assume the obligations of a signatory carrier to a sponsor's

[27] The obligations under the grant assurances to afford reasonable access extends only to aeronautical users engaging in aeronautical activities. The grant assurance obligations do not extend to nonaeronautical users.

airport use agreement or chooses not to assume those obligations and be classified as a nonsignatory carrier. The primary obligation of a signatory is to lease space in airport facilities and commit to long-term financial support of the development and operation of the airport. The debt for airport facilities is typically secured by signatory tenant leases. In return for their financial commitment, signatory carriers may have a rate, fee, and rental structure that differs from nonsignatory carriers choosing not to make the same financial commitment. The sponsor cannot unreasonably deny signatory status to an air carrier willing and able to assume the obligations of a signatory carrier.

c. Fixed-base Operators (FBOs).[28] The sponsor must impose the same rates, fees, rentals, and other charges on similarly situated fixed-based operators (FBOs) that use the airport and its facilities in the same or similar manner. However, FBOs under different types of sponsor agreements may have different fees and rentals. For example, an FBO leasing a sponsor-owned aeronautical facility may pay more in rent to the sponsor than an FBO that builds and finances its own facility. In the first case, the FBO is not servicing debt while in the second case, the FBO is servicing debt.

d. Changes in Rates Over Time. A sponsor is not foreclosed from revising its rental rate structure from time to time. An airport sponsor does not engage in unjust discrimination simply by imposing different lease terms on carriers and users whose leases have expired. FAA recognizes rate differences based partly on differences in other lease terms and facilities. Ideally, a new rate should be imposed at a time when the rates can be changed for all similarly situated tenants at the same time to avoid any claims of unjust discrimination. In some cases, however, the sponsor will have reason to revise rates even though existing contracts at lower rates have not yet expired. In such cases, the sponsor should make every effort to provide terms for new contracts that will support any difference in rates between new tenants and existing tenants. The sponsor should also consider limiting the term of new agreements to expire when existing agreements expire in order to bring all similarly situated tenants under a common rate structure at one time. While circumstances may allow differences in rental rates among tenants, landing fee schedules generally must be applied uniformly to all similarly situated users at all times (i.e., a signatory rate and a separate nonsignatory rate).

e. Complaints. The FAA does not normally review airport fees or question the fairness or comparability of the sponsor's rates, fees, and rental structure. Accordingly, the FAA normally investigates only upon receipt of a properly documented complaint that alleges sponsor noncompliance with an applicable assurance, such as Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights*, Grant Assurance 24, *Fee and Rental Structure*, or Grant Assurance 25, *Airport Revenues*.

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[28] A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

f. Additional Information. Refer to chapter 18 of this Order, *Airport Rates and Charges*, for a further discussion on airport rates and charges, and chapter 15 of this Order, *Permitted and Prohibited Uses of Airport Revenue*, for use of airport revenue.

A sponsor may establish two classes of FBO, one serving primarily high performance aircraft and another that caters to piston powered aircraft. Rates that may not be comparable because entities are not similarly situated should, nevertheless, be equitable. (Photos: FAA)

9.3. Types of Charges for Use of Airport Facilities. The sponsor may use direct charges (such as landing and tie-down fees) to charge aeronautical users for use of airport facilities. It may also use indirect charges through its FBO such as fuel flowage fees or percentages of gross receipts fees where it factors into the price of fuel and other aeronautical services the cost of providing airport facilities. For example, an FBO may have a ground lease, on which it erects hangars and other facilities, and also pay the sponsor a percentage of the receipts from fuel and aeronautical services provided to aeronautical users.

9.4. Airport Tenant and Concessionaire Charges to Airport Users. At most airports, profit-motivated private enterprise can best provide fuel, storage, and aircraft service. When negotiating agreements with tenants and concessionaires, it is the sponsor's responsibility to retain sufficient oversight to guarantee that aeronautical users will be treated fairly. A sponsor is encouraged to include a "subordination clause" in its contracts' standard terms and conditions. Such a clause subordinates the sponsor's contract with tenants to

its federal obligations, preserving its rights and powers under Grant Assurance 5, *Preserving Rights and Powers.*

The sponsor has a federal obligation to ensure that aeronautical users have access to airport facilities on reasonable and not unjustly discriminatory terms. The sponsor is not obligated by federal grant agreements or property deeds with the United States to oversee the pricing and services for nonaeronautical concessions such as public parking and ground transportation, food and beverage concessions, and other terminal area concessions.

All grant agreements contain an assurance that the sponsor will neither exercise nor grant any right or privilege that would have the effect of preventing the operator of an aircraft from performing any services on its own aircraft with its own employees. Two entities to which this applies are charter operators (below) and flight schools (above). (Photos: FAA).

9.5. Terms and Conditions Applied to Tenants Offering Aeronautical Services.

a. Signatory and Nonsignatory. An air carrier that is willing and able to assume the same obligations assumed by other tenant air carriers shall enjoy the same classification and status. This applies to rates, fees, rentals, rules, regulations, and conditions covering all the airport's aeronautical activities.

b. Signatory Fees and Rentals. The sponsor may

grant lower fees and rentals to an air carrier willing and able to be a signatory to a sponsor's airport use agreement. When an air carrier is unwilling or unable to become a signatory, the sponsor may charge the air carrier higher nonsignatory rates.

c. Different Rates to Similar Users. If the sponsor can show that different rates are nondiscriminatory and if the rates are substantially comparable, it may charge airport tenants different rates for similar airport uses. For example, the rental rates in different airline terminals may vary because of differences in debt and physical layout of rental and public space, but only to the extent justified by the difference in circumstances.

d. Differences of Value and Use. The FAA may consider factors such as minimum investment requirements, demand, location, venture risk, ownership of facilities, time remaining on contract terms, and condition of facilities as reasons that may justify differing rates. For example, a sponsor may establish two classes of FBO, one serving primarily high performance aircraft and another that caters to piston powered aircraft. Nonetheless, rates that may not be comparable should be equitable.

Grant Assurance 22, Economic Nondiscrimination, requires an airport sponsor to make available suitable areas or space on reasonable terms to those willing and qualified to offer aeronautical services to the public such as air taxi, charter, aircraft storage (hangar), and aircraft maintenance services. An airport sponsor may not have a hangar available for a prospective service provider but might have land available at the airport. In order to make the airport available on reasonable terms, that airport sponsor must, at a minimum, make that land available to the prospective service provider (i.e. through a ground lease) so that it can develop its aeronautical facility. (Photos: FAA).

e. Escalation Provision. Ground leases with terms of five (5) or more years should contain an escalation provision for periodic adjustments based on a recognized economic index. This will facilitate parity between new and established lessees. An escalation provision also helps the sponsor comply with Grant Assurance 24, *Fee and Rental Structure*, which requires the sponsor to make the airport as self-sustaining as possible under the circumstances.

9.6. Fixed-Base Operations and Other Aeronautical Services.

a. Similarity of Facilities. If one FBO rents office and/or hangar space from the sponsor and another leases land from the sponsor and builds its own facilities, the sponsor would have justification for applying different rental rates and fee structures. Even though the operators offer the same services to the public, the cost of their facilities is different due to circumstance.

b. Location. If one FBO is in a prime location and another FBO is in a less advantageous area, the sponsor could logically charge different rental rates and fees to reflect the advantage of the location.

c. Similarity of Services. An airport might have an FBO that provides aeronautical services to air carriers and private operators such as fueling, ramp services, aircraft parking, crew transport, and catering while another FBO may focus only on general aviation (GA) services such as the sale of aviation fuel and oil, tie-down and aircraft parking, ramp services, flight training, aircraft sales, or avionics repair. These differing services may require different space, facilities, and other requirements based on their business needs. If the services are not similar, sponsors are not required to charge the FBOs the same rates. Nonetheless, all rates charged must be equitable.

d. FAA Determination. If the FAA determines that the FBOs at the airport are making the same or similar uses of the airport facilities under the same circumstances, then the same rates, fees, and rental structure will apply

To aid in establishing uniform rates and charges applied to aeronautical activities on the airport, the sponsor should establish minimum standards to be met as a condition for the right to conduct an aeronautical activity on the airport.

e. Minimum Standards. To aid in establishing uniform rates and charges applied to aeronautical activities on the airport, the sponsor should establish minimum standards to be met as a condition for the right to conduct an aeronautical activity on the airport. (See Appendix O of this Order, *Sample Minimum Standards for Commercial Aeronautical Activities*. See also Advisory Circular (AC) 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*.)

f. New Airport. At a new general aviation airport, the sponsor frequently must offer reduced rental rates and other inducements to attract FBOs. This arrangement recognizes that the FBO may not be profitable for some time. In order to secure FBO services for aeronautical users, the sponsor may provide an incentive rate during an initial startup period, which should run for a specific period of time and be reflected in a written agreement. Once the startup period ends, the airport sponsor should charge the airport standard rates and charges based on current values.

g. Unreasonable Restraint. If the sponsor requires an FBO to procure fuel, services, or supplies from a source that the sponsor provides, the FAA may determine that the requirement is an unreasonable restraint on the FBO's use of the airport and not consistent with Grant Assurance 22, *Economic Nondiscrimination* or Grant Assurance 23, *Exclusive Rights*.

h. Aeronautical Activities Conducted by the Airport Sponsor (Proprietary Exclusive). The sponsor of a public use airport may elect to provide any or all of the aeronautical services needed by the public at the airport. As discussed in chapter 8 of this Order, *Exclusive Rights*, the

statutory prohibition against exclusive rights does not apply to the sponsor-operator of a public use airport. The airport owner may exercise, but not grant, the exclusive right to conduct any aeronautical activity.

However, these owners must engage in such activities as principals using their own employees and resources. An independent commercial enterprise that has been designated as agent of the owner may neither exercise nor be granted an exclusive right at the airport.

(1). As a practical matter, most sponsors recognize that these services are best provided by profit-motivated private enterprise. The exceptions are usually those instances in which a sponsor elects to provide fuel service or aircraft parking. If it does so, whether on an exclusive or nonexclusive basis, it may not refuse to permit an air carrier, air taxi, or flight school to fuel its own aircraft with its own personnel and equipment.

(2). The airport owner may establish reasonable standards covering the refueling, washing, painting, repairing, etc., of aircraft. However, unless the airport owner is providing such services itself on an exclusive basis, it may not refuse to negotiate for the space and facilities needed to meet such standards by an activity willing and qualified to provide aeronautical services to the public.

If the airport sponsor reserves unto itself the exclusive right to sell fuel, it can prevent an airline or air taxi from selling fuel to others, but it must deal reasonably to permit such operators to refuel their own aircraft.

If the airport owner reserves unto itself the exclusive right to sell fuel, it can prevent an airline or air taxi from selling fuel to others, but it must deal reasonably to permit such operators to refuel their own aircraft. The self-service fueling by such flight operators, however, must be done with their own employees and equipment. For information regarding fueling, refer to *Aircraft Fuel Storage, Handling, and Dispensing on Airports*, Advisory Circular (AC) 150/5230-4A. (See chapter 11 of this Order, *Self-service*, for additional information on self-service.)

(3). Aircraft operators do not have a right to bring a third party, such as an oil company, onto the airport to refuel their aircraft. This would be an aeronautical activity undertaken by the fuel company, which has only such rights as the airport owner may confer. It should be noted that air carriers frequently insist on a standard condition in their airport contracts reserving the right to obtain fuel from a supplier of their choice. Under this arrangement, the air carrier-owned fuel can be delivered to the airport fuel farm with fueling handled by the airport's contractors.

9.7. Availability of Leased Space. The sponsor's federal obligation under Grant Assurance 22, *Economic Nondiscrimination,* to operate the airport for the public's use and benefit is not satisfied simply by keeping the runways open to all classes of users. The assurance federally obligates the sponsor to make available suitable areas or space on reasonable terms to those willing and qualified to offer aeronautical services to the public (e.g. air carrier, air taxi, charter, flight training, or crop dusting services) or support services (e.g. fuel, storage, tie-down, or flight

line maintenance services) to aircraft operators. Sponsors are also obligated to make space available to support aeronautical activity of noncommercial aeronautical users (i.e., hangars and tie-down space for individual aircraft owners). This means that unless it undertakes to provide these services itself, the sponsor has a duty to negotiate in good faith for the lease of premises available to conduct aeronautical activities. Since the scope of this federal obligation is frequently misunderstood, the following guidance is offered:

a. Servicing of Aircraft. All grant agreements contain an assurance that the sponsor will neither exercise nor grant any right or privilege that would have the effect of preventing the operator of an aircraft from performing any services on its own aircraft with its own employees. This does not, however, federally obligate the sponsor to lease space to every aircraft operator using the airport. It simply means that any aircraft operator entitled to use the airfield is also entitled to tie down, adjust, repair, clean, and otherwise service its own aircraft, provided it does so with its own employees and conducts self-servicing in accordance with the sponsor's reasonable rules or standards established for such work. Accordingly, the assurance establishes a privilege of self-service, but it does not, by itself, compel the sponsor to lease the facilities necessary to exercise that privilege.

b. Facilities Not Providing Service to the Public. When adequate facilities are otherwise available, Grant Assurance 22, *Economic Nondiscrimination*, does not compel sponsors to lease property to entities that desire to construct facilities for private aeronautical use. Examples would include making property available so that private aircraft owners or flying clubs may construct their own hangars while vacant hangars are available on the airport that can meet the potential tenant's needs. However, if the entity is not able to arrange satisfactory terms for hangar space, facilities, or support services from existing airport entities, the assurance does require the sponsor to lease available property identified on the sponsor's airport layout plan (ALP) for such use to such entities on reasonable terms. (See Grant Assurance 38, *Hangar Construction*, regarding hangars for private aircraft storage.)

c. Activities Offering Services to the Public. If adequate space is available on the airport and the sponsor is not already providing identical aeronautical services, Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to negotiate in good faith and on reasonable terms with prospective aeronautical service providers.

If adequate space is available on the airport and the sponsor is not already providing identical aeronautical services, Grant Assurance 22, Economic Nondiscrimination, requires the sponsor to negotiate in good faith and on reasonable terms with prospective aeronautical service providers.

The FAA interprets the willingness of a prospective provider to lease space and invest in facilities as sufficient evidence of a public need for those services. In such a situation, the FAA does not accept a sponsor's claim of insufficient business activity as a valid reason to restrict the prospective provider access to the airport.

9.8. Air Carrier Airport Access.

With the passage of the Airline Deregulation Act of 1978 (Deregulation Act), air carriers have had no restrictions on entry into new markets. Even before the Deregulation Act's passage, however, many airports already operated at or near capacity in terms of ticket counter, gate, and ramp space. Consequently, new air carriers wishing to serve an airport often faced a lack of available facilities. In some instances, established air carriers made space available for the newcomers. However, in other cases, no space was made available, and sponsors subsequently denied the newcomers access to the airport.

a. Mandatory Access. In accordance with Grant Assurance 23, *Exclusive Rights*, which prohibits a sponsor from directly or indirectly conveying an exclusive right to an air carrier, the FAA Office of Chief Counsel determined that a sponsor may not deny an air carrier access solely based on the nonavailability of existing facilities. The sponsor must make some arrangements for accommodations if reasonably possible. Consequently, access issues can often be complex and are not always easy to resolve. (See FAA Docket No. 16-98-05 for additional information, available online.)

b. Reports of denial of access. Grant Assurance 39, *Competitive Access*, requires operators of large and medium hub airports to report to the Secretary any denial of a request by an air carrier for access to the airport. A report is due on February 1st or August 1st if there has been any denial of access in the preceding six-month period.

c. FAA Headquarters Airport Compliance Division (ACO-100) Review. The ADOs or regional airports divisions should notify the ACO-100 if the region cannot develop a feasible solution to an air carrier access situation. The division will coordinate the effort of the regional airports division with the FAA Office of Chief Counsel to achieve a viable solution to the problem.

9.9. Civil Rights. The ADOs or regional airports divisions and the Office of Civil Rights are responsible for enforcing Grant Assurance 30, *Civil Rights*. More information is available at 49 Code of Federal Regulations (CFR) Part 21 *Nondiscrimination in Federally Assisted Programs of the Department of Transportation,* and 150/5100-15, *Civil Rights Requirements for the Airport Improvement Program,* available online.

The Office of Civil Rights advises, represents, and assists the FAA Administrator on civil rights, diversity, and equal opportunity matters that ensure the elimination of unlawful discrimination on the basis of race, color, national origin, sex, age, religion, creed, and individuals with disabilities in federally operated and federally assisted transportation programs.

9.10. FAA Policy on Granting Preferential Treatment Based on Residency. The FAA has received complaints about a sponsor's policy of granting preferential treatment in the assignment of aircraft storage hangars or other services to residents of the sponsor's locality. Such preferential practices are unreasonable and unjustly discriminatory, and can result in the granting of an exclusive right contrary to Grant Assurance 22, *Economic Nondiscrimination*, and Grant

Assurance 23, *Exclusive Rights*, implementing 49 United States Code (U.S.C.) § 40107(a) and 49 U.S.C. § 40103(e) respectively.

A federally obligated airport sponsor has received federal aid in support of the national air transportation system. All users of the national airport system pay taxes to support and maintain the system and all its component airports, including the airport in question. The fact that certain users at a particular airport pay district or other local taxes, while others do not, does not justify preferential treatment, differential rates, or other unjustly discriminatory practices having the effect of unreasonably restricting or excluding users who do not pay those local taxes.

Nonresident aeronautical users have the same rights as resident aeronautical users regarding reasonable access to, and services provided at, a federally obligated airport. Accordingly, the airport must be available on reasonable terms to all public aeronautical users, and a local tax obligation does not establish a reasonable basis upon which to discriminate between resident and nonresident airport users.

The national air transportation system is dependent on each airport properly functioning as part of the whole system. Allowing airport sponsors to invoke local preferences, such as granting preferential treatment in the assignment of aircraft storage hangars to resident aeronautical users, could result in a patchwork of local preferences that would be inconsistent with a national air transportation system.

9.11. through 9.14. reserved.

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Chapter 10. Reasonable Commercial Minimum Standards

10.1. Introduction. This chapter describes the sponsor's prerogative to establish minimum standards for commercial service providers and to establish self-service rules and regulations for all other airport activities. Flying clubs are not-for-profit commercial operations and are not normally covered by commercial minimum standards. However, flying clubs are covered within this chapter since a majority of federally obligated airports where flying clubs exist have historically addressed the issue in their minimum standards.

It is the responsibility of the airports district offices (ADOs) and regional airports divisions to advise sponsors on the appropriateness of proposed standards and to ensure that the standards do not protect or convey an exclusive right. (For samples, see Appendix O of this Order, *Sample Minimum Standards for Commercial Aeronautical Activities*, and Appendix P of this Order, *Sample Airport Rules and Regulations*.)

10.2. FAA Recognition of Minimum Standards. A sponsor's establishment of minimum standards and self-service rules and regulations contributes to nondiscriminatory treatment of airport tenants and users. It also helps the sponsor avoid granting an exclusive right. (See chapter 8 of this Order, *Exclusive Rights*, and chapter 9 of this Order, *Unjust Discrimination between Aeronautical Users*.) When the sponsor imposes reasonable and not unjustly discriminatory minimum standards for airport operations, and the sponsor then denies access or services based on those standards, the FAA will not find the sponsor in violation of the assurances regarding exclusive rights and unjust discrimination, provided those standards:

a. Apply to all providers of aeronautical services, from full service fixed-base operators (FBOs)[29] to single service providers.

b. Impose conditions that ensure safe and efficient operation of the airport in accordance with FAA guidance when available.

c. Are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect providers of aeronautical services from unreasonable competition.

d. Are relevant to the activity for which they apply.

e. Provide the opportunity for others who meet the standards to offer aeronautical services.

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[29] A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

Note: There is no requirement to include nonaeronautical activities (such as restaurant or car rental) in minimum standards since those activities are not covered under the grant assurances.

10.3. Use of Minimum Standards to Protect an Exclusive Right. When the sponsor implements minimum standards for the apparent purpose of protecting an exclusive right, the FAA will find the sponsor in violation of the exclusive rights prohibition. Evidence of intent to grant an exclusive right might be, for example, the adoption of a standard that only one particular operator can reasonably or practically meet.

STAFFORD REGIONAL AIRPORT

MINIMUM STANDARDS

FOR

PROVIDING AERONAUTICAL SERVICES

TO THE PUBLIC

Adopted by the Stafford Regional Airport Authority February 8, 2000

Airport sponsors should strive to develop minimum standards that are fair and reasonable to all operators and relevant to the activity that the minimum standards concern.

10.4. Benefits of Minimum Standards. The FAA strongly recommends developing minimum standards because these standards typically:

a. Promote safety in all airport activities and maintain a higher quality of service for airport users,

b. Protect airport users from unlicensed and unauthorized products and services,

c. Enhance the availability of adequate services for all airport users,

d. Promote the orderly development of airport land, and

e. Provide a clear and objective distinction between service providers that will provide a satisfactory level of service and those that will not.

f. Prevent disputes between aeronautical providers and reduce potential complaints.

10.5. Developing and Applying Minimum Standards.

a. Advisory Circular (AC) on Minimum Standards. When developing minimum standards, the most critical consideration is the particular nature of the activity and the operating environment at the airport. Airport sponsors should tailor their minimum standards to their individual airports. For example, consider the requirements for an FBO located at a small, rural airport that serves only small general aviation (GA) aircraft. A minimum standard requiring the FBO to make jet fuel available if there were few jet operations at the airport would likely be unreasonable.

The potential imposition of unreasonable requirements illustrates why "fill-in-the-blank" minimum standards and the blanket adoption of another airport's standards are not effective. The FAA will not endorse "fill-in-the-blank" minimum standards because of the high probability that many airport sponsors would adopt the document without modifying it to the needs of their particular airports. This could result in the imposition of irrelevant and unreasonable standards. Instead, the FAA has provided guidance in the form of AC 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities,* to illustrate an approach to developing and implementing minimum standards. AC 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities* is available in Appendix C of this Order.

b. Safety and Efficiency Standards. Federal law and policies requiring airport sponsors to provide airport access to all types, kinds, and classes of aeronautical activity, as well as to the general public, include certain exceptions. Exceptions to the general rule may apply when airport safety or efficiency would be compromised.

If a type, kind, or class of activity would have an adverse effect on safety or efficiency for the airport, the sponsor may deny business applications to conduct that activity on the airport or limit or restrict the manner of operation. However, a restriction imposed for safety or efficiency purposes that is subsequently challenged by an aeronautical user will require concurrence from FAA Flight Standards (FS) and/or Air Traffic (AT) before the FAA headquarters Airport Compliance Division (ACO-100) or ADO or regional airports division can determine the restriction is reasonable and approve the restriction. This is because the federal government, through this exercise of its constitutional and statutory powers, has preempted the areas of airspace use and management, air traffic control, and aviation safety. (See chapter 14 of this Order, *Restrictions Based on Safety and Efficiency Procedures and Organization.)*

c. Aircraft Weight Restrictions. A sponsor may impose a restriction based on specified maximum gross weight or wheel loading. Before imposing a weight-based restriction, however, the FAA recommends the sponsor seek FAA review of the proposal to ensure compliance with other federal obligations. (See Appendix S of this Order, *FAA Weight-Based Restrictions at Airports*, for additional information.)

d. Public Access. The sponsor may also impose restrictions that apply to the general public. For example, the general public is generally subject to restrictions concerning vehicle and pedestrian access, security, and crowd control when using airport facilities.

The sponsor may also impose restrictions that apply to the general public. For example, the general public is generally subject to restrictions concerning vehicle and pedestrian access, security, and crowd control when using airport facilities.

e. Availability of FAA Assistance. Airport sponsors can obtain assistance from ADOs and regional airports divisions in determining the reasonableness of restrictions imposed through minimum standards.

10.6. Flying Clubs.

a. Definition. FAA defines a flying club as a nonprofit or not-for-profit entity (e.g., corporation, association, or partnership) organized for the express purpose of providing its members with aircraft for their personal use and enjoyment only.

b. General. The ownership of the club aircraft must be vested in the name of the flying club or owned by all its members. The property rights of the members of the club shall be equal; no part of the net earnings of the club will inure to the benefit of any individual in any form, including salaries, bonuses, etc. The flying club may not derive greater revenue from the use of its aircraft than the amount needed for the operation, maintenance and replacement of its aircraft. For a sample of flying club rules and regulations, see the *Sample Flying Club Rules and Regulations* at the end of this chapter.

c. Policies. A flying club qualifies as an individual under the grant assurances and, as such, has the right to fuel and maintain the aircraft with its members. The airport owner has the right to require the flying club to furnish documents, such as insurance policies and a current list of members, as may be reasonably necessary to assure that the flying club is a nonprofit organization rather than an FBO or other commercial entity.

The FAA suggests several definitions and items as guidance for inclusion by airports in their minimum standards and airport rules and regulations. (See Appendix O of this Order, *Sample Minimum Standards for Commercial Aeronautical Activities*, and Appendix P, *Sample Airport Rules and Regulations*.) These items include:

A flying club qualifies as an individual under the grant assurances and, as such, has the right to fuel and maintain the aircraft with its members. The airport owner has the right to require the flying club to furnish documents, such as insurances policies and a current list of members, as may be reasonably necessary to assure that the flying club is a nonprofit organization rather than a fixed-base operator or other commercial entity that purports to be a flying club. (Photo: FAA)

(1). All flying clubs desiring to base their aircraft and operate at an airport must comply with the applicable provisions of airport specific standards or requirements. However, flying clubs will not be subject to commercial FBO requirements provided the flying club fulfills the conditions contained in the stated airport standards or requirements satisfactorily.

(2). Flying clubs may not offer or conduct charter, air taxi, or aircraft rental operations. They may conduct aircraft flight instruction for regular members only, and only members of

the flying club may operate the aircraft.

(3). No flying club shall permit its aircraft to be used for flight instruction for any person, including members of the club owning the aircraft, when such person pays or becomes obligated to pay for such instruction. An exception applies when the instruction is given by a lessee based on the airport who provides flight training and the person receiving the training is a member of the flying club. Flight instructors who are also club members may not receive payment for instruction except that they may be compensated by credit against payment of dues or flight time.

(4). Any qualified mechanic who is a registered member and part owner of the aircraft owned and operated by a flying club may perform maintenance work on aircraft owned by the club. The flying club may not become obligated to pay for such maintenance work except that such mechanics may be compensated by credit against payment of dues or flight time.

(5). All flying clubs and their members are prohibited from leasing or selling any goods or services whatsoever to any person or firm other than a member of such club at the airport, except that said flying club may sell or exchange its capital equipment.

All flying clubs and their members are prohibited from leasing or selling any goods or services whatsoever to any person or firm other than to a member of such club at the airport, except that the flying club may sell or exchange its capital equipment.

(6). A flying club at any airport shall comply with all federal, state, and local laws, ordinances, regulations and the rules and regulations of the airport.

(7). The flying club should file periodic documents as required by the sponsor, including tax returns, insurance policies, membership lists, and other documents that the sponsor reasonably requires.

d. Violations. A flying club that violates the requirements for a flying club – or that permits one or more members to do so – may be required to terminate all operations as a flying club at all airports controlled by the airport sponsor.

10.7. through 10.10. reserved.

Article I - The Club

1.01 The Metro Flying Club operates aircraft owned, rented or leased by the Club. The Club is managed by officers elected by the Board of Directors. The Board of Directors is elected annually by the members.

Article II - Club Membership

2.01 Membership in the Metro Flying Club is contingent upon approval of the application for membership by the Board of Directors and such membership may be revoked by the Board of Directors.

2.02 The applicable initiation fee, security deposit and current dues must be paid in full before a membership application can be approved.

2.03 Fees: Initiation fee, $200.00 (family $230.00); security deposit, $100.00; monthly dues, $73.00; family dues, $106; associate member dues $4.00; active CFI, $0 dues contingent on:

Giving annual Metro check rides free of charge.
Non CFI Board member(s) will be responsible to insure CFI is active.

2.04 A security deposit of $100.00 must be paid with each application for membership. This will be refunded when membership is terminated if there are no amounts owed to the Club.

2.05 If a new member decides to terminate membership within 30 days after joining the Club and did not use any Club aircraft, the initiation fee shall be refunded less $25.00 service charge.

2.06 If a member must terminate membership for reasons beyond his/her control during the first year of membership, one-half of his/her initiation fee will be refunded less any amounts owed to the Club.

2.07 Family Memberships -- The spouse of a member or any unmarried child living with member as part of his/her family group shall be entitled to join the Club upon payment of an additional $30.00 initiation fee and $33.00 monthly dues. A family membership reverts to an individual membership when the individual is no longer living at home, requiring payment of the regular security deposit and regular dues.

2.08 Minimum age for membership is 20 years, except that the Board of Directors may approve exemption to this rule in specific cases.

2.09 In the event that a member is unable to use Club aircraft for reasons beyond his/her control, he/she may retain his/her membership by paying nominal monthly dues, providing this request is submitted in writing and is approved by the Board of Directors.

2.10 When any member is in default in the payment of dues for three months, membership may be terminated by the Board of Directors.

2.11 A member is eligible to fly Club aircraft only if the membership is valid in all respects and his/her "block time" account contains sufficient funds to cover the planned flight.

Article III - Check-Out and Flight Rules

3.01 Use of Club aircraft shall be under such conditions as to ensure strict compliance with FAA regulations and local airport rules. Full cooperation with the airport owners or operators is required of all members at all times. Club aircraft will be operated according to standard operating procedures.

Sample Flying Club Rules and Regulations - Page 1

3.025 The pilot-in-command is responsible for having the operating manual for the aircraft being flown with them during flight since it is not necessarily provided on board by the Club.

3.02 The members will at all times perform as pilot-in-command of the aircraft and will fly from the pilot's seat (left) and will allow no other person to fly the aircraft unless the member is an instructor or is working for an instructor rating having been checked out by a Club-approved instructor for right seat operation.

3.03 Club aircraft may be used for the purpose of obtaining dual instruction provided the instructors are approved by the Board of Directors.

3.04 No member shall act as pilot-in-command in any Club aircraft unless he/she has demonstrated proficiency in that make and model of aircraft at or approaching gross weight and his/her log book has been signed to that effect by the safety director or his designee.

3.05 Each member must have flown a check ride with a qualified and approved instructor during the preceding 12 months, subject to the following:

(a) A pilots not having flown Metro Flying Club aircraft within a three (3) month period must take a check ride with a qualified and approved flight instructor.

(b) A pilot qualified to fly more than one type of aircraft in the club (as per section 3.04) will take the annual check ride in the heaviest/fastest such aircraft and such check ride will qualify the pilot to fly all other aircraft the pilot is previously approved to fly with the Club. The ranking of the Club's aircraft for this paragraph will be made by the Safety Director.

(c) The check ride will include maneuvers and procedures appropriate to the aircraft flown and the pilot certificate held.

(d) Other specialized aircraft may be subject to additional rules.

3.06 Members using Club aircraft for Instrument Flight Rules (IFR) flight must have had an instrument check ride during the past 12 months. Only those instructors approved as "Instrument Instructor Pilots" by the FAA may perform these check rides. Refer to paragraph 3.05 for the aircraft to be used in such check.

3.07 Checkout in a retractable aircraft will require the following:

(a) 250 hours total flight time.

(b) Fifteen hours in aircraft having retractable landing gear, including not less than five hours dual in-flight checkout to competency by a Club-approved flight instructor in that make and model.

(c) If a rated pilot has at least 700 hours total time including 300 hours complex and 25 hours experience as pilot-in-command (PIC) in the same make retractable as is operated by the Club, the checkout will be to proficiency in place of item (b) above.

3.08 Touch and go takeoff and landings are not to be made in complex aircraft.

3.09 Over water flight is not to be undertaken in any circumstances where the glide ratio would not permit a land landing. Under no circumstances shall a single engine Club aircraft fly across Lake Michigan.

3.10 Intentionally Left Blank.

3.11 Mountain Flying: Club members contemplating mountain flight must verbally demonstrate knowledge of mountain flying to a qualified and approved flight instructor.

Sample Flying Club Rules and Regulations - Page 2

3.13 Any infraction of FAA or Club rules will constitute automatic grounding and possible expulsion from Metro Flying Club until member is rechecked and reinstated by Safety Director or Board of Directors.

3.14 Club aircraft shall not be used to lift and drop parachute jumpers.

3.15 Club aircraft shall not be used for banner, sailplane, or towing of any kind.

3.16 Student pilots are required to take two check rides with a qualified and approved instructor. The first check ride is to be prior to solo cross-country and the second is to be prior to the private flight examination.

3.17 A student pilot shall be required to obtain his/her private pilot's license in no more than 75 total hours of flight time within a two-year time period from the date of his/her first instruction. In the event that the above is not attained, the Safety Director shall recommend to the Board for either approval of an additional amount of time and hours needed for the student to obtain his/her license or dismissal from the Club.

3.18 A pilot who has less than 125 total hours of flight time who wants to go on a cross-country flight of more than 250 nautical miles must receive prior permission from the Safety Director.

Article IV - Scheduling and Returning Aircraft

4.01 All rated pilots will be responsible for returning the aircraft to home base. Extenuating circumstances due to maintenance requirements will be reviewed by the Board for exemptions to this rule.

4.02 Student pilots have the privilege of leaving the aircraft at another airport if, for any reason, the student does not feel capable of returning it to home base. The Club will be responsible for returning the aircraft at no cost to the student.

4.03 On a flight, if a rated pilot must return without the plane and is unable to pick it up, the expense of returning it will be charged to the pilot.

4.04 It is the responsibility of the pilot to notify the aircraft scheduling system when he/she is unable to return the plane within his/her scheduled estimated time of arrival (ETA). This is a matter of common courtesy and is an absolute must so that the next member who has scheduled the aircraft can be notified. The Board of Directors, at its discretion, may impose a $20 fine to members returning aircraft more than 20 minutes late without proper notice.

Article V - Aircraft Care and Maintenance

5.00 It shall be the responsibility of the Club to maintain the aircraft in a good state of repair in accordance with FAA regulations. It shall be the responsibility of the individual pilots to report known mechanical deficiency to the scheduler immediately upon termination of any flight.

5.01 At all times, it is the pilot's responsibility to see that the aircraft is hangared or tied down before leaving the field. In the event that a member neglects to tie down an aircraft, he/she will be responsible for any damage resulting from his/her negligence.

Article VI - Insurance

6.01 All aircraft are covered by public liability and passenger insurance only. The pilot is not covered by insurance for any injuries he/she may receive.

6.02 Any member involved in an accident with a Club aircraft will be liable for the first $750.00 of any damage.

6.03 If a member flies a retractable gear aircraft and is not in accordance with Metro Flying club's Rules and Regulations and FAR's and causes damage to the aircraft, the pilot will be responsible for the entire amount of damage incurred.

Sample Flying Club Rules and Regulations - Page 3

Chapter 11. Self-Service

11.1. General. The sponsor of a federally obligated airport must permit airport aeronautical users, including air carriers, the right to self-service and to use any of the airport's fixed-base operators (FBOs).[30]

Grant Assurance 22(f), Economic Nondiscrimination, provides that a sponsor "will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to, maintenance, repair, and fueling) that it may choose to perform. (Photos: FAA).

11.2. Restrictions on Self-servicing Aircraft. Grant Assurance 22(f), *Economic Nondiscrimination,* provides that a sponsor "will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to, maintenance, repair, and fueling)[31] that it may choose to perform."

The FAA considers the right to self-service as prohibiting the establishment of any unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment.

[30] A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

[31] For information regarding fueling, refer to *Aircraft Fuel Storage, Handling, and Dispensing on Airports*, Advisory Circular (AC) 150/5230-4.

Aircraft owners must be permitted to fuel, wash, repair, and otherwise take care of their own aircraft with their own personnel, equipment, and supplies. At the same time, the sponsor is federally obligated to operate the airport in a safe and efficient manner.

The establishment of reasonable rules, applied in a not unjustly discriminatory manner, restricting the introduction of equipment, personnel, or practices that would be unsafe, unsightly, detrimental to the public welfare, or that would affect the efficient use of airport facilities by others, will not be considered a violation of Grant Assurance 22(f), *Economic Nondiscrimination*.

The sponsor should design its self-service rules and regulations to ensure safe operations, preservation of facilities, and protection of the public interest. Examples of such rules and regulations include safe practices for handling, storage, and application of paint and fuel. The safety of operations at a self-service fueling location -- such as the one shown below – will depend greatly upon the airport's minimum standards and rules and regulations established for both the provider and the users. A sponsor may require the owner or operator to confine aircraft maintenance, servicing, and fueling operations to appropriate locations with equipment appropriate for the job being done. (Photos: Above, USAF; Below, FAA)

11.3. Permitted Activities. An aircraft owner or operator, including but not limited to individuals, air carriers, air taxis, corporate flight departments, charter operators, or flight schools may:

a. Perform self-service operations, usually in accordance with 14 Code of Federal Regulations (CFR) Part 43.

b. Use its own sources for parts and supplies.

c. Perform its own self-fueling activities, including bringing fuel to the airport with its own employees in conformance with the sponsor's rules and regulations pertaining to self-service operations. (See Appendix P of this Order, *Sample Airport Rules and Regulations*.)

11.4. Contracting to a Third Party. Self-service activities must be performed by the owner or employees of the entity involved. Self-service activities cannot be contracted out to a third party. To confirm that particular individuals performing tasks on aircraft are employees of the individual or company conducting the self-service activity, the FAA may request clarifying information, such as payroll data.

11.5. Restricted Service Activities. The sponsor may require an aircraft owner or operator to:

a. Observe reasonable rules and regulations pertaining to self-service operations, including local fire safety and federal and/or state environmental requirements.[32]

b. Confine aircraft maintenance, painting, and fueling operations to appropriate locations using equipment appropriate for the job being done. (For information regarding fueling, refer to Advisory Circular (AC) 150/5230-4, *Aircraft Fuel Storage, Handling, and Dispensing on Airports*.)

c. Limit equipment, personnel, or practices that are unsafe, unsightly, or detrimental to the public welfare or that would affect the efficient use of airport facilities by others.

d. Pay the same fuel flowage fees that the sponsor charges providers selling fuel to the public. This practice alleviates the potential for claims of unjust discrimination.

11.6. Reasonable Rules and Regulations. The sponsor should design its self-service rules and regulations to ensure safe operations, preservation of facilities, and the protection of the public interest. Examples of such rules and regulations may include:

a. Confining the use of paints, dopes, and thinners to structures that meet appropriate safety and environmental criteria.

b. Establishing safe practices for storing and transporting fuel.

c. Restricting hangars to related aeronautical activities.

d. Placing restrictions on the use of solvents to protect sewage and drainage facilities.

e. Establishing weight limitations on vehicles and equipment to protect airport roads and paving, including limits on delivery trucks, fuel trucks, and construction equipment.

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[32] FAA Order 1050.15A, *Fuel Storage Tanks at FAA Facilities*, dated April 30,1997, establishes agency policy, procedures, responsibilities, and implementation guidelines to comply with regulations pertaining to underground storage tanks (UST) of the Federal Aviation Administration as required by the Resource Conservation and Recovery Act of 1976 (52 U.S.C. § 6901 et seq.), as amended by the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616) and other acts, and as implemented by the U.S. Environmental Protection Agency's "Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules regulation, 40 CFR Parts 280 and 281."

f. Setting time limits on the open storage of nonairworthy aircraft, wreckage, and unsightly major components.

g. Maintaining minimum requirements for taxiing an aircraft, i.e., student pilot, rated pilot or Airframe and Power Plant (A&P) mechanic.

h. Setting requirements for escorting passengers and controlling vehicular access.

i. Requiring certain regulations that mirror FAA regulations in Title 14. Requirements inconsistent with FAA regulations may not be reasonable. For example, requiring a pilot license or medical certificate as a condition for self-servicing aircraft is inconsistent with 14 CFR Part 61 (i.e., an aircraft *owner* is not required to be a licensed pilot or to hold a medical certificate). The aircraft *pilot* or *operator* would have to meet FAA licensing requirements. The aircraft *owner* must simply *own* the aircraft to self-service it.

An airport sponsor is under no obligation to permit aircraft owners to introduce equipment, personnel, or practices that would be unsafe, unsightly, or detrimental to the public welfare.

11.7. Restrictions Based on Safety and Location.

An airport sponsor is under no obligation to permit aircraft owners to introduce onto the airport any equipment, personnel, or practices that would be unsafe, unsightly, or detrimental to the public welfare or that would affect the efficient use of airport facilities by others. Reasonable rules and regulations should be adopted to confine aircraft maintenance and fueling operations to

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A sponsor should design its self-service rules and regulations to ensure safe operations, preservation of facilities, and protection of the public interest. Examples of such rules and regulations may include minimum requirements for operating an aircraft, i.e. flight engineer, student pilot, private pilot or Airframe and Powerplant (A&P) mechanic. Above, a sample FAA airman certificate. Below, the possible outcome of permitting unqualified vehicle personnel in aircraft movement areas: a collision between an aircraft and a truck on a taxiway. (Photos: FAA)

appropriate locations with equipment commensurate to the job being done. In addition, aircraft owners that are subtenants of an airport tenant, such as an FBO, may not be able to self-fuel on the tenant or FBO premises without the approval of the airport owner and tenant. However, the subtenant may be directed by the airport owner to an alternative location on the airport to self-fuel.

11.8. Activities Not Classified as Self-service.

Activities not classified as self-service include servicing aircraft and parts for others, providing parts and supplies to others, receiving services and supplies from fuel cooperative organizations (CO-OPs), and delivery of fuel to owners or operators by off-airport suppliers.

11.9. Sponsor Self-service Prerogatives.

a. A sponsor may establish reasonable minimum standards and rules and regulations to be followed when conducting self-service operations, including specifying equipment and personnel training requirements. Where an owner or operator does not have the equipment or personnel to meet the sponsor's self-service requirements, the sponsor may deny the owner or operator the opportunity to perform the specific self-service activity. In such cases, the FAA will not find the sponsor in violation of its grant assurances regarding self-service operations. In other words, the fact that a particular operator cannot meet requirements the FAA finds reasonable does not constitute a violation of federal obligations on the part of the sponsor.

b. Fuel Cooperative Organizations (CO-OPs). An airport sponsor is not required to permit a CO-OP to self-service. If a sponsor does permit CO-OPs to self-service, the CO-OP will have to observe the same minimum standards and rules and regulations applicable to all self-service activities. In addition, if self-fueling is allowed for CO-OPs, the sponsor may require the CO-OP to demonstrate joint ownership of the fuel tank and the fuel. The sponsor may also require the CO-OP to document that all personnel involved in fueling operations are adequately trained and that self-fueling is conducted only for that CO-OP business partner for which the employee actually works.

c. When an owner or operator obtains a certificate that authorizes it to fuel with automotive gasoline, also known as MoGas, the sponsor may impose the same rules and regulations on that owner or operator as it imposes on the airport's other self-service operations.

d. Flying Club. When an organization claims self-service status by virtue of its status as a flying club, the sponsor may hold the organization to the same rules and regulations that it established for its other self-service operations. In addition, it may establish reasonable criteria to ensure that the organization qualifies as a flying club, as described in chapter 10 of this Order, *Reasonable Commercial Minimum Standards*.

11.10. Fractional Aircraft Ownership Programs.

a. Summary. Title 14 CFR Part 91, subpart K, provides the regulatory definitions and safety standards for fractional ownership programs. This regulation defines the program and program

elements, allocates operational control responsibilities and authority to the owners and program manager, and provides increased operational and maintenance safety requirements for fractional ownership programs. (Additional requirements can be found in Part 91, subpart F.)

b. Background. The fractional ownership concept began in 1986 with the creation of an industry program that offered increased flexibility in aircraft ownership and operation. This program used existing aircraft acquisition concepts, including shared aircraft ownership, with the aircraft being managed by an aircraft management company.

The aircraft owners participating in the program purchase a minimum share of an aircraft, share that specific aircraft with others having an ownership interest in that aircraft, and participate in a lease aircraft exchange program with other owners in the program. The aircraft owners use a common management company to maintain the aircraft, to administer aircraft leasing among the owners, and to provide other aviation expertise and professional management services.

c. Policy. FAA has found companies engaged in fractional ownership operations under Part 91, subpart K, to be aircraft owners for purposes of the self-service provisions of Grant Assurance 22(f), *Economic Nondiscrimination*, and entitled to self-fuel fractionally owned aircraft.

11.11. through 11.14. reserved.

Chapter 12. Review of Aeronautical Lease Agreements

12.1. Introduction. This chapter discusses procedures for reviewing lease agreements between the sponsor and aeronautical users. As part of the compliance program, the FAA airports district office (ADO) or regional airports division may review such agreements, advising sponsors of their federal obligations, and ensuring that the terms of the lease do not violate a sponsor's federal obligations.

12.2. Background. The operation of a federally obligated airport involves complex relationships between the sponsor and its aeronautical tenants. In most instances, the sponsor will turn to private enterprise to provide the aeronautical services that make the airport attractive and self-sustaining.

a. Rights Granted by Contract. Airport lease agreements usually reflect a grant of three basic rights or privileges:

(1). The right for the licensee or tenant to use the airfield and public airport facilities in common with others so authorized.

(2). The right to occupy as a tenant and to use certain designated premises exclusively.

(3). The commercial privilege to offer goods and services to airport users.

b. Consideration for Rights Granted. The basic federal obligation of the sponsor is to make public landing and aircraft parking areas available to the public. However, the sponsor may impose a fee to recover the costs of providing these facilities. (Refer to chapter 18 of this Order, *Airport Rates and Charges*, for a further discussion on rates and charges.) Frequently, the sponsor recovers its airfield costs indirectly from rents or fuel flowage fees that it charges its commercial tenants. The sponsor's substantial capital investment and operating expense necessitates assessing airport fees to recover these costs.

c. Operator/Manager Agreements. Sometimes a sponsor may, for various reasons, rely on commercial tenants to carry out certain sponsor federal obligations. For instance, a sponsor may (i) contract with a commercial tenant to perform all or part of its airfield maintenance, or (ii) delegate to the tenant responsibility for collecting landing fees, publishing notices to airmen, or (iii) contract for airport management. When this occurs, the FAA highly recommends that the sponsor and tenant enter into separate agreements: one agreement for the right to operate an aeronautical business on the airport, and a separate management agreement if the tenant provides management services on behalf of the sponsor.

12.3. Review of Agreements.

a. Scope of FAA Interest in Leases. The FAA does not review all leases, and there is no requirement for a sponsor to obtain FAA approval before entering into a lease. However, when the ADO or regional airports division does review a lease agreement, the review should include the following issues:

(1). Determine if a lease has the effect of granting or denying rights that are contrary to federal statute, sponsor federal obligations, or FAA policy. For example, does the lease grant options or rights of first refusal that preclude the use of airport property by other aeronautical tenants?

(2). Ensure the sponsor has not entered into a contract that would surrender its capability to control the airport.

(3). Identify terms and conditions that could prevent the airport from realizing the full benefits for which it was developed.

In reviewing airport leases and agreements, the airports district office (ADO) or regional airports division should give special consideration to those arrangements that convey the right to offer services and commodities to the public. In particular, ensure that the sponsor maintains a fee and rental structure that will make the airport as self-sustaining as possible and that the facilities of the airport are made available to the public on reasonable terms without unjust discrimination. (Photo: FAA)

(4). Identify potential restrictions that could prevent the sponsor from meeting its grant and other obligations to the federal government. For example, does the lease grant the use of aeronautical land for a nonaeronautical use?

b. Form of Lease or Agreement. The type of document or written instrument used to grant airport privileges is the sole responsibility of the sponsor. In reviewing such documents, the FAA office should concentrate on determining the nature of the rights granted and whether granting those rights may be in violation of the sponsor's federal obligations. The most important articles of a lease to review include:

(1). Premises. What is being leased – land or facilities or both? Does the lease include only the land and/or facilities that the aeronautical tenant can reasonably use or has the tenant been granted options or rights of first refusal for other airport property and/or facilities that it will not immediately require? Do options or rights of first refusal grant the tenant an exclusive right by

allowing the tenant to control a majority or all of the aeronautical property on the airport that can be developed?

(2). Rights and Obligations. Does the lease grant the tenant an explicit or implied exclusive right to conduct a business or activity at the airport? Does the lease state the purpose of the lease, such as "the noncommercial storage of the owner's aircraft?" Does the lease require any use to be approved by the airport sponsor? This will prevent future improper nonaeronautical uses of airport property.

(3). Term. Does the term exceed a period of years that is reasonably necessary to amortize a tenant's investment? Does the lease provide for multiple options to the term with no increased compensation to the sponsor? Most tenant ground leases of 30 to 35 years are sufficient to retire a tenant's initial financing and provide a reasonable return for the tenant's development of major facilities. Leases that exceed 50 years may be considered a disposal of the property in that the term of the lease will likely exceed the useful life of the structures erected on the property. FAA offices should not consent to proposed lease terms that exceed 50 years.

(4). Payment of Fees to the Sponsor. Does the lease assess the tenant rent for leasing airport property and/or facilities and a concession fee if the tenant provides products and/or services to aeronautical users? Does the lease provide for the periodic adjustment of rent? Has the rental of airport land and/or facilities been assessed on a reasonable basis (e.g., by an appraisal)?

(5). Title. Does the title to tenant facilities vest in the sponsor at the expiration of the lease? Do any lease extension or option provisions provide for added facility rent once the title of facilities vests in the sponsor?

(6). Subordination. Is the lease subordinate to the sponsor's federal obligations? Subordination may enable the sponsor to correct tenant activity through the terms of its lease that otherwise would put the sponsor in violation of its federal obligations.

(7). Assignment and Subletting. Has the sponsor maintained the right to approve in advance an assignment (sale of the lease) or sublease by the tenant? For example, could the sponsor intervene if (a) a dominant fixed-base operator (FBO)[33] decides to acquire all other competing FBOs on the airfield or (b) an aeronautical tenant decides to lease aeronautical space to a nonaeronautical tenant?

12.4. FAA Opinion on Review. Since the FAA's interest in a lease is confined to the lease's impact on the sponsor's federal obligations, the sponsor should not construe the acceptance of the lease as an endorsement of the entire document. When the ADO or regional airports division reviews a lease and determines it does not appear to violate any federal compliance obligations, that office will advise the sponsor that FAA has no objection to the agreement. The FAA does not approve leases, nor does it endorse or become a party to tenant lease agreements.

[33] A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

It is important for the airport sponsor to maintain the right to approve in advance an assignment (sale of the lease) or sublease by a tenant. The sponsor must be able to intervene if an aeronautical tenant decides to lease aeronautical space to a nonaeronautical tenant to the detriment of aeronautical users, as shown below. A hangar must not be used as a car garage. (Photo: FAA)

12.5. Agreements Covering Aeronautical Services to the Public. In reviewing airport leases and agreements, the ADO or regional airports division should give special consideration to those arrangements that convey to aeronautical tenants the right to offer services and commodities to the public. In particular, ensure that (a) the sponsor maintains a fee and rental structure in the lease agreements with its tenants that will make the airport as self-sustaining as possible and that (b) the facilities of the airport are made available to the public on reasonable terms without unjust discrimination. Any lease or agreement granting the right to serve the public on the airport should be subordinate to the sponsor's federal obligations. That is, the lease should provide that it will be interpreted to preserve its compliance with the federal obligations. This will enable the sponsor to preserve its rights and powers and to maintain sufficient control over the airport to guarantee aeronautical users are treated fairly.

a. Required Nondiscrimination Provision. Grant Assurance 22.b, *Economic Nondiscrimination*, requires the airport sponsor to include specific provisions in any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted. The intent of this provision is to ensure aeronautical service providers engage in reasonable and nondiscriminatory practices and to provide the airport sponsor with authority to correct unreasonable and discriminatory practices by tenants should they occur. When reviewing lease agreements, ADOs and regional airports divisions should ensure that the agreement contains the required provision and, if it is missing, instruct the airport sponsor to insert the provision in the agreement.

b. Nonaeronautical Service to the Public. Although the grant assurances and property deed restrictions are not generally applicable to nonaeronautical leases and agreements (as compared to aeronautical agreements), the lease of premises or an agreement granting rights to offer nonaeronautical services to the public must incorporate specific language prohibiting unfair practices regarding civil rights assurances as outlined in AC 150/5100-15, *Civil Rights Requirements for the Airport Improvement Program*.

12.6. Agreements Involving an Entire Airport.

a. Contracts to Perform Airport Maintenance or Administrative Functions. The important point in such arrangements is that the sponsor may delegate or contract with an agent of its choice to perform any element of airport maintenance or operation. However, such arrangements in no way relieve the sponsor of its federal obligations. The sponsor has the ultimate responsibility for the management and operation of the airport in accordance with federal obligations and cannot abrogate these responsibilities. When the sponsor elects to rely upon one of its commercial operators or tenants to carry out airport maintenance or operating responsibilities, there is the potential for a conflict of interest and the potential for a violation of the sponsor's federal obligations.

Any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the sponsor's control over the actions of its agent. The agent's contract should be separate and apart from any other lease or contract with the sponsor that grants property or commercial rights on the airport.

b. Total Delegation of Airport Administration. In certain cases, the ADO or regional airports division may be asked to give consideration to entrusting the operation of a publicly owned airport to a management corporation. Whether the document establishing this kind of a relationship is identified as a lease, concession agreement, management contract, or otherwise, it has the effect of placing a third party in a position of substantial control over a public airport that may be subject to a grant agreement or other federal obligation. The ADO or regional airports division should review these agreements carefully to ensure that the rights of the sponsor and other tenants are protected. See paragraph 6.13, *Airport Management Agreements*, in chapter 6 of this Order, *Rights and Powers and Good Title*, for a discussion of the requirements applicable to such agreements.

c. Resident Agent. The FAA will, at all times, look to the sponsor to ensure the actions of its management corporation contractor conform to the sponsor's federal obligations. The FAA will consider a management corporation with a lease of the entire airport, or a tenant operator authorized to perform any of the sponsor's management responsibilities, as a resident agent of the airport sponsor and not as a responsible principal.

The sponsor retains the right to develop or improve the airfield and public areas of the airport as it sees fit, regardless of the desires or views of the management corporation and without interference or hindrance of the management corporation. (Photo: FAA)

12.7. Agreements Granting "Through-the-Fence" Access. There are times when the sponsor will enter into an agreement that permits access to the airfield by aircraft based on land adjacent to, but not a part of, the airport property. This type of an arrangement has frequently been referred to as a "through-the-fence" operation even though a perimeter fence may not be visible. "Through-the-fence" arrangements can place an encumbrance upon the airport property and reduce the airport's ability to meet its federal obligations. As a general principle, the FAA does not support agreements that grant access to the public landing area by aircraft stored and serviced offsite on adjacent property. Thus this type of agreement is to be avoided since these agreements can create situations that could lead to violations of the airport's federal obligations. ("Through-the-fence" access to the airfield from private property also may be inconsistent with Transportation Security Administration security requirements.)

Under no circumstances is the FAA to support any "through-the-fence" agreement associated with residential use since that action will be inconsistent with the federal obligation to ensure compatible land use adjacent to the airport.

The federal obligation to make an airport available for the use and benefit of the public does not impose any requirement to permit access by aircraft from adjacent property.

a. Rights and Obligations of Airport Sponsor. The federal obligation to make an airport available for the use and benefit of the public does not impose any requirement to permit access by aircraft from adjacent property. The existence of such an arrangement could conflict with the sponsor's federal obligations unless the sponsor retains the legal right to require the off-site property owner or occupant to conform in all respects to the requirements of any existing or proposed grant agreement. For example, in any "through-the-fence" agreement, the airport sponsor must retain the ability to take action should a safety or security concern require fencing around the airport. In some cases, airport sponsors have been unable to install actual fencing to mitigate wildlife hazards due to pre-existing "through-the-fence" agreements.

b. Economic Discrimination Considerations. The sponsor is entitled to seek recovery of capital and operating costs of providing a public use airfield. The development of aeronautical enterprises on land off airport and not controlled by the sponsor can result in an economic competitive advantage for the "through-the-fence" operator to the detriment of on-airport tenants. To equalize this imbalance, the sponsor should obtain from any off-base enterprise or entity a fair return for its use of the airfield by assessing access fees from those entities having "through-the-fence" access. For example, if the airport sponsor charges $100 per month for a single-engine aircraft tie-down on the airport to pay for the costs of airport operation, then any other single-engine aircraft operator using the airport "through-the- fence" should be charged no less than a similar fee. The same is true for the ground lease on a privately owned hangar and the fees charged to "through-the-fence" operators with a hangar off the airport. The airport sponsor must not discriminate against those aeronautical users within the airport. NOTE: "Through-the-fence" operators are not protected by the grant assurances. The airport sponsor may assess any level of fee it deems appropriate for "through-the-fence" operators so long as that fee is not less than the comparable fee paid by on-airport tenants.

c. Safety Considerations. Arrangements that permit aircraft to gain access to the airfield from off-site properties complicate the control of vehicular and aircraft traffic. In some cases, they may create unsafe conditions. The sponsor may need to incorporate special safety operational requirements in its "through-the-fence" agreements. (For example, a safety requirement may be needed to prevent aircraft and vehicles from sharing a taxiway.) When required, FAA Flight Standards should be consulted on safety and operational matters. In all cases, in any "through-the-fence" agreement, the airport sponsor must retain the ability to intervene if a safety concern arises and take all the necessary actions.

d. Off-Airport Aeronautical Businesses. As a general principle, the ADO or regional airports division should not support sponsor requests to enter into any agreement that grants "through-the-fence" access to the airfield for aeronautical businesses that would compete with an on-airport aeronautical service provider such as an FBO. Exceptions may be granted on a case-by-case basis where operating restrictions ensure safety and equitable compensation for use of the airport and subordinate the agreement to the grant assurances and grant agreement. Examples of "through-the-fence" uses that would not compete with an on-airport business include:

(1). At the sponsor's option, if a bona fide airport tenant has already leased a site from the sponsor and has negotiated airfield use privileges but also desires to move aircraft to and from a hangar or manufacturing plant on adjacent off-airport property, the tenant may gain access through an area provided by the sponsor.

(2). Although not encouraged by the FAA, if an individual or corporation actually residing or doing business on an adjacent tract of land proposes to gain access to the airfield solely for aircraft use without offering any aeronautical services to the public, the sponsor may agree to grant this access. Airports commonly face this situation when an industrial airpark or manufacturing facility is developed in conjunction with the airport.

Under no circumstances is the FAA to support any "through-the-fence" agreement associated with residential use since that action will be inconsistent with the federal obligation to ensure compatible land use adjacent to the airport.

e. FAA Determinations. The FAA regional airports division will determine whether arrangements granting access to the airfield from off-site locations are consistent with applicable federal law and policy. If the FAA regional airports division determines that such an agreement lessens the public benefit for which the airport was developed, the FAA regional airports division will notify the sponsor that the airport may be in violation of its federal obligations if it grants such "through-the-fence" access. If necessary, the FAA headquarters Airport Compliance Division (ACO-100) will be able to provide assistance in such cases.

f. Reasonable Access is Not Required. It is important to remember that users having access to the airport under a "through-the-fence" agreement are *not* protected by the sponsor's federal obligations to the FAA. This is because the federal obligation to make the airport available for

public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities without granting an exclusive right does not impose any requirement to permit access by aircraft from adjacent property. In fact, the airport sponsor may simply deny "through-the-fence" access if it so chooses. The airport may also charge any fee it sees fit to those outside the airport.

Since federal obligations do not require that access be granted under these circumstances, the FAA will not normally entertain complaints from entities operating from adjacent property with a "through-the-fence" access agreement. The FAA should not support or agree to requests to enter into any agreement that grants access to the airfield for the establishment of a residential airpark since this would raise a compliance issue under Grant Assurance 21, *Compatible Land Use.*

The FAA will not support any agreement that grants access to a public airfield by aircraft stored and serviced on adjacent nonairport property, and strongly recommends that airport owners and aeronautical users refrain from entering into such an agreement. A "through-the-fence" access agreement may result in the violation of a number of the sponsor's federal obligations. Among other things, "through-the-fence" agreements can have the effect of:

(1). Placing contractual and legal encumbrances or conditions upon the airport property, in violation of Grant Assurance 5, *Preserving Rights and Powers*;

(2). Limiting the airport's ability to ensure safe operations in both movement and non-movement areas, in violation of Grant Assurance 19, *Operation and Maintenance*;

(3). Creating unjustly discriminatory conditions for on-airport commercial tenants and other users by granting access to off-airport competitors or users in violation of Grant Assurance 22, *Economic Nondiscrimination*;

(4). Effectively granting an exclusive right to the "though-the-fence" operator in violation of Grant Assurance 23, *Exclusive Rights,* if the operator conducts a commercial business and no on-airport operator is able to compete because the terms given to the

If an airport sponsor chooses to grant "through-the-fenc" access, it must ensure that its decision will not result in a violation of its federal obligations, either now or in the future. It has been the FAA's experience that airport sponsors are often unable to correct violations of the grant assurances that result from "through-the-fence" operations. The existence of a gate, as shown here, does not, per se, mitigate the FAA's concerns regarding "through-the-fence" agreements. (Photo: FAA)

The "through-the-fence" operator shall not have a right to assign or sell the right of access without the express prior written approval of the sponsor. The sponsor shall have the right to amend the terms of the access agreement to reflect a change in value to the off-airport property at the time of the approved sale if the "through-the-fence" access is to continue. (Photo: AOPA)

"through-the-fence" operator are so much more favorable;

(5). Affecting the airport's ability to be self-sustaining, in violation of Grant Assurance 24, *Fee and Rental Structure,* because the airport may not be in a position to charge "through-the-fence" operators adequately for the use of the airfield;

(6). Weakening the airport's ability to remove and mitigate hazards and incompatible land uses, in violation of Grant Assurance 20, *Hazard Removal and Mitigation*, and Grant Assurance 21, *Compatible Land Use*.

(7). Making it more difficult for an airport sponsor to implement future security requirements that may be imposed on airports.

g. While FAA does not support "through-the-fence" access, should a sponsor choose to proceed, it should do so only under the following conditions:

(1). **FAA Review**. Seek FAA review to ensure that its decision will not result in a violation of its federal obligations, either now or in the future. It has been the FAA's experience that airport sponsors find it difficult to correct grant assurance violations that result from "through-the-

fence" access. The inability to correct such violations could result in an airport losing its eligibility to receive Airport Improvement Program (AIP) grant funds.

(2). Access Agreement Provisions. Sponsors should consider the following provisions in preparing an access agreement to grant a right of "through-the-fence" access:

(a). The access agreement should be a written legal document with an expiration date and signed by the sponsor and the "through-the-fence" operator. It may be recorded. Airports should never grant deeded access to the airport.

(b). The right of access should be explicit and apply only to the "through-the-fence" operation (i.e., right to taxi its aircraft to and from the airfield).

(c). The "through-the-fence" operator shall not have a right to grant or sell access through its property so other parties may gain access to the airfield from adjacent parcels of land. Only the airport sponsor may grant access to the airfield, which should be consistent with Transportation Security Administration (TSA) requirements.

(d). The access agreement should have a clause making it subordinate to the sponsor's grant assurances and federal obligations. Should any provision of the access agreement violate the sponsor's grant assurances or federal obligations, the sponsor shall have the unilateral right to amend or terminate the access agreement to remain in compliance with its grant assurances and federal obligations.

If an airport sponsor chooses to grant "through-the-fence" access, it should seek FAA review to ensure that its decision will not result in a violation of its federal obligations, either now or in the future. It has been the FAA's experience that airport sponsors find it difficult to correct grant assurance violations that result from "through-the-fence" access. The inability to correct such violations could result in an airport losing its eligibility to receive Airport Improvement Program (AIP) grant funds. (Photo: FAA)

(e). The "through-the-fence" operator shall not have a right to assign its access agreement without the express prior written approval of the sponsor. The sponsor should have the right to amend the terms of the access agreement to reflect a change in value to the off-airport property at the time of the approved sale if the "through-the-fence" access is to continue.

(f). The fee to gain access to the airfield should reflect the airport fees charged to similarly situated on-airport tenants and aeronautical users. For example, landing fees, ground rent, or tie-down fees paid to the sponsor by comparable on-airport aeronautical users or tenants to recover

the capital and operating costs of the airport should be reflected in the access fee assessed the "through-the-fence" operator, including periodic adjustments. In addition, if the "through-the-fence" operator is granted the right to conduct a commercial business catering to aeronautical users either on or off the airport, the sponsor shall assess, at a minimum, the same concession terms and fees to the "through-the-fence" operator as assessed to all similarly situated on-airport commercial operators. As previously stated, the FAA does not support granting "through-the-fence" access to aeronautical commercial operators that compete with on-airport operators.

(g). The access agreement should contain termination and insurance articles to benefit the sponsor.

(h). The expiration date of the access agreement should not extend beyond a reasonable period from the sponsor's perspective. It should not depend upon the full depreciation of the "through-the-fence" operator's off-airport investment (i.e., 30 years), as would be the case had the investment been made inside the airport. In any case, it should not exceed the appraised useful life of the off-airport facilities. Should the access agreement be renegotiated at its expiration, the new access fee should reflect an economic rent for the depreciated off-airport aeronautical facilities (i.e., hangar, ramp, etc.) comparable to what would be charged by the sponsor for similar on-airport facilities. That is, when on-airport facilities are fully amortized and title now vests with the airport instead of the tenant, the airport may charge higher economic rent for the lease of its facility. The access fee for a depreciated off-airport facility should be adjusted in a similar fashion notwithstanding that title still vests with the off-airport operator. However, there is no limitation on what the airport sponsor may charge for "through-the-fence" access.

h. Access Not Permitted. No exception will be made to permit "through-the-fence" access for certain purposes.

(1). The FAA will not approve any "through-the-fence" access for residential airpark purposes since that use is an incompatible land use. Refer to chapter 20 of this Order, *Compatible Land Use and Airspace Protection*, for additional details concerning the FAA's position on residential airparks**.**

(2). The FAA will not approve a release of airport land for "through-the-fence" access to the airport by aircraft. Airport land may only be released if the land no longer has an airport purpose; if the land would be used for the parking and operation of aircraft, it would not qualify for a release. A release of airport land for an aeronautical use would simply serve to reduce the sponsor's control over the use and its ability to recover airport costs from the user.

12.8. through 12.12. reserved.

U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

AUG 29 2005

Mr. Hal Shevers
Chairman
Clermont County-Sporty's Airport
Batavia, OH 45103

Dear Mr. Shevers:

Thank you for your letter of July 18. In your letter, you suggested the Federal Aviation Administration promote developing residential airparks as a means to improve airport security and reduce the closure rate of general aviation airports. Residential airparks developed next to an airport usually rely on "through-the-fence" agreements to gain access to the airfield.

First, I would like to make clear that the FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any use of airport land they like. A public airport receiving Federal financial support is different, however, because it is operated for the benefit of the general public. Also, it is obligated to meet certain requirements under FAA grant agreements and Federal law. Allowing residential development on or next to the airport conflicts with several of those requirements.

An airpark is a residential use and is therefore an incompatible use of land on or immediately adjacent to a public airport. The fact there is aircraft parking collocated with the house does not change the fact that this is a residential use. Since 1982, the FAA has emphasized the importance of avoiding the encroachment of residential development on public airports, and the Agency has spent more than $300 million in Airport Improvement Program (AIP) funds to address land use incompatibility issues. A substantial part of that amount was used to buy land and houses and to relocate the residents. Encouraging residential airparks on or near a federally obligated airport, as you suggest, would be inconsistent with this effort and commitment of resources.

Allowing an incompatible land use such as residential development on or next to a federally obligated airport is inconsistent with 49 USC §47104(a) (10) and associated FAA Grant Assurance 21, *Compatible Land Use*. This is because a federally obligated airport must ensure, to the best of its ability, compatible land use both off and on an airport. We would ask how an airport could be successful in preventing incompatible residential development before local zoning authorities if the airport operator promotes residential airparks on or next to the airport.

Additionally, residential airparks, if not located on airport property itself, require through-the-fence access. While not prohibited, the FAA discourages through-the-fence operations because

**FAA Response to Request for Residential "Through-the-Fence"
Page 1**

they make it more difficult for an airport operator to maintain control of airport operations and allocate airport costs to all users.

A through-the-fence access to the airfield from private property also may be inconsistent with security guidance issued by the Transportation Security Administration (TSA). TSA created guidelines for general aviation airports: Information Publication (IP) A-001, *Security Guidelines for General Aviation Airports*. The TSA guidelines, drafted in cooperation with several user organizations including the Aircraft Owners and Pilots Associations (AOPA), recommend better control of the airport perimeter with fencing and tighter access controls. Accordingly, we do not agree with your view that a residential airpark and the associated through-the-fence access points can be said to improve airport security. In fact, multiple through-the-fence access points to the airfield could hinder rather than help an airport operator maintain perimeter security.

Finally, we find your statement that general aviation airports have been closing at an alarming rate to be misleading, because it is simply untrue with respect to *federally* obligated airports. In fact, the FAA has consistently denied airport closure requests. Of approximately 3,300 airports in the United States with Federal obligations, the number of closures approved by the FAA in the last 20 years has been minimal. The closures that have occurred generally relate to replacement by a new airport or the expiration of Federal obligations. AOPA has recognized our efforts. In its latest correspondence to the FAA on the *Revised Flight Plan 2006-2010*, AOPA stated, "the FAA is doing an excellent job of protecting airports across the country by holding communities accountable for keeping the airport open and available to all users."

For the above reasons, we are not able to support your proposal to promote the development of residential airparks at federally obligated airports.

I trust that this information is helpful.

Sincerely,

Original signed by:
Woodie Woodward

Woodie Woodward
Associate Administrator
for Airports

FAA Response to Request for Residential "Through-the-Fence"
Page 2

U.S. Department of Transportation
Federal Aviation Administration

San Francisco Airports District Office
831 Mitten Road, Room 210
Burlingame, California 94010-1303

March 28, 2003

Mr. Sam Scheider
Airport Manager
Madera Municipal Airport
205 West 4th Street
Madera, California 93637

Dear Mr. Scheider:

Madera Municipal Airport
Release Determination

This is in regard to a request by the City of Madera (City) for the release of 1.332 acres of land at Madera Municipal Airport from its federal obligations. The proposed release would allow the land to be sold to a buyer who intends to develop the property with, among other things, aircraft storage hangars. As part of the proposed sale, the city has agreed to grant the buyer a through-the-fence permit that will authorize exclusive access to the airport from the private property. Upon review of all available information regarding this request, the Federal Aviation Administration (FAA) finds it cannot approve the City's request. This decision is a result of our review and analysis of the following factors:

We have determined that the release proposed by the City does not meet the criteria set by law or by FAA policy. First, the use of the land once it is released incorporates an aviation-related function. Therefore, the purpose of the release demonstrates that the land is still needed for airport purposes. By law, the FAA cannot approve such a release.

Second, the City also proposes to grant the buyer through-the-fence access to the airport from the private property. This proposal does not comply with the FAA policy that advocates against through-the-fence arrangements whereby airport owners enter into an agreement with a private property owner to grant access to the airport by aircraft normally stored and serviced on the adjacent non-airport property. Based on the terms of the City's release proposal, the City is asking the FAA to approve a through-the-fence agreement that the FAA, by policy, recommends be avoided. (See FAA Order 5190.6A, Section 6-6) Since the Madera proposal relies on through-the-fence access, approving the release would conflict with current FAA policy. Although there are some exceptions to this policy, those exceptions are not intended to

Sample Response to Request Release for "Through-the-Fence" Purposes - Page 1

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apply to cases where through-the-fence access was the result of an FAA-approved release of federal surplus property.

In addition, the proposed use of the parcel would not qualify for an exemption to the policy. The City's through-the-fence request is not incidental to an existing land use arrangement adjacent to the airport. The city wishes to create through-the-fence access to permit the released land to be used for an aviation-related purpose. The FAA policy rests on the likelihood that through-the-fence access for the purpose of providing aviation services to the public will create conditions that result in the violation of the sponsor's federal obligations. Therefore, based on the policy, the release cannot be approved.

Suitable alternatives to a land release exist. The FAA supports a proposal that would consider offering a private developer a ground lease upon which tenant improvements would be made. We recognize that the City stated in its release request that the airport is not willing to make the investment necessary to finance the project. However, we must assume that the developer is prepared to make an investment if the land were released. Therefore, why not just make an investment in airport land under the terms of a favorable lease agreement? The leasing option would not only establish a long-term revenue stream for the airport, but would also allow the airport to retain ownership of the property and avoid through-the-fence access.

In conclusion, although our determination may not have been timely, the FAA cannot approve the City's release request or waive the regulatory requirements to permit a release or through-the-fence access. We trust that the City will conclude that there are suitable alternatives other than a release to satisfy the airport's development needs and to serve the City's public airport interests.

If you have any questions, please contact Racior R. Cavole, Airports Compliance Specialist, at (650) 876-2804.

Sincerely,

ORIGINAL SIGNED BY
ANDREW M. RICHARDS
Andrew M. Richards, Manager
San Francisco Airports District Office

Sample Response to Request Release for "Through-the-Fence" Purposes - Page 2

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Chapter 13. Airport Noise and Access Restrictions

13.1. Introduction and Responsibilities. This chapter contains guidance on the sponsor's responsibility with regard to restrictions on airport noise and access. Access restrictions have the potential to violate the federal obligation to make the airport available for public use on reasonable terms and without unjust discrimination as required by Grant Assurance 22, *Economic Nondiscrimination*.

It is the responsibility of the airports district offices (ADOs) and regional airports divisions to advise sponsors on the laws and policies that apply to access restrictions and to ensure that the sponsor extends equitable treatment to all of the airport's aeronautical users.

Airport Noise and Capacity Act of 1990 (ANCA) requires airport sponsors proposing restrictions on operations by Stage 2 or Stage 3 aircraft to conform to 14 CFR Part 161 Notice and Approval of Airport Noise and Access Restrictions. (Photo: FAA).

13.2. Background.

a. The legal framework with respect to abatement of aviation noise may be summarized as follows:

(1). The federal government has preempted the areas of airspace use and management, air traffic control, safety, and the regulation of aircraft noise at its source. The federal government also has substantial power to influence airport development through its administration of the Airport Improvement Program (AIP).

(2). Other powers and authorities to control aircraft noise rest with the airport proprietor – including the power to select an airport site, acquire land, assure compatible land use, and control airport design, scheduling and operations – subject to constitutional prohibitions against creation of an undue burden on interstate and foreign commerce, and unreasonable, arbitrary, and unjust discriminatory rules that advance the local interest, other statutory requirements, and interference with exclusive federal regulatory responsibilities over safety and airspace management.

(3). State and local governments may protect their citizens through land use controls and other police power measures not affecting airspace management or aircraft operations. In addition, to the extent they are airport proprietors, they have the powers described in paragraph (b)(2) below:

b. The authorities and responsibilities of the parties may be summarized as follows:

(1). The federal government has the authority and responsibility to control aircraft noise by the regulation of source emissions, by flight operational procedures, and by management of the air traffic control system and navigable airspace in ways that minimize noise impact on residential areas, consistent with the highest standards of safety and efficiency. The federal government also provides financial and technical assistance to airport proprietors for noise reduction planning and abatement activities and, working with the private sector, conducts continuing research into noise abatement technology.

(2). Airport sponsors are primarily responsible for planning and implementing action designed to reduce the effect of noise on residents of the surrounding area. Such actions include optimal site location, improvements in airport design, noise abatement ground procedures, land acquisition, and restrictions on airport use that do not unjustly discriminate against any user, impede the federal interest in safety and management of the air navigation system, or unreasonably interfere with interstate or foreign commerce.

(3). State and local governments and planning agencies should provide for land use planning and development, zoning, and housing regulations that are compatible with airport operations.

(4). Air carriers are responsible for retirement, replacement or retrofit for older jets that do not meet federal noise level standards, and for scheduling and flying airplanes in a way that minimizes the impact of noise on people.

(5). Air travelers and shippers generally should bear the cost of noise reduction, consistent with established federal economic and environmental policy that the costs of complying with laws and public policies should be reflected in the price of goods and services.

(6). Residents and prospective residents in areas surrounding airports should seek to understand the noise problem and what steps can be taken to minimize its effect on people. Individual and community responses to aircraft noise differ substantially and, for some individuals, a reduced level of noise may not eliminate the annoyance or irritation. Prospective residents of areas impacted by aircraft noise, thus, should be aware of the potential effect of noise on their quality of life and act accordingly.

Airport sponsors have limited proprietary authority to restrict access as a means of reducing aircraft noise impacts in order to improve compatibility with the local community. To accomplish this, airport sponsors must comply with the national program for review of airport noise and access restrictions under the Airport Noise and Capacity Act of 1990 (ANCA). ANCA requires that certain review and approval procedures be completed before a proposed restriction that impacts Stage 2 or Stage 3 aircraft is implemented. The FAA regulation that implements ANCA is 14 Code of Federal Regulations (CFR) Part 161, *Notice and Approval of Airport Noise and Access Restrictions*. An airport sponsor may use an airport noise compatibility study pursuant to 14 CFR Part 150 to fulfill certain notice and comment requirements under ANCA.

13.3. Overview of the Noise-Related Responsibilities of the Federal Government. Responsibility for the oversight and implementation of aviation laws and programs is delegated to the FAA under the Federal Aviation Act of 1958 (FAA Act), as amended, 49 United States Code (U.S.C.) § 40101 et seq. The basic national policies intended to guide FAA actions under the FAA Act are set forth in 49 U.S.C. § 40101(d), which declares that certain matters are in the public interest. To achieve these statutory purposes, 49 U.S.C. §§ 40103(b), 44502, and 44721 provide extensive and plenary authority to the FAA concerning use and management of the navigable airspace, air traffic control, and air navigation facilities.

The FAA has exercised this authority by promulgating wide-ranging and comprehensive federal regulations on the use of navigable airspace and air traffic control. Similarly, the FAA has exercised its aviation safety authority, including the certification of airmen, aircraft, air carriers, air agencies, and airports under 49 U.S.C. § 44701 et seq. by extensive federal regulatory action.

The federal government, through this exercise of its constitutional and statutory powers, has preempted the areas of airspace use and management, air traffic control and aviation safety. Under the legal doctrine of federal preemption, which flows from the Supremacy Clause of the Constitution, state and local authorities do not generally have legal power to act in an area that already is subject to comprehensive federal regulation.

Because of the increasing public concern about aircraft noise that accompanied the introduction of turbojet powered aircraft in the 1960s and the constraints such concern posed for the continuing development of civil aeronautics and the air transportation system of the United States, the federal government in 1968 sought, and Congress granted, broad authority to regulate aircraft for the purpose of noise abatement.

This authority, codified at 49 U.S.C. § 44715, constitutes the basic authority for federal regulation of aircraft noise.

13.4. Code of Federal Regulations (CFR) Part 36, Noise Standards for Aircraft Type and Airworthiness Certification. Under 49 U.S.C. § 44715, the FAA may propose rules considered necessary to abate aircraft noise and sonic boom. Aircraft noise rules must be consistent with the highest degree of safety in air commerce and air transportation, economically reasonable, technologically practicable, and appropriate for the particular type of aircraft. On November 18, 1969, the FAA promulgated the first aircraft noise regulations, which were codified in 14 CFR Part 36. The new Part 36 became effective on December 1, 1969. It prescribed noise standards for the type certification of subsonic transport category airplanes and for subsonic turbojet powered airplanes regardless of category. Part 36 initially applied only to new types of aircraft. As soon as the technology had been demonstrated, the standard was to be extended to all newly manufactured aircraft of already certificated types.

In 1973, the FAA amended Part 36 to extend the applicability of the noise standards to newly produced airplanes irrespective of type certification date. In 1977, the FAA amended Part 36 to provide for three stages of aircraft noise levels (Stage 1, Stage 2, and Stage 3), each with specified limits. This regulation required applicants for new type certificates applied for on or after November 5, 1975, to comply with Stage 3 noise limits, which were stricter than the noise limits then being applied. Airplanes in operation at the time that did not meet the Stage 3 noise limits were designated either as Stage 2 or Stage 1 airplanes.

The Aviation Safety and Noise Abatement Act (ASNA) provided for federal funding and other incentives for airport operators to prepare noise exposure maps and noise compatibility programs voluntarily. Under ASNA, noise compatibility programs "shall state the measures the [airport] operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the [noise exposure] map" submitted by the airport operator. Aircraft noise compatibility planning is critical to prevent residential development too close to the airport, as shown above. (Photo: FAA)

In 1976, the FAA amended the aircraft operating rules in 14 CFR Part 91 to phase out operations in the United States, by January 1, 1985, of Stage 1 aircraft weighing more than 75,000 pounds. These aircraft were defined as civil subsonic aircraft that did not meet Stage 2 or Stage 3 Part 36 noise standards. Effectively, the Stage 1 category is composed of transport category and jet airplanes that cannot meet the noise levels required for Stage 2

In 1973, the FAA amended Part 36 to extend the applicability of the noise standards to newly produced airplanes irrespective of type certification date. In 1977, the FAA amended Part 36 again to provide for three stages of aircraft noise levels, each with specified limits. Those are referred as Stage1, Stage 2, and Stage 3 aircraft; Stage 3 being the more recent and, generally, the quieter for a certain aircraft weight. The aircraft shown here – the Boeing 727 – is classified as a Stage 3 aircraft and is commonly seen at airports throughout the U.S. (Photo: FAA)

or Stage 3 under Part 36, Appendix B. It also includes aircraft that were never required to demonstrate compliance with Part 36 because they were certificated prior to the requirement for Part 36 noise certification. Stage 1 aircraft include some corporate jets, some transport category turbo-prop, and some transport category piston airplanes. Aircraft certificated under Part 36 Subpart F, *Propeller Driven Small Airplanes and Propeller-Driven, Commuter Category Airplanes,* do not have a stage classification, and as such are referred to as nonstage. The vast majority of small general aviation (GA) aircraft and many propeller-driven commuter aircraft flying in the United States are nonstage aircraft. In addition, some aircraft to which Part 36 does not apply, regardless of method of propulsion, can be aircraft certificated in the experimental category. For example, most jet war birds, military aircraft types and World War II aircraft are also classified as nonstage aircraft.

As a result of congressional findings, ANCA revised CFR Part 91 to include the provision that no civil subsonic turbo aircraft weighing more than 75,000 pounds may be operated within the 48 contiguous states after January 1, 2000, unless it was shown to comply with the Stage 3 noise standards of CFR Part 36.

In July 2005, the FAA adopted more stringent Stage 4 standards for certification of aircraft, effective January 1, 2006. Any aircraft that meets Stage 4 standards will meet Stage 3 standards. Accordingly, policies for review of noise restrictions affecting Stage 3 aircraft may be applied to Stage 4 aircraft as well.

13.5. The Aircraft Noise Compatibility Planning Program. In 1979, Congress enacted the Aviation Safety and Noise Abatement Act (ASNA). In ASNA, Congress directed the FAA to: (1) establish a single system of noise measurement to be uniformly applied in measuring noise at airports and in surrounding areas for which there is a highly reliable relationship between projected noise and surveyed reactions of people to noise; (2) establish a single system for determining the exposure of individuals to noise from airport operations; and (3) identify land uses that are normally compatible with various exposures of individuals to noise. (See Table 1 of Part 150 at the end of this chapter.). FAA promulgated 14 CFR Part 150 to implement ASNA. Part 150 established the "day-night average sound level" (DNL) as the noise metric for determining the exposure of individuals to aircraft noise. It identifies residential land uses as being normally compatible with noise levels below DNL 65 decibels (dB). ASNA also provided for federal funding and other incentives for airport operators to prepare noise exposure maps voluntarily and institute noise compatibility programs. Under ASNA, noise compatibility programs "shall state the measures the [airport] operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the [noise exposure] map."

a. Consistent with ASNA, Part 150 requires airport operators preparing noise compatibility programs to analyze the following alternative measures:

(1). Acquisition of land in fee, and interests therein, including but not limited to air rights, easements, and development rights;

(2). Construction of barriers and acoustical shielding, including the soundproofing of public buildings;

(3). Implementation of restrictions on the use of the airport by type or class of aircraft based on the noise characteristics of the aircraft;

(4). Implementation of a preferential runway system; use of flight procedures to control the operation of aircraft to reduce exposure of individuals or specific noise sensitive areas[34] to noise in the area around the airport;

(5). Other actions or combinations of actions that would have a beneficial noise control or abatement impact on the public; and

(6). Other actions recommended for analysis by the FAA for the specific airport.

b. Under Part 150, an airport operator "shall evaluate the several alternative noise control actions" and develop a noise compatibility program that:

The FAA has continuously, consistently, and actively encouraged a balanced approach to address noise problems and to discourage unreasonable and unwarranted airport use restrictions. It is a long-standing FAA policy that airport use restrictions should be considered only as a last resort when other mitigation measures are inadequate to address the noise problem satisfactorily and a restriction is the only remaining option that could provide noise relief. A balanced approach in noise mitigation is important in part because new technology in aircraft and engine design, along with new noise certification and noise abatement procedures, have in many instances been extremely successful in reducing noise impacts at airports across the country. Voluntary measures, such as asking flight crews to expedite climbs (safely) or apply airport specific noise procedures are inherently reasonable elements of a balanced approach. (Photos: FAA)

[34] These are land uses that may be adversely affected by cumulative noise levels at or above 65 DNL such as residential neighborhoods, educational, health, or religious structures or sites, and outdoor recreational, cultural and historic sites.

(1). Reduces existing noncompatible uses and prevents or reduces the probability of the establishment of additional noncompatible uses;

(2). Does not impose an undue burden on interstate and foreign commerce;

(3). Does not derogate safety or adversely affect the safe and efficient use of airspace;

(4). To the extent practicable, meets both local interests and federal interests of the national air transportation system; and

(5). Can be implemented in a manner consistent with all of the powers and duties of the FAA Administrator.

As a matter of policy, FAA encourages airport proprietors to develop and implement aircraft noise compatibility programs under Part 150. Where an airport proprietor is considering an airport use restriction, Part 150 provides an effective process for determining whether the proposed restriction is consistent with applicable legal requirements, including the grant assurances in airport development grants. However, while a restriction might meet the Part 150 criteria, that does not necessarily mean it will meet the Part 161 criteria. ASNA and Part 150 set forth an appropriate means of defining the noise problem, recognizing the range of local and federal interests, ensuring broad public and aeronautical participation, and balancing all of these interests in a manner to ensure a reasonable, nonarbitrary, and nondiscriminatory result that is consistent with the airport proprietor's federal obligations. Accordingly, the FAA included in 14 CFR Part 161, the regulations that implement ANCA, an option to use the Part 150 process to provide public notice and opportunity to comment on a proposed Stage 2 or Stage 3 restriction. The FAA encouraged the use of Part 150 for meeting the notice and comment requirements of Part 161, noting that the Part 150 process "is more comprehensive in scope in that it includes compatible land use planning, as well as restrictions on aircraft operation." The FAA further noted, in the preamble to the Part 161 final rule, that a Part 150 determination "may provide valuable insight to the airport operator regarding the proposed restriction's consistency with existing laws, and the position of the FAA with respect to the restriction."

13.6. Compliance Review. As part of a Part 150 study, the FAA requires the sponsor to analyze fully the anticipated impact of any proposed restriction. The FAA must evaluate whether the restriction places an undue burden on interstate or foreign commerce or the national aviation system, and whether the restriction affects the sponsor's ability to meet its federal obligations. Certain restrictions may have little impact at one airport and a great deal of impact at others. Accordingly, the sponsor must clearly present the impact of the restriction at the affected airport. A sponsor with a multiple airport system may designate different roles for the airports within its system. That designation in itself does not authorize restrictions on classes of operations, and the sponsor should first present its plan to FAA to ensure compliance with grant assurances and other federal obligations.

13.7. Mandatory Headquarters Review. The FAA headquarters staff shall review proposed noise restrictions, especially those that are proposed without using the Part 150 process. Accordingly, if the ADOs or regional airports divisions identify a restriction that potentially

impacts the sponsor's federal obligations, it must coordinate its actions with the Airport Planning and Environmental Division (APP-400) through the FAA headquarters Airport Compliance Division (ACO-100).

13.8. Balanced Approach to Noise Mitigation. Proposed noise-based airport use restrictions must consider federal interests in the national air transportation system as well as the local interests they are intended to address.

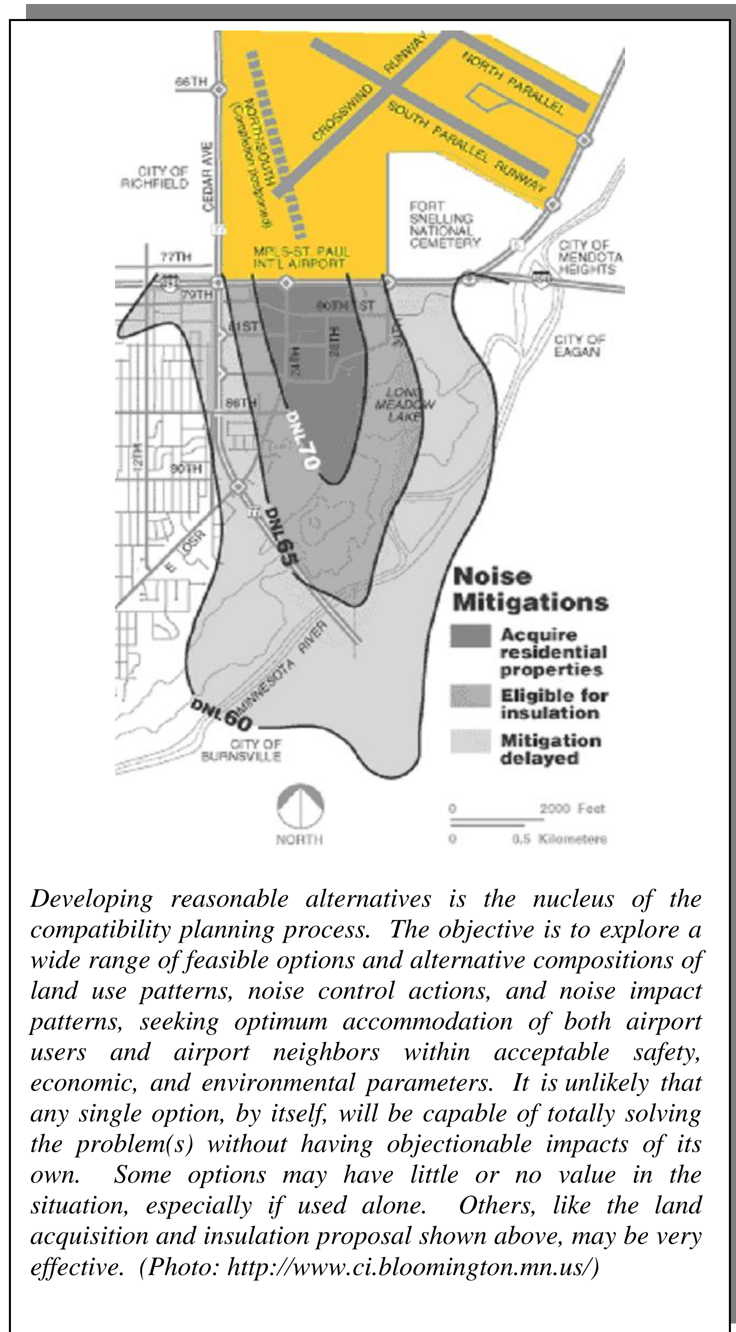
a. FAA Policy. The FAA has encouraged a balanced approach to address noise problems and has discouraged unreasonable airport use restrictions. It is FAA policy that airport use restrictions should be considered only as a measure of last resort when other mitigation measures are inadequate to satisfactorily address a noise problem and a restriction is the only remaining option that could provide noise relief. This policy furthers the federal interest in maintaining the efficiency and capacity of the national air transportation system and, in particular, the FAA's responsibility to ensure that federally funded airports maintain reasonable public access in compliance with applicable law.

Aircraft noise and access restrictions must comply with Grant Assurance 22, Economic Nondiscrimination, and similar requirements under 49 U.S.C. § 47152 (2), (3), Surplus Property Conveyances Covenants and section 516 of the Airport and Airway Improvement Act of 1982 (AIAA), section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act), and section 16 of the Federal Airport Act of 1946, Nonsurplus Conveyances Covenants. Under the prohibition on unjust discrimination in Grant Assurance 22 and similar requirements, a sponsor may not unjustly discriminate between aircraft because of propulsion system, weight, type, operating regulations, or any other characteristic that does not relate to actual noise emissions. For example, some first generation turboprop aircraft – such as the Fokker F-27 seen here below – and the DC-3/C-47 shown above are noisier than many jets. (Photo: Above, USAF; Below, Bob Garrard).

b. Federal Methodology. Failure to consider a combination of measures, such as land acquisitions, easements, noise abatement procedures, and sound insulation could result in a finding that a balanced approach was not used in addressing a noise problem. A sponsor's acceptance of federal funds places upon it certain federal obligations, which require it first to consider a wide variety of options to alleviate a local noise problem. Consistent with these federal requirements and policies, the FAA interprets the requirement in 49 U.S.C. § 47107(a)(1) that a federally funded airport will be "available for public use

on reasonable conditions" as requiring that a regulation restricting airport use for noise purposes: (1) be justified by an existing noncompatible land use problem; (2) be effective in addressing the identified problem without restricting operations more than necessary; and (3) reflect a balanced approach to addressing the identified problem that fairly considers both local and federal interests.

c. The Role of ASNA and Part 150. Aircraft under ASNA involves consideration of a range of alternative mitigation measures, including aircraft noise and other restrictions. For example, under Part 150, the airport operator could, among other things, recommend constructing noise barriers, installing acoustical shielding, and acquiring land, easements, air rights, and development rights to mitigate the effects of noise consistent with 49 U.S.C. § 47504. The FAA does not need to examine nonrestrictive measures to see if they are consistent with ANCA and Grant Assurance 22, *Economic Nondiscrimination*, or related federal obligations.



Developing reasonable alternatives is the nucleus of the compatibility planning process. The objective is to explore a wide range of feasible options and alternative compositions of land use patterns, noise control actions, and noise impact patterns, seeking optimum accommodation of both airport users and airport neighbors within acceptable safety, economic, and environmental parameters. It is unlikely that any single option, by itself, will be capable of totally solving the problem(s) without having objectionable impacts of its own. Some options may have little or no value in the situation, especially if used alone. Others, like the land acquisition and insulation proposal shown above, may be very effective. (Photo: http://www.ci.bloomington.mn.us/)

d. Reasonable Alternatives. Developing reasonable alternatives is the nucleus of the compatibility planning process. The objective is to explore a wide range of feasible options and alternative compositions of land use patterns, noise control actions, and noise impact patterns, seeking optimum accommodation of both airport users and airport neighbors within acceptable safety, economic, and environmental parameters. It is unlikely that any single option, by itself, will be capable of totally solving the problem(s) without having objectionable impacts of its own. Some options may have little or no value in the situation, especially if used alone. Realistic alternatives, then, will normally consist of combinations of the

various options in ways that offer more complete solutions with more acceptable impacts or costs.

A balanced approach – using a combination of nonrestrictive measures and considering use restrictions only as a last resort – is inherently reasonable and is used nationally and internationally. On the other hand, bypassing nonrestrictive measures and only relying on restrictive alternatives can be an inherently unreasonable approach to addressing a noise problem.

13.9. Cumulative Noise Metric. In ASNA, Congress directed the Secretary of Transportation to "establish a single system for determining the exposure of individuals to noise resulting from airport operations" and "identify land uses normally compatible with various exposures of individuals to noise."

As directed by Congress in ASNA, the FAA has established DNL as the metric for "determining the exposure of individuals to noise resulting from airport operations." Also in compliance with ASNA, the FAA has established the land uses normally compatible with exposures of individuals to various levels of aircraft noise. The FAA determined that residential land use is "normally compatible" with noise levels of less than DNL 65 dB. In other words, a sponsor should demonstrate that a proposed restriction will address a noise problem within the 65 dB DNL contour.

Realistic alternatives will normally consist of combinations of the various options in ways that offer more complete solutions with more acceptable impacts or costs.

A restriction designed to address a noise problem must be based on significant cumulative noise impacts, generally represented by an exposure level of DNL 65 dB or higher in an area not compatible with that level of noise exposure. A community is not precluded from adopting a cumulative noise exposure limit different than DNL 65 dB, but cannot apply a different standard to aircraft noise than it does to all other noise sources in the community. This is not common, and most noise mitigation measures can be expected to address cumulative noise exposure of DNL 65 dB and higher.

13.10. General Noise Assessment. In assessing the reasonableness and unjustly discriminatory aspect of a proposed noise restriction, FAA may need to answer the following:

a. Is Part 150 documentation available for review and consideration? Has the sponsor completed the required analysis, public notice, and approval process under 14 CFR Part 161? Has the sponsor implemented the measures?

b. Is the proposed restriction a rational response to a substantiated noise problem?

c. Were nonrestrictive land use measures considered first?

d. Is proper methodology being used in comparing alternatives?

e. Is there consistency between guidelines governing the establishment of compatible land use and those governing an access restriction? Do they work together to solve the noise problem?

f. Are existing local land use standards designed to achieve the same level of compatibility sought by the restriction (i.e., does the community tolerate a higher level of noise for nonaviation uses and place a higher burden of noise mitigation on the airport and its users than it does on other noise sources)?

g. Are the restrictions intended to achieve noise reductions above 65 dB or below? Is guidance from the federal Interagency Committee on Aviation Noise (FICAN) being used?[35]

h. Has the sponsor demonstrated any exposure to financial liability for noise impact as a result of a noise problem?

i. Is the restriction based on a qualifier other than noise? For example, noise-based restrictions have to be justified on the grounds of aircraft noise. A restriction based on aircraft weight or any other qualifier other than noise emission might be unjustly discriminatory if the purpose is to address a noise problem.

In reviewing the reasonableness of airport access restrictions, the FAA must consider whether the airport sponsor has taken appropriate action to the extent reasonable to restrict the use of land near the airport to uses that are compatible with airport operations. The airport sponsor is obligated under its federal grant assurances to address incompatible land use in the vicinity of the airport. These homes in the vicinity of an airport are a clear indication of the failure of local zoning to protect the airport. (Photos: FAA)

13.11. Residential Development. In reviewing the reasonableness of airport access restrictions, the

[35] The Federal Interagency Committee on Aviation Noise (FICAN) was formed in 1993 to provide forums for debate over future research needs to better understand, predict, and control the effects of aviation noise, and to encourage new technical development efforts in these areas. Additional information may be available online.

FAA must consider whether the sponsor has fulfilled its responsibilities regarding compatible land use under Grant Assurance 21, *Compatible Land Use***.** Airport sponsors are obligated to take appropriate action, including the adoption of zoning laws, to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations. Local land use planning, as a method of determining appropriate (and inappropriate) use of properties around airports, should be an integral part of the land use policy and regulatory tools used by state and local land use planning agencies. Very often, such land use planning coordination is hampered by the fact that an airport can be surrounded by multiple individual local governmental jurisdictions, each with its own planning process. Some airport authorities have the authority to control land use, but many do not. If the airport sponsor does not have authority to control local land use, FAA will not hold the actions of independent land use authorities against the airport sponsor. However, FAA expects the airport sponsor to take reasonable actions to encourage independent land use authorities to make land use decisions that are compatible with aircraft operations. The airport sponsor should be proactive in opposing planning and proposals by independent authorities to permit development of new noncompatible land uses around the airport.

13.12. Impact on Other Airports and Communities. In evaluating the significance of a restriction, the FAA will consider the degree to which the restriction may affect other airports in two general ways: (1) whether it establishes a precedent for restrictions at more airports, possibly resulting in significant effects on the national air transportation system, and (2) whether other airports in the region will be impacted by traffic diverted from the restricted airport, either by shifting noise impact from one community to another or by burdening a hub airport with general aviation traffic that should be able to use a reliever airport.

13.13. The Concept of Unjust Discrimination. Grant Assurance 22, *Economic Nondiscrimination*, of the prescribed grant assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Consistent with Grant Assurance 22, *Economic Nondiscrimination*, airport sponsors are prohibited from unjustly discriminating among airport users when implementing a noise-based restriction. The FAA has determined – and the federal courts have held – that the use of noise control regulations to ban aircraft on a basis unrelated to noise is unjustly discriminatory and a violation of the federal grant assurances and federal surplus property obligations.

For example, in *City and County of San Francisco v. FAA*, the airport adopted an aircraft noise regulation that resulted in the exclusion from the airport of a retrofitted Boeing 707 that met Stage 2 standards while permitting use of the airport by 15 other models of aircraft emitting as much or more noise than the 707. The Ninth Circuit Court of Appeals affirmed the FAA's determination that the airport regulation was unjustly discriminatory because it allowed aircraft that were equally noisy or noisier than the aircraft being restricted to operate at the airport and to increase in number without limit while excluding the 707 based on a characteristic that had no bearing on noise (date of type-certification as meeting Stage 2 requirements).

In *Santa Monica Airport Association v. City of Santa Monica*, the Court struck down the airport's ban on the operation of jet aircraft on the basis of noise under the Commerce and Equal Protection clauses of the U.S. Constitution. The Court found that, "… in terms of the quality of the noise produced by modern type fan-jets and its alleged tendency to irritate and annoy, there is absolutely no difference between the noise of such jets and the noise emitted by the louder fixed-wing propeller aircraft which are allowed to use the airport."

13.14. Part 161 Restrictions Impacting Stage 2 or Stage 3 Aircraft.

a. Stage 2 or 3 Aircraft. Airport noise/access restrictions on operations by Stage 2 or Stage 3 aircraft must comply with ANCA, as implemented by 14 CFR Part 161.

ANCA does not require FAA approval of restrictions on Stage 2 aircraft operations; however, FAA determines whether applicable notice, comment, and analysis requirements have been met. The FAA also separately reviews proposed Stage 2 restrictions for compliance with grant assurance and surplus property obligations. For this purpose, the FAA relies upon the standards under ASNA, as implemented by 14 CFR 150.

ANCA prescribes a more stringent process for national review of proposed restrictions on Stage 3 aircraft operations, including either FAA approval or, alternatively, agreement by all operators at the airport. If FAA approval is required, then the process for review of restrictions on Stage 3 aircraft operations includes consideration of environmental impacts. The statutory criteria for FAA approval of Stage 3 restrictions includes the criteria used under 14 CFR Part 150 to determine compliance with the grant assurance and Surplus Property Act obligations. For Stage 3 restrictions, the ANCA review considers compliance with grant assurance and surplus property obligations.

Aircraft certificated under Part 36 Subpart F "Propeller Driven Small Airplanes and Propeller-Driven, Commuter Category Airplanes" do not have a stage classification, and as such are referred to as nonstage. Most small general aviation aircraft and many commuter aircraft are nonstage aircraft. An example is the Beechcraft 58 Baron. (Photo: FAA)

Proposals to restrict operations by Stage 3 aircraft must (1) be agreed upon by the airport and all users at the airport or (2) satisfy procedural requirements similar to proposals to restrict Stage 2 operations and be

approved by FAA. To be approved, restrictions must meet the following six statutory criteria:

- The proposed restriction is reasonable, nonarbitrary, and nondiscriminatory.
- The proposed restriction does not create an undue burden on interstate or foreign commerce.
- The proposed restriction maintains safe and efficient use of the navigable airspace.
- The proposed restriction does not conflict with any existing federal statute or regulation.
- The applicant has provided adequate opportunity for public comment on the proposed restriction.
- The proposed restriction does not create an undue burden on the national aviation system.

b. ANCA Grandfathering. ANCA contains special provisions that "grandfather" restrictions on Stage 2 aircraft operations that were proposed before October 1, 1990. ANCA also grandfathers restrictions on Stage 3 aircraft that were in effect on October 1, 1990. Airport

The variability in the way individuals react to noise makes it essentially impossible to predict with any accuracy how any one individual will respond to a given noise. For example, some people object to noise emitted by jets, regardless of the actual noise energy level, while others will only complain about helicopter noise. (Photos: FAA).

sponsors who adopted restrictions before ANCA was enacted on November 5, 1990, may amend these restrictions without complying with ANCA provided the amendment does not reduce or limit aircraft operations or affect aircraft safety. However, amendments to existing restrictions and new restrictions are subject to review for compliance with the federal grant assurances and federal surplus property obligations.

c. Consistency of Part 161 and Grant Assurance Determinations on Proposed Restrictions of Operations by Stage 2 Aircraft. It is possible for a proposed Stage 2 restriction to meet the requirements of Part 161, which are essentially procedural, but fail to comply with the grant assurance requirements to provide access on reasonable terms without unjust discrimination. Accordingly, in reviewing a restriction on operations by Stage 2 aircraft, it is important that FAA regional airports divisions coordinate with the FAA headquarters Airport Compliance Division (ACO-100), the FAA Airport Planning and Environmental Division (APP-400), and to assure consistency between agency Part 161 and grant assurance determinations.

13.15. Undue Burden on Interstate Commerce.

The FAA is responsible for reviewing and evaluating an airport sponsor's noise restrictions to determine whether there is an undue burden on interstate or foreign commerce contrary to the airport's federal requirements under the grant assurances, the Surplus Property Act, and ANCA.

a. General. An airport restriction must not create an undue burden on interstate commerce. The FAA will make the determination on whether it is an undue burden. While airport restrictions may have little impact at one airport, they may have a great deal of impact at others by adversely affecting airport capacity or excluding certain users from the airport. The magnitude of both impacts must be clearly presented. Any regulatory action that causes an unreasonable interference with interstate or foreign commerce could be an undue burden.

b. Analysis and Process. In all cases, it is essential to determine whether there are interstate operations into and out of the airport in question, as well as the level of air carrier service. For example, the airport may have Part 121 operations or others engaged in Part 135 commercial operations of an interstate commerce nature. While some kinds of operations may be entirely local, e.g., air tours or crop dusting, most commercial aviation will involve interstate commerce to some degree.

In determining whether a particular restriction would cause an undue burden on interstate commerce, it may be necessary to consider the total number of based aircraft and aircraft operations, the role of the airport, and the capabilities of other airports within the system (i.e., reliever airport, general aviation (GA), or commercial service airport), and the number of operators engaged in interstate commerce. The analysis of a proposed restriction should also quantify the economic costs and benefits and the regional impact in terms of employment, earnings, and commerce.

13.16. Use of Complaint Data. Complaint data (i.e., from homeowner complaints filed with the airport) are generally not statistically valid indicators or measurements of a noise problem. Therefore, complaint data is usually not an acceptable justification for a restriction. Congress, in

ASNA, directed the FAA to establish a single system of noise measurement to be uniformly applied in measuring noise at airports and in surrounding areas for which there is a highly reliable relationship between projected noise and surveyed reactions of people to noise.
In 14 CFR Part 150, the FAA adopted DNL to fulfill this statutory federal obligation. While complaints may be a valid indication of *individual* annoyance, they do not accurately measure *community* annoyance. Reactions of individuals to a particular level of noise vary widely, while community annoyance correlates well with particular noise exposure levels. As the FAA stated in a 1994 report to Congress on aircraft noise:

The attitudes of people are actually more important in determining their reactions to noise than the noise exposure level. Attitudes that affect an individual's reactions include:

a. Apprehension regarding their safety because of the noise emitter,

b. The belief that the noise is preventable,

c. Awareness of non-noise environmental problems, and

d. A general sensitivity to noise, and the perceived economic importance of the noise emitter.

The resultant variability in the way individuals react to noise makes it essentially impossible to predict with any accuracy how any one *individual* will respond to a given noise. For example, some people object to noise emitted by jets, regardless of the actual noise energy level, while others complain about helicopter noise only. When *communities* are considered as a whole, however, reliable relationships are found between reported annoyance and noise exposure. This relationship between community annoyance and noise exposure levels "…remains the best available source of predicting the social impact of noise on communities around airports …". As the Federal Interagency Committee on Noise (FICON) noted in its 1992 report, "the best available measure of [community annoyance] is the percentage of the area population characterized as 'highly annoyed' (%HA) by long-term exposure to noise of a specified level (expressed in terms of DNL)."

13.17. Use of Advisory Circular (AC) 36-3H. Advisory Circular (AC) 36-3H provides listings of estimated airplane noise levels in units of A-weighted sound level in decibels (dBA), ranked in descending order under listed conditions and assumptions. A-weighted noise levels refer to the level of noise energy in the frequency range of human hearing, rather than total noise energy. The advisory circular provides data and information both for aircraft that have been noise type certificated under 14 CFR Part 36 and for aircraft for which FAA has not established noise standards.

While 14 CFR Part 36 requires turbojet and large transport category aircraft noise levels to be reported in units of Effective Perceived Noise Level in decibels (EPNdB) and the reporting of propeller-driven small airplanes and commuter category airplanes to be reported using a different method [A-weighted noise levels], many airports and communities use a noise rating scale that is stated in A-weighted decibels. For this reason, FAA has provided a reference source for aircraft noise levels expressed in A-weighted noise levels.

The noise levels in AC 36-3H expressed in A-weighted noise levels are estimated as they would be expected to occur during type certification. Aircraft noise levels that occur under uniform certification conditions provide the best information currently available to compare the relative noisiness of airplanes of different types and models. AC 36-3H should be used as the basis for comparing the noise levels of aircraft that are not subject to noise certification rules to aircraft that are certificated as Stage 1, Stage 2, or Stage 3 under 14 CFR Part 36.

Advisory Circular (AC) 36-3H allows an "apple-to-apple" comparison among aircraft certificated under a variety of standards. It can easily be incorporated into an airport operator's plan, and it is widely used and understood by the layman.

Table 13.1 in AC 36-3H provides an example of comparisons of aircraft. AC 36-3H provides the data in dBA, which is the base metric for DNL. It tabulates noise levels for a broad variety of aircraft in A-weighted sound level, retaining the advantage of the Part 36 testing methodology

ESTIMATED MAXIMUM A-WEIGHTED SOUND LEVELS
MEASURED IN ACCORDANCE WITH PART-36 APPENDIX -C- PROCEDURES
TAKEOFF

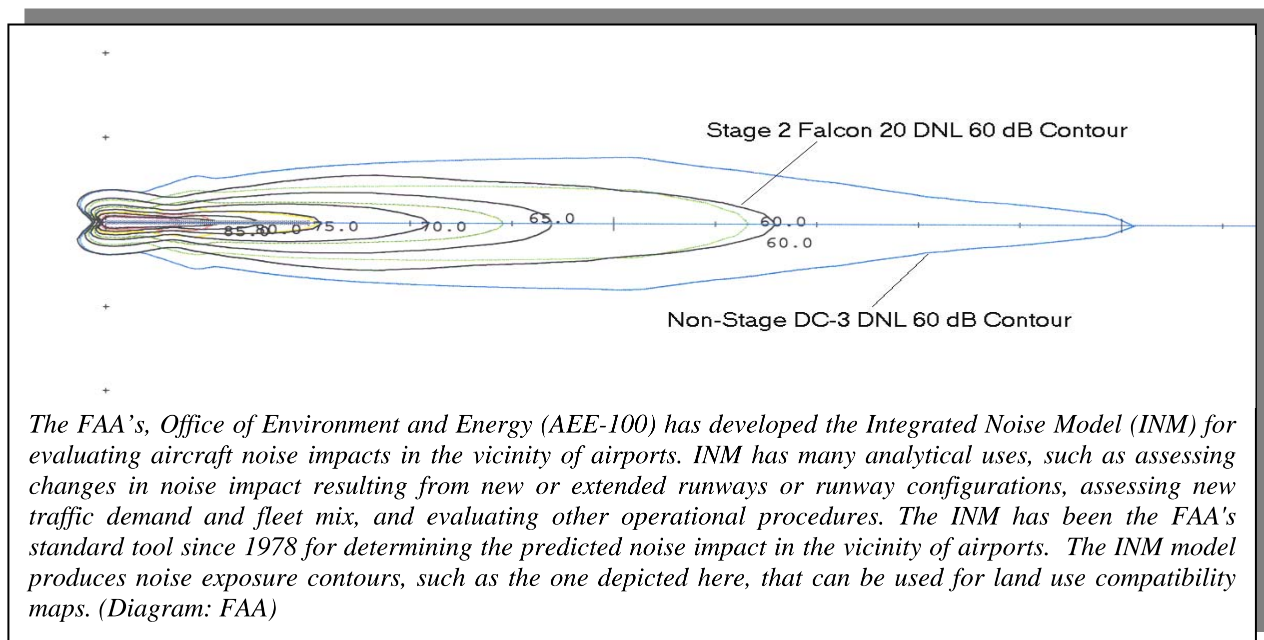
MANUFACTURER	AIRPLANE	ENGINE	TOGW 1000 LBS	EST DBA	FLAPS	NOT
BEECH	35-C33A	I0-520-B	3.30	70.0	-	
BEECH	F33A	I0-520-B	3.40	70.0	-	
BEECH	K35,M35	IO-470-C	3.00	70.0	-	
CESSNA	182P	O-470-S	3.00	70.0	-	1
CESSNA	320C	TSI0-470-D	5.20	70.0	-	
CESSNA	337H	IO-360-G	4.60	70.0	-	
PIPER	601P	IO-540-S1A5	6.00	70.0	-	
PIPER	PA-31-325	TIO-540-F2BD	6.50	70.0	-	
PIPER	PA-32R-301	IO-540-K1G5D	3.60	70.0	-	
PIPER	PA-46-31P MALIBU	TSIO-520-BE	4.10	70.0	-	
BOEING	B-757-200	PW-2037(BG-3)	220.00	69.9	5	
DASSAULT	FALCON 900	TFE731-5BR-1C	46.50	69.9	20	
FOKKER	F100	RR TAY MK650-15	98.00	69.9	-	
FOKKER	F100	RR TAY MK650-15	98.00	69.9	-	
AVRO	146-RJ 70	LF507-1F	84.00	69.8	18	8,1
AVRO	146-RJ 70	LF507-1F	84.00	69.8	18	8,1

Table 13.1 Comparison of Aircraft Using Advisory Circular (AC) 36-3

and procedures (standardization, repeatability). AC 36-3H allows an "apple-to-apple" comparison among aircraft certificated under a variety of standards. It can easily be incorporated into an airport sponsor's noise compatibility plan, and it is widely used and understood in both the aviation industry and community planning agencies. However, the noise levels in AC 36-3H are not intended to determine what noise levels are acceptable or unacceptable for an individual community.

13.18. Integrated Noise Modeling. The FAA's Office of Environment and Energy (AEE-100) has developed the Integrated Noise Model (INM) for evaluating aircraft noise impacts in the vicinity of airports. INM has many analytical uses, such as (a) assessing changes in noise impact resulting from new or extended runways or runway configurations, (b) assessing changes in traffic demand and fleet mix, and (c) evaluating other operational procedures. The INM has been the FAA's standard tool since 1978 for determining the predicted noise impact in the vicinity of airports. Requirements for INM use are defined in FAA Order 1050.1E, *Policies and Procedures for Considering Environmental Impacts*; FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*; and 14 CFR Part 150, *Airport Noise Compatibility Planning.*

The INM produces noise exposure contours that are used for land use compatibility maps. The INM program includes built-in tools for comparing contours; it also has features that facilitate easy export to a commercial geographic information system (GIS). The INM can also calculate predicted noise levels at specific sites of interest, such as hospitals, schools, or other noise-sensitive locations. For these grid points, the INM reports detailed information for the analyst to determine which events contribute most significantly to the noise level at that location. The INM supports 16 predefined noise metrics that include cumulative sound exposure, maximum sound



The FAA's, Office of Environment and Energy (AEE-100) has developed the Integrated Noise Model (INM) for evaluating aircraft noise impacts in the vicinity of airports. INM has many analytical uses, such as assessing changes in noise impact resulting from new or extended runways or runway configurations, assessing new traffic demand and fleet mix, and evaluating other operational procedures. The INM has been the FAA's standard tool since 1978 for determining the predicted noise impact in the vicinity of airports. The INM model produces noise exposure contours, such as the one depicted here, that can be used for land use compatibility maps. (Diagram: FAA)

level, and time above metrics from the A-Weighted, C-Weighted, and the Effective Perceived

Noise Level families. The user may also create the Australian version of the Noise Exposure Forecast (NEF).[36]

13.19. Future Noise Policy. Federal policy on noise measurement methodology and noise mitigation is not static, but can change with new legislation or reconsideration of past agency policy. ACO-100 should be consulted when reviewing a proposed aircraft noise restriction to ensure that current policy is applied to the review.

13.20. through 13.25 reserved.

[36] Additional information on the Integrated Noise Model (INM) and its use is available from the FAA Office of Environment and Energy (AEE-100) or online on the FAA web site.

TABLE 1

LAND USE COMPATIBILITY* WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land Use	Yearly Day-Night Average Sound Level (L_{dn}) in Decibels					
	Below 65	65-70	70-75	75-80	80-85	Over 85
Residential						
Residential, other than mobile homes and transient lodgings	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
Public Use						
Schools	Y	N1)1	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
Commercial Use						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
Manufacturing And Production						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
Recreational						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.

* The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM	Standard Land Use Coding Manual.
Y (Yes)	Land Use and related structures compatible without restrictions.
N (No)	Land Use and related structures are not compatible and should be prohibited.
NLR	Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
25, 30, or 35	Land used and related structures generally compatible; measures to achieve NLR or 25, 30, or 35 dB must be incorporated into design and construction of structure.

In the Aviation Safety and Noise Abatement Act (ASNA), Congress directed the FAA, among other things, to identify land uses that are normally compatible with various exposures of individuals to noise. The result was Table 1 in 14 CFR Part 150, as depicted above. (Graphic: FAA)

NOISE ABATEMENT PROCEDURES

Large (Greater Than 12,500 lbs.) and All Turbine Powered

RUNWAY 16:

Departure: Maintain runway heading and climb at (V2 + 20) not to exceed 190 KIAS. Upon reaching 800 ft. MSL turn to a 320 degree heading and set thrust to achieve 1,000 fpm climb rate to 2,500 ft. MSL. Use reduced climb power until reaching 3,500 ft. MSL.

Eastbound: Maintain runway heading and climb at (V2 + 20) not to exceed 190 KIAS. Upon reaching 1,000 ft. MSL set thrust to achieve 1,000 fpm climb rate. Use reduced climb power until reaching 3,500 ft. MSL.

Arrival: Maintain 2,500 ft. MSL or higher as long as practical. Intercept the final approach course **at or beyond the ILS Outer Marker (5 DME).** Use minimum flap setting and delay extending landing gear until established on the final approach. Use thrust reduction techniques and minimize rapid RPM changes.

RUNWAY 34:

Departure: Maintain runway heading and climb at (V2 + 20) not to exceed 190 KIAS. Upon reaching 1,000 ft. MSL turn to a 295 degree heading and set thrust to achieve 1,000 fpm climb rate to 2,500 ft. MSL. Use reduced climb power until reaching 3,500 ft. MSL.

Arrival: Maintain 2,500 ft. MSL or higher as long as practical. Intercept the final approach course over Long Island Sound. Use minimum flap setting and delay extending landing gear until established on the final approach. Use thrust reduction techniques and minimize rapid RPM changes.

Note: Inbound; avoid overflying shoreline communities.

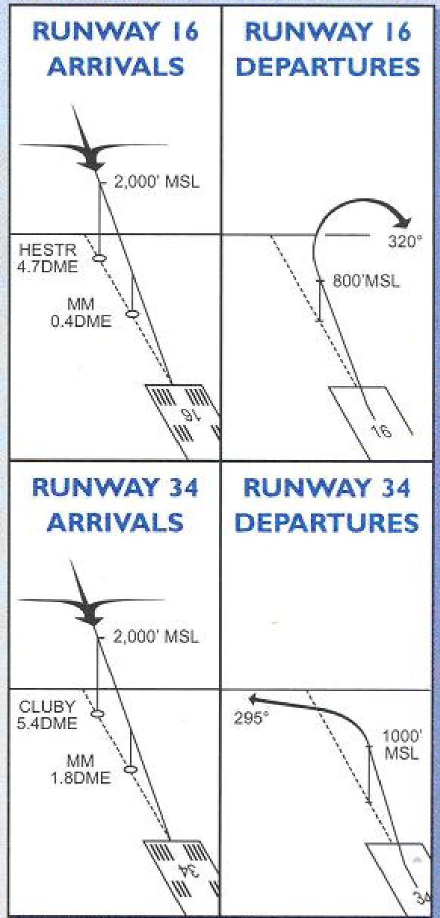
RUNWAY 11 AND 29:

Departure: Maintain runway heading and climb at (V2 + 20) not to exceed 190 KIAS. Upon reaching 1,000 ft. MSL set thrust to achieve 1,000 fpm climb rate to 2,500 ft. MSL. Use reduced climb power until reaching 3,500 ft. MSL.

Arrival: Maintain 2,500 ft. MSL or higher as long as practical. Use minimum flap setting and delay extending landing gear until beginning final decent to landing. Use thrust reduction techniques and minimize rapid RPM changes.

Note: Avoid making turns to a short final when possible.

Safety and ATC Instructions override Noise Abatement Procedures.



AIRPORT INFORMATION

Noise Abatement Office: 914-995-4861
Operations Office: 914-995-4850
Airport Manager: 914-995-4856
Control Tower: 914-948-6520
ATIS: 914-948-0130
ASOS: 914-288-0216
New York FSS: 1-800-WX-BRIEF

Runways:
16/34 6,548' X 150' (ASPH-GRVD)
11/29 4,451' X 150' (ASPH-GRVD)
Rwy 29: Threshold Displaced

As mentioned in this voluntary noise abatement pilot handout, safety of flight and Air Traffic Control (ATC) instruction always override noise abatement procedures. (Source: Panorama Flight Service, Westchester County Airport, New York)

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Chapter 14. Restrictions Based on Safety and Efficiency Procedures and Organization

14.1 Introduction. This chapter outlines guidance and standard methodology by which FAA reviews existing or proposed restrictions on aeronautical activities at federally obligated airports on the basis of safety and efficiency for compliance with federal obligations. It does not address other airport noise and access restrictions, which are discussed in chapter 13 of this Order, *Airport Noise and Access Restrictions*.

14.2. Applicable Law. The sponsor of any airport developed with federal financial assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination.[37] Grant Assurance 22, *Economic Nondiscrimination*, of the prescribed sponsor assurances, implements the provisions of 49 United States Code (U.S.C.) § 47107(a) (1) through (6). Grant Assurance 22(a) requires that the sponsor of a federally obligated airport:

> *…will make its airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.*

Grant Assurance 22(h) provides that the sponsor:

> *…may establish such reasonable, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.*

The Airport Noise and Capacity Act (ANCA), as implemented by 14 Code of Federal Regulations (CFR) Part 161, establishes a national program for review of airport noise and access restrictions on operations by Stage 2 and 3 aircraft.[38] In reviewing proposed safety and efficiency restrictions affecting such operations, airports district offices (ADOs) and regional airports divisions should consult with the Airport Compliance Division (ACO-100) for possible referral to the Airport Planning and Environmental Division (APP-400) and Assistant Chief Counsel for Airports and Environmental Law (AGC-600).

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[37] The FAA shall develop plans and policy for the use of navigable airspace to ensure the safety of aircraft and efficient use of airspace. (49 U.S.C. § 40103.) The U.S. Government has exclusive sovereignty over airspace of the United States and thus makes the final decision regarding safety of aircraft.

[38] Safety and efficiency restrictions are typically imposed at generally aviation (GA) airports on aircraft that are not designated Stage 2 or 3 (e.g., hang gliding and banner towing aircraft). Accordingly, most safety and efficiency restrictions will be subject to review only for compliance with grant assurance and Surplus Property Act obligations, and not ANCA.

14.3. Restricting Aeronautical Activities. While the airport sponsor must allow use of its airport by all types, kinds, and classes of aeronautical activity, as well as by the general public, Grant Assurance 22, *Economic Nondiscrimination*, also provides for a limited exception: "the airport sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is reasonable and necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public." A prohibition or limit may be based on safety or on a conflict between classes or types of operations. This generally occurs as a conflict between fixed-wing operations and another class of operator that results in a loss of airport capacity for fixed-wing aircraft. Any restriction proposed by an airport sponsor based upon safety and efficiency, including those proposed under Grant Assurance 22(i), must be adequately justified and supported.

Prohibitions and limits are within the sponsor's proprietary power only to the extent that they are consistent with the sponsor's obligations to provide access to the airport on reasonable and not unjustly discriminatory terms and other applicable federal law.

The Associate Administrator for Airports, working in conjunction with Flight Standards and/or the Air Traffic Organization, will carefully analyze supporting data and documentation and make the final call on whether a particular activity can be conducted safely and efficiently at an airport. In all cases, the FAA is the final arbiter regarding aviation safety and will make the determination regarding the reasonableness of the sponsor's proposed measures that restrict, limit, or deny access to the airport.

The FAA, not the sponsor, is the authority to approve or disapprove aeronautical restrictions based on safety and/or efficiency at federally obligated airports.

14.4. Minimum Standards and Airport Regulations. An airport proprietor may adopt reasonable minimum standards for aeronautical businesses and adopt routine regulations for use and maintenance of airport property by aeronautical users and the public. These kinds of rules typically do not restrict aeronautical operations, and therefore would generally not require justification under Grant Assurance 22(i). For example, an airport sponsor may require a reasonable amount of insurance as part of their minimum standards.

a. Type, Kind, or Class. Grant Assurance 22(i) refers to the airport sponsor's limited ability to prohibit or limit aeronautical operations by whole classes or types of operation, not individual operators. If a class or type of operation may cause a problem, all operators of that type or class would be subject to the same restriction. For example, if the sponsor of a busy airport finds that skydiving unacceptably interferes with the use of the airport by fixed-wing aircraft, and the FAA agrees, the sponsor may ban skydiving at the airport. However, the sponsor could not ban some skydiving operators and allow others to operate. If a sponsor believes there is a safety issue with the flight operations of an individual aeronautical operator, rather than a class of operations, the sponsor should report the issue to the Flight Standards Service as well as bringing it to the attention of the operator's management.

The term “kind” in Grant Assurance 22(i) is not defined in the Federal Aviation Act of 1958 (FAA Act), the Airport and Airway Improvement Act of 1982 (AAIA), or in FAA regulations, and has been interpreted not to add any meaning distinct from “class” and “type” of operation or operator.

b. Multi-Airport Systems. The operator of a system of airports may have some ability to accommodate operations at its other airports if those operations are restricted at one airport in the system. However, any access restrictions must still be fully justified, based on a safety or efficiency problem at the airport where the restrictions apply. Such restrictions must also comply with ANCA. The operator may not simply allocate classes or types of operations among airports based on preference for each airport‘s function in the system.

c. Purpose. A prohibition or limit on aeronautical operations justified by the sponsor on the basis of safety or efficiency, under Grant Assurance 22(i), will be evaluated based on the stated purpose, justification, and support offered by the sponsor. If it appears that the sponsor actually intends the restriction to partially or wholly serve other purposes, such as noise mitigation, the safety and efficiency basis of the restriction should receive special scrutiny.

d. Examples of Grant Assurance 22(i) restrictions.

(1). Examples of airport rules approved by the FAA prohibiting, limiting, or regulating operations under Grant Assurance 22(i) have included:

(a). Limiting skydiving, soaring, and banner towing operations to certain times of the day and week to avoid the times of highest operation by fixed-wing aircraft.

(b). Banning skydiving, soaring, ultralights, or banner towing when the volume of fixed-wing traffic at the airport would not allow those activities without significant delays in fixed-wing operations.

(c). Limiting skydiving, soaring, and ultralight operations to certain areas of the airfield and certain traffic patterns to avoid conflict with fixed-wing patterns.

(d). Restricting agricultural operations due to conflict with other types of operations or lack of facilities to handle pesticides safely that are used in this specialized operation.

(2). Examples of restrictions which the FAA has found were not justified for safety or efficiency under Grant Assurance 22(i) have included:

(a). A nighttime curfew for general aviation operations, based on safety, when Part 121 operators were allowed to operate in night hours.

(b). A ban on scheduled commercial operations, based partly on safety grounds, when nonscheduled commercial operations were permitted.

(c). A ban on certain categories of aircraft, based on safety, where the banned categories of operator were defined solely by aircraft design group, which is an airport planning and design criterion based on approach speed for each aircraft type.

(d). A total ban on skydiving, when skydiving could be accommodated safely at certain times of the week with no significant effect on fixed-wing traffic.

(3). Examples of operational restrictions that generally do not require justification under Grant Assurance 22(i).

(a). Examples of airport rules approved by the FAA prohibiting, limiting, or regulating aeronautical operations that would not require justification under Grant Assurance 22(i) have included:

(i). Designated runways, taxiways, and other paved areas that may be restricted to aircraft of a specified maximum gross weight or wheel loading.

(ii). Designated areas for maintenance, fueling, and aircraft painting.

(iii). Use of airport facilities by the general public may be restricted by vehicular, security, or crowd control rules.

14.5 Agency Determinations on Safety and System Efficiency. The FAA airports district office (ADO) or regional airports division will make the informal (Part 13.1) determination and the Office of Compliance and Field Operations (ACO) will make the formal (Part 16) determination on whether a particular access restriction is a violation of the airport sponsor's grant assurances, subject to appeal to the Associate Administrator for Airports. However, when an informal Part 13.1 report or formal Part 16 complaint is filed regarding an access restriction based on safety or air traffic efficiency, the FAA Office of the Associate Administrator for

An Airports Airspace Analysis has been used to assess the safe and efficient use of the navigable airspace by aircraft and/or the safety of persons and property on the ground, including ultralights, banner towing, acrobatic flying, gliders, and parachute jumping functions. Analysis would include internal FAA coordination with the appropriate FAA offices (Flight Standards and/or Air Traffic) and a review of flight procedures. (Photo: FAA)

Airports should obtain assistance from the appropriate FAA office, usually Flight Standards for safety issues and Air Traffic for efficiency and utility issues. While Flight Standards has jurisdiction for safety determinations, coordination with Air Traffic or other FAA offices might be required in cases where the aeronautical activity being denied has an impact on the efficient use of airspace and the utility of the airport.

14.6. Methodology. The goal of this guidance is to provide a standard procedure for addressing technical safety and efficiency claims in support of an airport access restriction. It is often appropriate to ask Flight Standards to conduct a safety review or to ask Air Traffic for an airspace study to determine the impact of a restriction on the safety, efficiency, and utility of the airport. The determinations provided by these offices may be an important part of the decision making process and material record used as part of a Director's Determination (DD) and Final Agency Decision (FAD) and possibly for a decision subject to judicial review.

A sponsor's justification for a proposed restriction should be fully considered, but should also be subjected to an independent analysis by appropriate FAA offices. Early contact with Flight Standards as part of an investigation is desirable since it is possible that a safety determination may already have been made. For example, certain operators may already possess a "Certificate of Waiver or Authorization" from Flight Standards to conduct the aeronautical activity the airport is attempting to restrict, such as banner towing. Such a document would allow certain operations to remain in compliance with Part 91, *General Operating and Flight Rules*. These "waivers" or "authorizations" are de facto safety determinations; their issuance implies that the activity in question can be safely accommodated provided specified conditions are followed.

Similarly, if applicable, the FAA Office of the Associate Administrator for Airports should check with Air Traffic early in the investigation in order to determine whether or not any Air Traffic special authorization or study affecting the aeronautical activity in question was issued or exists.

However, when neither an FAA Flight Standards safety nor an Air Traffic determination or study exists, a review process that includes Flight Standards and/or Air Traffic should be coordinated by the FAA Office of the Associate Administrator for Airports to address the issue of accommodating the aeronautical activity in question at the airport. Depending on Flight Standards/Air Traffic familiarity with the affected airport and its operation, a site inspection may or may not be required. After an evaluation, Flight Standards and/or Air Traffic may or may not decide that a particular activity may be able to be safely conducted at the airport. The ADO, regional airports division, or ACO will issue a determination based on the analysis of all responses.

14.7. Reasonable Accommodation. The purpose of any investigation regarding a safety-based or efficiency-based restriction of an aeronautical use is to determine whether or not the restricted activity can be safely accommodated on less restrictive terms than the terms proposed by the airport sponsor without adversely affecting the efficiency and utility of the airport. If so, the sponsor will need to revise or eliminate the restriction in order to remain in compliance with its grant assurances and federal surplus property obligations.

A complete prohibition on all aeronautical operations of one type, such as ultralights, gliders, parachute jumping, balloon and airship operations, acrobatic flying, or banner towing should be approved only if the FAA concludes that such operations cannot be mixed with other traffic without an unacceptable impact on safety or the efficiency and utility of the airport.

When it is determined that there are less restrictive ways or alternative methods of accommodating the activity while maintaining safety and efficiency, these alternative measures can be incorporated in the sponsor's rules or minimum standards for the activity in question at that airport.

a. Other agency guidance. Any accommodation should consider 14 Code of Federal Regulations (CFR) Part 91, as well as specific FAA regulations and advisory circulars for the regulated activity. These include:

(1). For ultralight operations: 14 CFR Part 103, *Ultralight Vehicles;* Advisory Circular (AC) 103-6, *Ultralight Vehicle Operations, Airports, Air Traffic Control, and Weather;* and AC 90-66A, *Recommended Standard Traffic Patterns and Practices for Aeronautical Operations at Airports Without Operating Control Towers.*

(2). For skydiving: 14 CFR Part 105, *Parachute Operations;* and AC 105-2C, *Sport Parachute Jumping*.

(3). For balloon operations: AC 91-71, *Operation of Hot Air Balloons with Airborne Heaters*.

(4). For banner towing operations: Flight Standards Publication *Information for Banner Tow Operations*, available online on the FAA web site.

b. Examples of Accommodation Measures. Some measures that airports have used to accommodate activities safely and efficiently in lieu of a total ban include:

(1). Establishing designated operations areas on the airport. An airport can designate certain runways or other aviation use areas at the airport for a particular class or classes of aircraft as a means of enhancing airport capacity or ensuring safety.

(2). Alternative traffic patterns and touchdown areas. Examples of this would be a glider operating area next to a runway or a helicopter practice area next to a runway as long as there is proper separation to maintain safety.

(3). Special NOTAM (Notice to Airmen) requirements.

(4). Special handheld radio requirements.

(5). Special procedures and required training.

(6). Seasonal authorization or special permission.

(7). Waivers issued by Flight Standards under 14 CFR section 103.5 or other applicable regulations and policies.

(8). Special use permit, pilot registration, and fees.

(9). Limits on the total number of operations in the restricted class. (It might be easier to accommodate just a few operations.)

(10). Letters of agreement with Air Traffic Control (ATC), if applicable.

(11). Restricted times of operations and prior notification.

(12). Weather limitations.

(13). Nighttime limitations.

14.8. Restrictions on Touch-and-Go Operations. A touch-and-go operation is an aircraft procedure used in flight training. It is considered an aeronautical activity. As such, it cannot be prohibited by the airport sponsor without justification. For an airport sponsor to limit a particular aeronautical activity for safety and efficiency, including touch-and-go operations, the limitation must be based on an analysis of safety and/or efficiency and capacity, and meet any other applicable requirements for airport noise and access restrictions explained in chapter 13 of this Order, *Airport Noise and Access Restrictions*.

14.9. Sport Pilot Regulations.

a. General. In 2004, the FAA issued new certification requirements for light-sport aircraft, pilots, and repairmen. The FAA created two new aircraft airworthiness certificates: one for special light-sport aircraft, which may be used for personal as well as for commercial use; and a separate certificate for experimental light-sport aircraft (including powered parachutes and other light aircraft such as weight-shift and some homebuilt types), which may be used only for personal use. The rule also establishes requirements for maintenance, inspections, pilot training, and certification. The FAA worked with the general aviation (GA) community to create a rule that sets safety standards for people who will now earn FAA certificates to operate more than 15,000 uncertificated, ultralight-like aircraft. The rule's safety requirements should also give this segment of the GA community better access to insurance, financing, and airports.

b. Compliance Implications. A proposed restriction affecting these aircraft should be analyzed like the other cases addressed in this chapter, with coordination with Flight Standards and/or Air Traffic as appropriate.

14.10. Coordination. The sample correspondence at the end of this chapter will assist in coordinating action with either Flight Standards or Air Traffic. Sample correspondence includes a request for a safety determination, a Flight Standards response, an Air Traffic assessment and response, and an FAA objection to a proposed accommodation of an aeronautical activity.

14.11. through 14.15. reserved.

U.S. Department of Transportation
Federal Aviation Administration

Memorandum

Subject: **ACTION:** Request for Safety Determination - Formal Complaint 16-00-11

Mr. William Dean Bardin
v.
County of Sacramento

Date: APR 10 2001

From: Director, Airport Safety and Standards AAS-1

Reply to Attn. of: Wayne Heibeck (202) 267-3187

To: Manager, Western Pacific Airports Division - AWP-600

It is our responsibility to review and issue a Director's Determination on the above-mentioned complaint under FAR Part 16. The complaint relates to Sacramento County, prohibiting ultralight vehicles at Franklin Field (Q53 - uncontrolled airport) on the grounds that such operations are unsafe.

We believe that insufficient safety related information relating to this case exists for a compliance determination. The complaint filed requires the FAA to determinate whether or not the prohibition instituted by the airport sponsor violates the requirement "to make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical uses." Flight Standards assistance in the form of a safety determination and/or recommendation is required. It would:

1. Substantiate a FAA (AAS-1) decision on the reasonableness of the restriction.
2. Be worthwhile as both parties in the complaint disagree on whether or not ultralight operations at Franklin are safe.
3. Would permit AAS-1 to adhere to FAA order 5190.6A, section 4-8, which addresses safety related restriction at federally-obligated airport and specifies the role(s) of other FAA entities, one of which is Flight Standards. Specifically, FAA Order 5190.6A,Section 4-8 states:

> In cases where complaints are filed with FAA, Flight Standards and Air Traffic should be consulted to help determine the reasonableness of the airport owner's restrictions. It may be appropriate to initiate an FAA airspace study to determine the efficiency and utility of the airport when

Sample Request for Safety Determination, Page 1

considering the proposed restriction. In all cases the FAA will make the final determination of the reasonableness of the airport owner's restrictions which denied or restricted use of the airport.

4. Strengthen the record given that the current complaint could lead to a Final Agency Decision, which in turn may be subjected to judicial review.

Given the existing situation, please coordinate with the region's Flight Standards Division, AWP-200, to have them conduct an analysis of options regarding the possibility of safely accommodating ultralight operations and the compatibility of ultralight operations with other aeronautical uses at Franklin Field as soon as possible.

Attached is a copy of the complaint documents we have received. Please notify us as soon as practicable of AWP-200's timeframe for completion of this analysis.

David L. Bennett

Attachment

Sample Request for Safety Determination, Page 2

The following is the suggested response to the Airports Division request for a safety review of Franklin Field.

Personnel of the Sacramento Flight Standards District Office (FSDO) have conducted a safety review of the Franklin Field Airport as request in the Memo dated April 10, 2001.

An Inspector reviewed the available safety related material provided by the users of Franklin Field, maps and the comments from the County of Sacramento. A site inspection was conducted and revealed an area on the northwest part of the airport could accommodate ultralight operations.

Franklin Field is a heavily used uncontrolled airport for pilot training and agricultural operations. Flight schools both helicopter and airplanes use the field. The mix of ultralight and aircraft traffic has generated numerous complains.

On June 5, 2001, the FSDO inspector met with the SFO-ADO and personnel for the County of Sacramento, Division of Airports. Another site visit was concluded with the above organizations and all parties agree it was possible for ultralights to operate within specific guidelines.

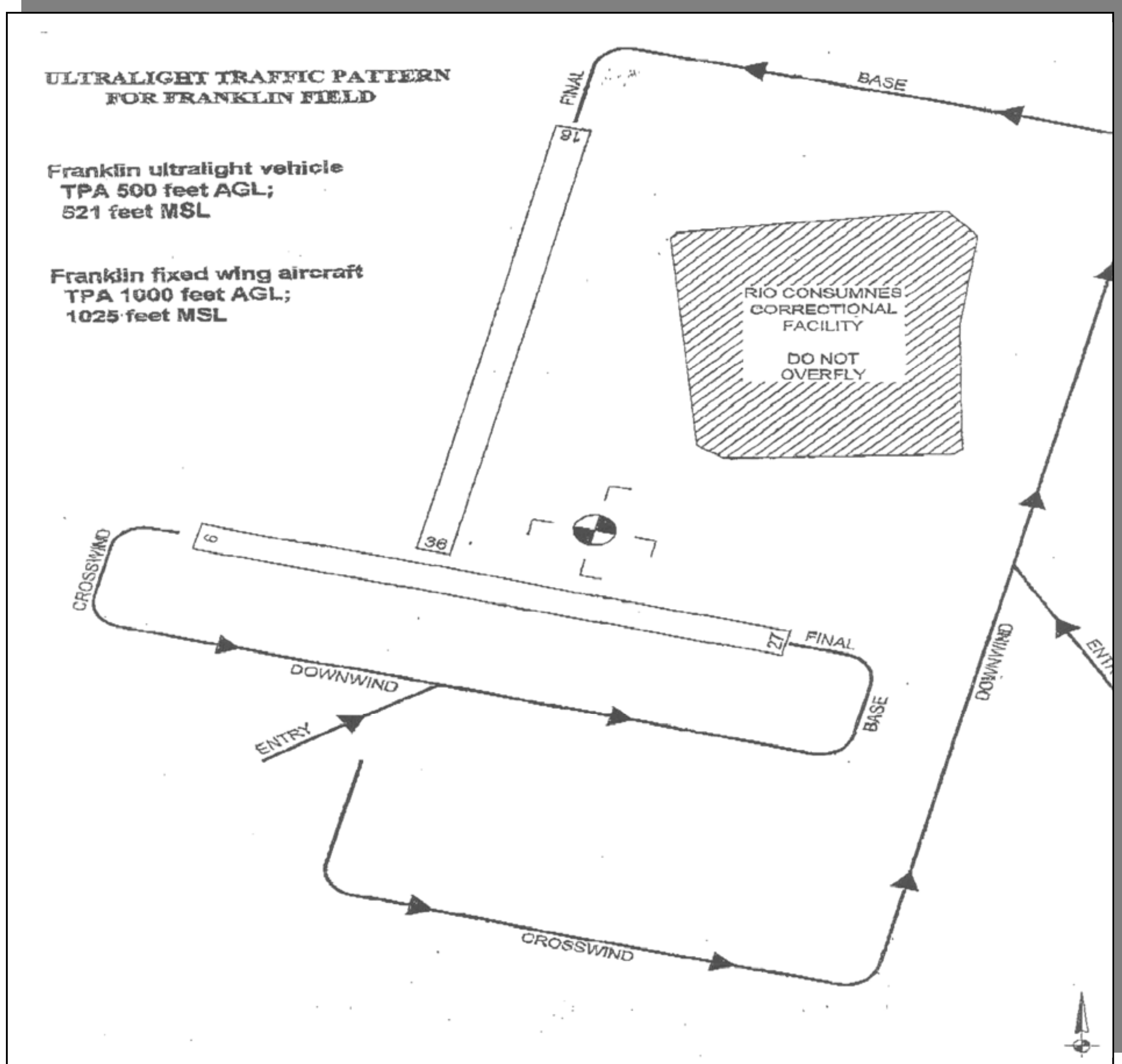
The area northwest along the airport boundaries is large enough to provide reasonable accommodation for ultralight operations. An area in the grass could be graded for a landing and ramp areas. The traffic pattern altitude should no higher than 400 feet; this would keep the ultralights away from the normal aircraft flow.

In addition, the following should be considered by the County of Sacramento in the effort to make reasonable accommodations for the ultralight activities:

- Establish designated operations area.
- Transient versus based ultralight operations.
- Alternative traffic patterns as per AC 90-66A.
- NOTAM requirements.
- Special use permits for pilot and aircraft.
- Level of purposed operations the airport.
- Times of operation and prior notification if required.
- Weather limitation.
- Daytime versus nighttime operations.

It is recommended that a meeting with the County of Sacramento, SFO-ADO, Sacramento FSDO and the ultralight users group be schedule, as soon as possible, to work out the details and any special provisions for the operation of ultralights at Franklin Field.

Sample Flight Standards Response



Sample Visual Depiction of Flight Standards-Approved Flight Pattern to Accommodate Ultralight Operations

U. S. Department
of Transportation
Federal Aviation
Administration

Memorandum

Air Traffic Control Tower
St. Petersburg-Clearwater Int'l Airport
Clearwater, FL 33762

Subject: INFORMATION: Review Aeronautical Study No. 01-ASO-3059-NRA **Date:** 4/25/01

From: Air Traffic Manager,
ATCT, Clearwater , Florida

To: Lee Blaney, ORL-610A

When I took over the position of Air Traffic Manager for St. Petersburg-Clearwater Air Traffic Control Tower (PIE) in 1996, I was briefed by my predecessor that the Pinellas County Airport Director did not allow banner towing operations at the airport. To my knowledge there have not been any banner towing operations, with the exception of one emergency landing by a banner tower. *I highly recommend that the Pinellas County Airport Authority continue its present policy to prohibit banner tow operations at PIE due to safety concerns.*

PIE Control Tower handled 229,215 operations in 2000. This is over a 30% increase in air carrier, corporate jet and general aviation since 1996. The layout of PIE runways makes this a very complex operation, which can only be worked safely under certain conditions. There are three crossing runways, which mean aircraft landing or departing one runway will cross the traffic path of one or more other runways. The determination of which runways to use is dependent upon the type of traffic at the time and the existing meteorological conditions. We try to use two or three runways at a time in pre-established patterns and this requires very precise timing. The preferred runway configuration is Runways 4, 9, 35R simultaneously. This configuration generally allows the controller to work the maximum number of aircraft and minimize delays. However, at times only one runway can be used. Because of the increased volume of traffic and existing runway configuration, the tower intermittently reaches a maximum safe number of aircraft operating at one time. The individual controller working the tower determines that number, based on the volume and complexity at the time. When that level is reached, any further aircraft movements are denied or curtailed. Presently, we estimate that occurs at PIE more than 10% of the time. As our volume increases, the frequency of denying services will increase.

We expect the volume of traffic to continue to increase at an even higher rate than in the past due to several upcoming events. First, we will be installing a CAT II ILS this year. The capability for pilots to shoot a CAT II ILS practice approach will attract more aircraft from other airports to make these practice approaches. Second, the three flight schools on the field are expanding. In fact, the number of practice operations increased by 7% in the last year. One of the flight schools has applied for a permit to open a new Part 141 school. Third, Embry Riddle Aeronautical University (ERAU) has recently gone into partnership

Sample Air Traffic Assessment and Response, Page 1

with St. Petersburg Junior College to provide bachelor's and master's degrees in professional aeronautics. This program is expected to draw students not only from the entire west cost of Florida, but also internationally. We anticipate ERAU's presence on the west coast will attract student activity similar to that experienced by ERAU at Daytona Beach Airport/Air Traffic Control Tower, on the east coast. The St. Petersburg-Clearwater Airport agreed to provide classroom and hanger space for ERAU's airplanes in the future and have already given approval for construction of a large building for classrooms on land adjacent to the airport.

In addition to flight training, the Airport is actively looking for additional commercial flights, both passenger and cargo. Funds have been appropriated to extend the main runway to 10,000 feet in order to accommodate overseas flights and heavy cargo planes. The Airport has been negotiating with various companies that would like to take advantage of the extended runway for their operations. There are plans to build a joint military reserve training center on the airport this year, which includes locally based helicopters and the probability of additional itinerant military traffic.

Banner towing operations would not readily fit into the patterns of established operations at PIE, practice or itinerant flights. They're low flying, slow moving operations that don't mix well with other flights. They also involve having a ground crew go out onto the airfield twice, to set up and later remove the banner. If the banner pick- up area is in the safety area of a runway, the runway is essentially closed from the time the crew goes out onto the airfield until the banner has been picked up and the site cleared. From a safety standpoint, banner towing is suited to small airfields without commercial flights.

In 2000, PIE had 229,215 operations and Tampa International Airport had 277,863 operations. The Hillsborough County Aviation Authority has not allowed banner towing for many years due to safety issues and traffic volume. When airports reach the volume that ~~Tampa and~~ St. Petersburg-Clearwater have, banner-towing operations cannot safely be worked into the traffic. High volume airports with commercial flights do not allow banner towing because it would result in interruption of the traffic flow and untenable delays for other aircraft in order to clear the way for banner-towing aircraft. Commercial jets are designed for fast flight and do not maneauver quickly when in landing or take-off configurations. It compromises their safety to mix in operations that have the potential to interrupt the traffic flow and cause aborted take-off's or landings. In addition to the airlines and air taxis, there are at least three air ambulance companies based at PIE. When they file as "Life Guard", they cannot be delayed for other aircraft. The Coast Guard has search and rescue flights that require priority handling. When any inbound commercial flights are delayed, they back up into Tampa's already congested airspace. For controllers to work several aircraft safely, they need routine procedures and flights. Whenever they have to interrupt the established flow, it is a distraction, and distractions always decrease safety. If banner towing were permitted at PIE, there are conceivably a minimum of two companies that intend to conduct some or all of their operations from PIE. They have a significant potential to interrupt air traffic and impact safety. Additionally, if banner towing were allowed at PIE, it would undoubedly attract other banner tow companies due to PIE's

Sample Air Traffic Assessment and Response, Page 2

geographical location. There are no Hillsborough County airports which permit banner towing.

Traffic volume at PIE is quite variable. As stated above, there are times when PIE is forced to deny operations for safety reasons, and we do this by curtailing the number of aircraft making practice approaches or touch-and-go's. At times, touch-and-go's are not permitted due to traffic volume and complexity. Volume variations are intermittent and cannot be predicted in advance. While not optimal, student pilots can tolerate interruptions to their practice flights and they reschedule for another flight time. Banner towing is a commercial enterprise that could not operate in an environment where they were subject to having their flight requests denied.

We highly recommend that the Pinellas County Airport Authority continue its present policy to prohibit banner tow operations at PIE due to safety concerns.

Sandra L. Bathon

Sample Air Traffic Assessment and Response, Page 3

U.S. Department of Transportation
Federal Aviation Administration

Orlando Airports District Office
5950 Hazeltine National Dr., Suite 400
Orlando, FL 32822-5003
Phone: (407) 812-6331
Fax: (407) 812-6978

December 5, 2006

Mr. Nickolis A. Landgraff
Airport Manager
City of DeLand
1777 Langley Ave.
DeLand, FL 32724

Dear Mr. Landgraff:

RE: Agency Review
DeLand Skydiving Agreement

We received your November 14, 2006 correspondence regarding the proposed agreement between the City of DeLand, the skydiving operators of DeLand Airport, and the proposed airport traffic control tower (ATCT). While we applaud the sponsor for its proactive efforts to come to agreement with the operators of skydiving operations at the airport, we are concerned that the structure of the document removes the airport's ability to adhere to its grant agreements into the future. Specifically, there are a number of provisions of the Agreement that concern the Federal Aviation Administration (FAA), which we have listed below.

- The FAA must review any agreement that includes safety requirements that differ from those required by federal regulation. This is true regardless if the requirements will be more or less stringent, and the requirements are continually subject to review, considering constantly changing circumstances. This review would not only include ATC, as the agreement states, but also Flight Standards and Airports Divisions.

- While the agreement states that it will seek FAA concurrence, it appears that the parties only intended to seek input from the local FAA ATCT. FAA Flight Standards and Airports Divisions *must* be consulted. Therefore, once a final draft of this agreement is made, it should be coordinated through the Orlando ADO.

- II.C. – Both Skydive Deland and the city of Deland must understand that any provision agreed to in this document cannot overrule the applicable Federal Aviation Regulations. Specifically, one provision needing further review by Flight Standards includes #3, which states:

  *"The **first radio communication of the day by a Jump Aircraft shall activate the DZ. When the Deland Drop Zone is activated, the Tower Operator is***

Sample FAA Objection to a Proposed Overreaching Accommodation of an Aeronautical Activity, Page 1

2

***deemed to have authorized all Jump Aircraft, their pilots and Parachutists for continuous operations** in the Deland Class 'D' airspace. **This authorization will remain in effect until the last load of the day**.*" [emphasis added.]

FAR Part 105 requires the pilot-in-command to maintain radio communications with air traffic control at least 5 minutes before the parachute operations begin and must, during each flight, advise air traffic control when the last parachutist or object exits the aircraft. Specific information must be provided to air traffic control under certain circumstances as required by FAR Part 105.15 and Part 105.25.

There is no guarantee that transient aircraft will hear the first communication of the day activating the drop zone. Also, there may be times that the drop zone may need to be closed to conduct airfield inspections or to pick up foreign object debris. Again, FAA Flight Standards must review these provisions to ensure continued flight safety.

- II.D. – The Agreement specifies what the tower operator shall commit to. For example,

  *"The Tower Operator **shall comply** with the following: The Tower Operator **shall not impose unreasonable limitations because of wind speed or direction**...the Tower Operator and the Skydiving Industry **stipulate and agree** that **aircraft operations and skydiving operations shall operate concurrently** as a preferred policy and that all parties shall act and engage in conduct that optimizes concurrent operation of flight and skydiving operation, **without unnecessary delays**."*

  Who determines the reasonableness of limitations imposed by ATC? An operating control tower makes decisions based on operational safety and efficiency. Additionally, during a given situation, it may not be operationally efficient or safe for the concurrent operation of flight and skydiving activities -- those determinations must be made by Air Traffic, Flight Standards, and the pilot-in-command, not the airport or skydiving industry.

- The City cannot preempt the right to use the airport by skydivers above all other users in perpetuity. The federal obligations require access for *all* aeronautical users, not just skydivers. While the skydiving community provides large economic stimulus for the airport and surrounding community, any unreasonable restrictions limiting access to other aeronautical users would be a violation of grant assurance and will not be accepted.

- III. – The Agreement includes provisions for an advisory committee and specifies the members of that committee. Under the current Agreement, there are no provisions for an airport or FAA ATC representative to be part of the committee. While there is no regulation or statute to mandate inclusion, the airport should be

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advised of this oversight and guided to include members of these two important parties to ensure a complete representation of those involved in operations at the airport.

- The FAA is concerned that this agreement is a contract, which appears to be an enforceable agreement. The agreement should not be a contract.
- While it is acceptable that the Airport can promulgate procedures and policies, it is a violation of Grant Assurance 5 (Rights and Powers) to PREVENT the sponsor from ever changing the policies and procedures in response to the interests of the public in civil aviation. This contract would prevent such changes. While some of these procedures could be adopted (with the exceptions discussed above) as minimum standards and policies, the airport sponsor cannot give away its discretion to manage this airport in the interests of civil aviation. For example, commercial service airports cannot force themselves to deny general aviation because they've agreed to with certain wishes of commercial operators. There must be other conditions, and even then they can only encourage the use of relievers for general aviation.

If you have any questions regarding these comments, please feel free to call me.

Once you have addressed these comments and revised the agreement, please forward the final draft to this office in my attention for agency review.

Sincerely,

Original Signed By

Rebecca R. Henry
Program Manager
Planning and Compliance

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Chapter 15. Permitted and Prohibited Uses of Airport Revenue

15.1. Introduction. This chapter discusses the sponsor's use of airport revenue. It supplements, but does not supersede, the guidance issued in FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999, (*Revenue Use Policy*).

The U.S. Congress has established the general requirements for the use of airport revenue and has identified the permitted and prohibited uses of airport revenues. These statutory requirements are incorporated in the standard grant assurances and have been interpreted by the FAA and the General Counsel's Office, Office of the Secretary, in policy statements and compliance decisions. It is the responsibility of the FAA airports district offices (ADOs) and regional offices to advise sponsors on the statutes, grant assurances, and policies that outline the permitted and prohibited uses of airport revenue and to ensure that sponsors are not in violation of their federal obligations in the use of their airport revenue. This chapter describes the legislative history, defines airport revenue, and describes the allowable and prohibited uses of airport revenue.

15.2. Legislative History. Congress placed restrictions on the use of airport revenue in four separate acts:

a. Airport and Airway Improvement Act of 1982 (AAIA). Congress first placed restrictions on the use of airport revenue in the AAIA (Public Law (P.L.) No. 97-248) . The AAIA established the basic rules for the use of airport revenue, which are still largely in effect today:

"All revenues generated by the airport, if it is a public airport, will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property."

Congress first placed restrictions on the use of airport revenue in the Airport and Airway Improvement Act of 1982 (AAIA) (Public Law No. 97-248). The AAIA established the basic rules for using airport revenue, which are still largely in effect today. The general principle is that airport revenue is to be used for the capital and operating costs of the airport. (Photo: FAA)

See 49 U.S.C. §§ 47107(b) and 47133 for current provision.

b. Airport and Airway Safety and Capacity Expansion Act of 1987 (1987 Airport Act). In the 1987 Airport Act, (P.L. No. 100-223), Congress extended the restriction on the use of airport revenue to include any local taxes on aviation fuel. Consequently, the taxing authorities must use local aviation fuel taxes (except taxes in effect on December 30, 1987) for airport capital and operating costs or for a state aviation program or for noise mitigation purposes on or off the airport. The AAIA and the 1987 Airport Act do allow for some preexisting "nonoperating or noncapital" uses of airport revenue. The *Revenue Use Policy* refers to these preexisting arrangements as "grandfathered." Paragraph 15.10 of this chapter discusses requirements for airports with grandfathered status. With the general recodification of Title 49 of the U.S. Code in 1994, the revenue use provisions were codified as 49 U.S.C. § 47107(b).

c. FAA Authorization Act of 1994 (1994 Authorization Act). In the 1994 Authorization Act, (P.L. No. 103-305), Congress (i) defined certain unlawful uses of airport revenue, (ii) required airports to be as self-sustaining as possible, and (iii) required the FAA to publish a policy on the use of airport revenue. (The self-sustaining requirement is discussed in chapter 17 of this Order, *Self-sustainability*.)

d. FAA Reauthorization Act of 1996 (1996 Reauthorization Act). In the 1996 Reauthorization Act (P.L. No. 104-264), Congress extended the restrictions on the uses of airport revenue to private airports that have received federal assistance. The provision is codified at 49 U.S.C. §§ 47107(b) and 47133.

15.3. Privatization. Also under the 1996 Reauthorization Act, Congress adopted a new statute, § 47134, establishing the Pilot Program on Private Ownership of Airports (privatization pilot program). The program provides for up to five publicly owned airports to participate in the program. Of the five eligible airports, only one airport can be a large hub airport. (Air carrier airports can only be leased.) One of the five airports must be a general aviation airport. (General aviation airports can either be leased or sold.) As an incentive to participation in the program, the Secretary may grant a sponsor three exemptions: (a) an exemption from the revenue-use rules to permit the sponsor to recover a specified amount from the lease or sale if approved by a super majority of air carriers, (b) an exemption waiving the obligation to repay federal grants or return property transferred from the federal government, and (c) an exemption permitting the private operator to earn compensation from airport operations.

15.4. Grant Assurance. Under the AAIA, sponsors, as a condition of receiving Airport Improvement Program (AIP) grants, must agree to the grant assurance on the use of airport revenue. Grant Assurance 25, *Airport Revenues*, incorporates the requirements described in the above legislation.

The Revenue Use Policy defines airport revenue and describes the permitted and prohibited uses of airport revenue.

15.5. FAA Policy. The *Revenue Use Policy* implements the requirements of the above acts, and incorporates the public comments from two earlier proposed versions of the policy. In addition, the *Revenue Use Policy* defines airport revenue and describes the permitted and prohibited uses of airport revenue (The final policy, dated February 16, 1999, is available online.)

15.6. Airport Revenue Defined. Airport revenue generally includes those revenues paid to or due to the airport sponsor for use of airport property by the aeronautical and nonaeronautical users of the airport. It also includes revenue from the sale of airport property and resources and revenue from state and local taxes on aviation fuel.

a. Revenue Generated by the Airport. Revenue generated by the airport for the aeronautical and nonaeronautical use of the airport includes, but is not limited to, the fees, charges, rents, or other payments received by or accruing to the sponsor from air carriers, tenants, concessionaires, lessees, purchasers of airport properties, airport permit holders making use of the airport property and services, etc. (Note: Revenue generated by the tenant in the course of that tenant's business is the tenant's revenue and not airport revenue under the *Revenue Use Policy*. The airport sponsor's revenue from that tenant's occupancy and business rights would be paid in the form of fees, rentals, lease agreement, etc.)

b. Taxes assessed by a special taxing district surrounding the airport and dedicated for support of the airport, but not derived from the use of the airport, are generally not considered airport revenue subject to the *Revenue Use Policy*. These tax revenue funds should be kept separate from airport revenue accounts and may be used for purposes other than those listed in 49 U.S.C. § 47107(b) and § 47133.

c. Parking Fines. Under the Revenue Use Policy, "airport revenue" constitutes money received by the airport for the use of the airport. All of the revenues within the definition represent some form of payment for airport property or use of airport property, whether it is rent, concession fees, aeronautical fees, or mineral rights. However, parking fines and penalties result from law enforcement activity; they are designed to penalize and change behavior, not to serve as a source of revenue. They are assessed by an airport using its police powers, not its proprietary powers as owner of an airport. As a result, the FAA does not generally consider parking fines and penalties to be a revenue-producing activity. For example, the FAA would not consider fines or penalties from other types of law enforcement (such as fines levied for drug possession or intoxication) to constitute "airport revenue." Nor would the FAA consider fines levied for building code violations, improper food handling, or fees from city-issued permits for utility or building use to be "airport revenue."

15.7. Applicability of Airport Revenue Requirements.

a. Airport Revenue. The rules regarding the use of airport revenue are applicable to:

(1). Public Agencies that Receive AIP Grants. The rules on airport revenue apply to public agencies that have received an AIP grant since September 3, 1982, if the obligations of that grant were in effect on or after October 1, 1996.

(2). Public Agencies that Collect Taxes on Aviation Fuel. The rules on aviation fuel apply to state and local agencies that have received an AIP grant since December 30, 1987, and had federal grant obligations for the use of aviation fuel in effect on October 1, 1996.

(3). Any Airport that Received Federal Financial Assistance. The rules on airport revenue apply to a public or private airport that has received federal financial assistance (as defined in paragraph 15.8 of this chapter) and the federal obligations for use of airport revenue incurred as a result of that assistance were in effect on or after October 1, 1996.

15.8. Federal Financial Assistance. Federal financial assistance includes:

a. AIP development grants and other grants issued under predecessor programs.

b. Airport planning grants that relate to a specific airport.

c. Aircraft noise mitigation grants received by an airport operator.

d. The transfer of federal property under the Surplus Property Act; the transfer of federal nonsurplus property under deeds of conveyance issued under section 16 of the Federal Airport Act of l946 (1946 Airport Act), under section 23 of the Airport and Airway Development Act of l970 (1970 Airport Act), or under section 516 of the AAIA.

15.9. Permitted Uses of Airport Revenue.

a. General. Sponsors may use their airport revenue 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.

Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of the *Revenue Use Policy*. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

b. Promotion of the Airport. Sponsors may use their airport revenue to promote public and industry awareness of the airport's facilities and services. Airport revenue may be used to promote new air service and competition at the airport, but it may not directly subsidize air carrier operations. A sponsor may use its revenue to pay the salary and expenses of airport or sponsor employees engaged in efforts to promote air service at the airport. The sponsor may participate in cooperative advertising where the airport advertises new services with or without matching funds. The name of the airport must be prominently featured in the marketing and promotional material. The sponsor may pay a share of promotional expenses designed to increase use of the airport. The promotion must include specific information about the airport. In addition, the sponsor may support promotional events, such as a Super Bowl hospitality tent for corporate aircraft at a sponsor-owned general aircraft terminal. The sponsor may use airport

revenue to pay for promotional items bearing airport logos distributed at various aviation industry events. The *Revenue Use Policy* does not prohibit a sponsor from spending airport revenue from one airport for promotion of another within that sponsor's airport system.

c. Repayment of the Sponsor. A sponsor may use its airport revenue to repay funds it contributed to the airport from general accounts or to repay loans from the general account to the airport provided the sponsor makes its request for reimbursement within six (6) years of the date on which it made the contribution. (See 49 U.S.C. § 47107(l).)

When the sponsor asks the airport to repay an interest-bearing loan, the airport may repay the loan with interest only if the sponsor clearly documented that the loan was interest-bearing at the time the loan was made. The interest rate may not exceed the interest rate on the sponsor's other investments for that time period.

For other contributions, the FAA must determine whether the sponsor made the contribution for the benefit of the airport. The FAA must determine the date from which the airport may commence payment of interest. The interest that the airport may pay for the other contributions is limited to the U.S. Treasury investment interest rate. (See 49 U.S.C. § 47107(o) and (p).)

d. Lobbying and Attorney Fees. A sponsor may use airport revenue to pay lobbying and attorney fees to the extent these fees are for services in support of airport capital or operating costs that are otherwise allowable.

e. Costs Incurred by Government Officials. A sponsor may pay for costs that government officials incur on the airport's behalf. For example, the cost of travel for city council members to meet with FAA officials about AIP funding is an allowable use of airport revenue.

f. General Government Costs. A sponsor may pay for a portion of the general costs of government, including executive offices and the legislative branches, provided the sponsor allocates such costs to the airport in accordance with an acceptable cost allocation plan. The FAA may require special scrutiny of allocated costs to assure that the airport is not paying a disproportionate share.

g. Central Service Costs. A sponsor may use airport revenue to pay for costs such as accounting, budgeting, data processing, procurement, legal services, disbursing, and payroll services that it bills to the airport through an acceptable cost allocation plan. The *Revenue Use Policy* and OMB Circular A-87 are our references for evaluating sponsor cost allocation plans. Such costs must meet the standard of being airport capital or operating costs. The allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

h. Community Activities. A sponsor may use airport revenue to support community activities and to participate in community events if such expenditures are directly and substantially related to the operation of the airport. For example, it may purchase tickets for an annual community luncheon at which the airport director delivers a speech reviewing the state of the airport. The airport may also contribute to a golf tournament sponsored by a "friends of the airport"

committee. The FAA also recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance and that a benefit of that nature is intangible and not quantifiable. Consequently, where the amount of contribution is minimal, the FAA will not question the value of the benefit so long as there is a reasonable connection between the recipient organization and the benefit of local community acceptance for the airport. An example of a permitted expenditure in this category is a $250 fee for a booth focusing on the operation of the airport and career opportunities in aviation at a local school fair. An airport may use its revenue to support a community's use of airport property if the expenditures are directly and substantially related to the operation of the airport.

i. Ground Access Projects. It is the policy of the United States to encourage the development of intermodal connections on airport property between aeronautical and other transportation modes and systems to serve air transportation passengers and cargo efficiently and effectively and promote economic development. (See 49 U.S.C. § 47101(a)(5).) Consistent with this policy, a sponsor may use airport revenue to pay for the airport's share of a ground access project in two general cases: (1) if the project qualifies as an integral part of an airport capital project, and (2) if the project is owned or operated by the sponsor and is directly and substantially related to the air transportation of passengers or property.

(1). Airport capital project. An example of an airport capital project would be the construction of an airport transit station incorporated into a new airport passenger terminal to provide direct transit access to the airport terminal building. The station is designed and intended exclusively for airport ground access and is effectively part of the terminal building.

(2). Other facilities directly and substantially related to air transportation. A facility may extend for a distance off airport property or be used in part by nonairport passengers. Such cases can be complex, and a three-part analysis should be applied:

First, is the facility owned or operated by the airport sponsor?

Second, is the facility directly and substantially related to air transportation? The facility must be a primary means of ground access to the airport even if the facility will not be used exclusively by airport passengers, employees, and visitors. The facility must be designed and intended for airport use even if others will also make use of it once the project is built. Airport funding is limited to the portion (road or rail line) from the airport to the nearest line of mass capacity, typically a highway or rail line adjacent to or close to the airport boundary. City streets and local highways may be used by passengers on the way to the airport, but they are not designed or intended for airport access and are not directly and substantially related to air transportation.

Third, is the airport contribution prorated to the forecast use of the facility? If 50 percent (50%) of the passengers on a transit line with a stop at the airport will be airport passengers, then the airport can contribute up to 50 percent (50%) of the cost of the rail line across airport property. For example, where a transit line was designed to run through airport property in order to provide an airport station, the FAA has approved the use of airport revenue for 100 percent (100%) of the actual costs incurred for structures and equipment associated with the airport

terminal building station, as well as for a portion of the costs of the rail line through the airport, prorated for the percentage of airport passengers using the system in relation to total transit passengers using that segment of the line.
The permissibility of using airport revenue for a ground access project is reviewed and accepted or rejected on a case-by-case basis.

15.10. Grandfathering from Prohibitions on Use of Airport Revenue.

a. General. Certain airports may use airport revenue for otherwise impermissible expenditures when the airport qualifies as "grandfathered." An airport is deemed "grandfathered" when provisions establishing certain financial arrangements between the airport and sponsor exist that were in effect prior to the enactment of the AAIA on September 3, 1982. (See 49 U.S.C. § 47107(b)(2).) Grandfathered airports are grandfathered only as to what was in effect of September 3, 1982. A list of airports considered to be grandfathered is at the end of this chapter.

A grandfathered airport is permitted to pay the sponsor for costs that are for purposes other than the airport's capital and operating costs. However, under the authority of 49 U.S.C. § 47115(f), the FAA considers as a factor militating against the approval of an application for AIP discretionary funds the fact that a grandfathered airport has exercised its rights to use airport revenue for nonairport purposes when, in the airport's fiscal year preceding the date of application for discretionary funds, the FAA finds that the amount of airport revenues used for nonairport purposes exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted for changes in the Consumer Price Index (CPI). In making this determination, the FAA will evaluate the grandfathered payments for the fiscal year preceding the date of the application.

Payments made by an independent authority or state department of transportation that owns or operates other transportation facilities in addition to airports with debt obligations or legislation governing financing that predate AAIA may be grandfathered.

Grandfathered arrangements include:

(1). Debt. An independent authority or state department of transportation that owns or operates other transportation facilities in addition to airports and has debt obligations or legislation governing financing and providing for use of airport revenue for nonairport purposes predating the AAIA. (Such sponsors may have obtained legal opinions from their counsel to support a claim of grandfathering, which FAA would consider in its review.)

(2). DOT Interpretations. Previous Department of Transportation (DOT) interpretations have found the following legislation certifying financial arrangements predating the AAIA legislation to qualify for the grandfather exception:

(a). Bonds. Bond obligations and city ordinances requiring a five percent (5%) "gross receipts" fee from airport revenue. In this case, the city instituted the payments in 1954 and continued them in 1968.

(b). State Statute. A 1955 state statute assessing a five percent (5%) surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

(3). City Legislation. City ordinance authorizing the payment of a percentage of airport revenue. City legislation permitting an air carrier settlement agreement in which the airport pays to the city 15 percent (15%) of airport concession revenue.

(4). Multi Modal Authority. A 1957 state law establishing financing and operations of a multi modal state transportation program and authority – including airport, highway, port, rail, and transit facilities. State revenues (including airport revenue) support the state's transportation-related and other facilities. The funds flow from the airports to a state transportation trust fund comprising all "taxes, fees, charges, and revenues" collected or received by the state department of transportation.

(5). Enabling Provision. A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes, requires annual payments in lieu of taxes to several local governments, and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for servicing debt, for facilities of the authority, and for its expenses, reserves, and the payment in lieu of taxes.

(6). Aviation Fuel Tax. Grandfathered arrangements also include local taxes on aviation fuel that were in effect before the 1987 Airport Act (i.e., fuel taxes in effect on December 30, 1987).

15.11. Allocation of Indirect Costs. An airport may use its revenue to pay capital or operating costs that the sponsor charges the airport through a cost allocation plan. In an acceptable cost allocation plan, the sponsor allocates costs in a manner consistent with Attachment A to Office of Management and Budget (OMB) Circular A-87,[39] except substitute the phrase "airport revenue" for the phrase "grant award" wherever the latter phrase occurs in Attachment A. In addition, the sponsor may not disproportionately allocate general government costs to the airport and may not indirectly bill costs through the cost allocation plan that are also billed directly to the airport. The sponsor must bill its other comparable units of government in a similar manner for the same costs it allocates to the airport; such allocations must be in proportion to the benefit that each receives from the allocated costs.

15.12. Standard for Documentation. The airport must ensure that billings from government entities meet the FAA requirement for documentation. The standards require the entity to maintain evidence to support its direct and indirect charges to the airport. Such evidence may include the underlying accounting data (such as general and specialized journals, ledgers,

[39] OMB Circular A-87, Cost Principles Applicable to Grants and Contracts with States and Local Governments.

manuals, and supporting worksheets and other analyses) as well as corroborating evidence (such as invoices, vouchers, and indirect cost allocation plans).

The FAA accepts audited financial statements as supporting evidence. However, the statement's underlying accounting records must clearly show the amounts that the entity billed to the airport. The entity's budget estimates are not sufficient to establish a claim for reimbursement. The entity may use budget estimates to establish predetermined indirect cost allocation rates as part of an indirect cost allocation plan, provided estimates are adjusted to actual expenses in the subsequent accounting period.

15.13. Prohibited Uses of Airport Revenue.

a. Unlawful Revenue Diversion. Unlawful revenue diversion is the use of airport revenue for purposes other than airport capital or operating costs or the costs of other facilities owned or operated by the sponsor and directly and substantially related to air transportation. Revenue diversion violates federal law and AIP grant assurances unless: (1) it is grandfathered within the scope of grandfathered financial authority established before 1982, or, (2) it is authorized under an exemption issued by the FAA as part of the airport privatization pilot program.

Revenue diversion is the use of airport revenue for purposes other than airport capital or operating costs.

b. General. Prohibited uses of airport revenue include direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value. For example, the DOT Office of Inspector General (OIG) and the FAA found a city sponsor to be diverting revenue where the sponsor charged the airport for investment management at the rate that would have been charged for commercial services when services to the airport were actually provided by city employees at a much lower cost.

c. Cost Allocation. Payments under a plan are a prohibited use of airport revenue when the allocation is based on a formula that is not consistent with the *Revenue Use Policy* or when the payment is not calculated consistently and equitably for the airport and other comparable units or cost centers of government.

d. General Economic Development. Using airport revenue for general economic development is a prohibited use of airport revenue.

e. Market and Promotion. When unrelated to airport operations, marketing and promotion costs are prohibited uses of airport revenue Examples include participating financially in marketing as destinations city or regional attractions such as hotels, convention centers, sports arena, theaters, and other entertainment attractions having no connection to the promotion of the airport.

f. Payments in Lieu of Taxes (PILOTs). Payments in lieu of taxes or other assessments that exceed the value of services or are not based on an acceptable cost allocation formula (i.e., reasonable and transparent), are prohibited uses of airport revenue.

g. Lost Tax Revenues. Payments to compensate nonsponsoring governmental bodies for lost tax revenues, to the extent the payments exceed the stated tax rates applicable to the airport, are prohibited uses of airport revenue Note that many payments in lieu of taxes (PILOTs) by airports are voluntary, not assessed, and should be evaluated under the lost tax provisions of 49 U.S.C. § 47107(l)(2)(D) rather than § 47107(l)(2)(C), which pertains to "payments in lieu of taxes or other assessments…." In each case the nature of the payment, rather than its title, should determine the appropriate analysis.

h. Loans and Investments. Loans to, or investment of, airport funds in a state or local agency at less than the prevailing rate of interest are prohibited uses of airport revenue.

i. Sponsor Aeronautical Use. Use of land for free or nominal rental rates by the sponsor for aeronautical purposes (e.g., a sponsor-owned fixed-base operator[40]) – except to the extent permitted under the *Revenue Use Policy* section on the self-sustaining requirement – is prohibited use of airport revenue.

j. Sponsor Nonaeronautical Use. Rental of land to, or use of land by, the sponsor for nonaeronautical purposes at less than fair market value rent is considered a subsidy of local government and is a prohibited use of airport revenue.

k. Impact Fees. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport are prohibited uses of airport revenue. However, the airport may pay for environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project or for constructing a ground access facility that would otherwise be eligible for the use of airport revenue. When such fees meet the other allowability and documentation requirements, the sponsor may use airport revenue to pay for impact fees. In determining appropriate corrective action for an impact fee payment that is not consistent with the revenue use requirements, the FAA will consider whether a nonsponsoring governmental entity imposed the fee and whether the sponsor has the ability under local law to avoid paying the fee.

l. Community Activities. Using airport funds to support community activities and to participate in community events or using airport property for community purposes – except to the extent permitted under the *Revenue Use Policy* – is a prohibited use of airport revenue.

m. Subsidy of Air Carriers. The direct subsidy of air carrier operations is a prohibited use of airport revenue. Prohibited direct subsidies do not include support for airline advertising or marketing of new services to the airport as described in paragraph 15.9.b above.

[40] A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

n. Airport Fee Waivers during Promotion Periods.

(1). Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. However, the airport must offer any promotional fee waiver or discount to all similarly situated users of the airport willing to provide the same type and level of new service consistent with the promotional offering.

(2). The cost of offering discounted fees or waivers cannot be shifted to other air carriers not participating in the promotional incentive program. When developing its rate base, the airport may not consider in its calculations the promotional discounted fees and waivers.

The airport may need a discretionary source of airport revenue – or revenue from another external source – to fund promotions. This requirement is consistent with the FAA's *Policy Regarding the Establishment of Airport Rates and Charges* (*Rates and Charges Policy*), which provides that airport sponsors may not recover the costs associated with one group of aeronautical users from fees of another aeronautical user or group of aeronautical users unless agreed to by all aeronautical users in that group**.** (See *Rates and Charges Policy*, section 3.1.)

Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. However, the airport must offer any promotional fee waiver or discount to all similarly situated users of the airport willing to provide the same type and level of new service consistent with the promotional offering.

Fees that can be waived during a promotional period include all or a portion of landing fees or space rent for passenger or cargo processing services or for operational activities. When developing its rate base, the airport may not consider in its calculations the promotional discounted fees and waivers. The cost of offering the discounted fees and waivers cannot be shifted to other air carriers not participating in the promotional incentive program. That is, the airport may need a discretionary source of airport revenue – or revenue from another external source – to fund the promotion. (Photo: FAA)

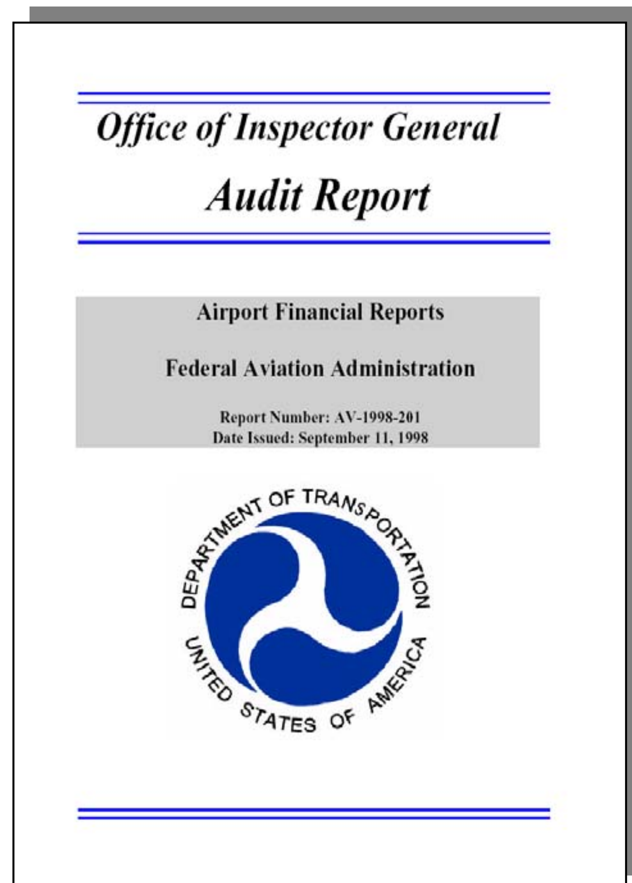
15.14. through 15.19. reserved.

Grandfathered Airport List

1. State of Maryland—Baltimore/Washington International and Martin State.
2. Massachusetts Port Authority—Boston-Logan and Hanscom Field.
3. Port Authority of New York and New Jersey—JFK, Newark, LaGuardia, and Teterboro.
4. City of Saint Louis, Missouri—Lambert-St. Louis.
5. State of Hawaii—all publicly owned/public use airports.
6. City and County of Denver—Denver International.
7. City of Chicago—Chicago O'Hare and Midway.
8. City and County of San Francisco—San Francisco International.
9. Port of San Diego—San Diego International.
10. Niagara Frontier Transportation Port Authority, NY—Greater Buffalo and Niagara Falls.
11. City and Borough of Juneau, AK—Juneau International.
12. Texarkana Airport Authority, AR—Texarkana Regional

Chapter 16. Resolution of Unlawful Revenue Diversion

16.1. Background. This chapter describes the FAA's responsibility for detecting and resolving unlawful revenue diversion. It is the responsibility of the FAA airports district and regional offices to identify unlawful revenue diversion, to seek sponsor compliance informally before initiating formal investigation, and to monitor corrective action plans. The FAA headquarters Office of Compliance and Field Operations (ACO) is responsible for issuing Notices of Investigation, assessing interest and penalties, issuing formal compliance determinations, and arranging for hearings to be conducted when appropriate.



16.2. FAA Authorization. As a violation of a standard grant assurance required under the Airport and Airway Improvement Act of 1982 (AAIA), as amended, unlawful revenue diversion is subject to the standard investigation and determination procedures discussed in chapter 5 of this Order, *Complaint Resolution*. The 1994 Authorization Act and 1996 Reauthorization Act established specific remedies for unlawful airport revenue diversion.

a. 1982 Authorization Act. The AAIA established the general requirement for use of airport revenue which directed public airport owners and operators to use all revenues generated by the airport for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property. (Codified at 49 United States Code (U.S.C.) § 47107(b))

b. 1994 Authorization Act. In the Federal Aviation Administration Authorization Act of 1994 (1994 Authorization Act) (Public Law (P.L.) No. 103-305, Congress strengthened the revenue use requirement by adding a new assurance requiring airport owners or operators to submit an annual report listing all amounts paid by the airport to other units of government, and required the FAA to issue a policy on the use of airport revenue. Congress also established specific actions that the FAA is authorized to take when a sponsor fails to correct unlawful revenue diversion. These actions are:

(1). Withholding Airport Improvement Program (AIP) grants and approval of applications to impose and use passenger facility charges (PFCs). (See 49 U.S.C. § 47111, § 47107(n).)

and/or

(2). Assessing a civil penalty for unlawful revenue diversion of up to $50,000. (See 49 U.S.C. § 46301.)

and/or

(3). Seeking judicial enforcement for violation of any grant assurance. (See 49 U.S.C. §§ 46106 and 47111(f).)

and/or

(4). In deciding whether to distribute funds to an airport from the discretionary fund, the Secretary shall consider as a factor militating against the distribution of such funds to the airport the fact that the airport is using revenues generated by the airport or by local taxes on aviation fuel for purposes other than capital or operating costs of the airport or the local airports system or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property.

The above provision shall only apply if the Secretary is able to find that the amount of revenues used by the airport for purposes other than capital or operating costs in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of such revenues in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index (CPI) of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. (See 49 U.S.C. § 47115(f).)

c. 1996 Reauthorization Act. In the FAA Reauthorization Act of 1996 (1996 Reauthorization Act)(P.L. No. 104-264), Congress broadened the revenue use requirements by adding a new section, 49 U.S.C. § 47133. Title 49 U.S.C. § 47133 broadened the applicability of the revenue use prohibition to cover any airport that is the subject of federal assistance, including both public and privately owned public use airports, and airport sponsors that have accepted real property conveyances from the federal government. There is a limited exception to the revenue use prohibition, which is discussed in detail in Chapter 15 of this Order, section 15.10, *Grandfathering from Prohibitions on Use of Airport Revenue*.

Additionally, as noted in the *Revenue Use Policy*, airport sponsors that have accepted surplus property from the federal government, but did not have an AIP grant in place on October 1, 1996, would not be subject to the revenue use requirement by operation of § 47133. However, if that airport accepted additional federal property or accepted an AIP grant on or after October 1, 1996, the airport would be subject to the revenue use requirement. Moreover, in accordance with 49 U.S.C. § 47153(b), the FAA does include the revenue use requirement as a required term in Surplus Property Instruments of Conveyance in order to protect and advance the interests of the United States in civil aviation. These actions are:

(1). Withholding any amount available to the sponsor under Title 49 of the United States Code, including transit or multimodal transportation grants. (See 49 U.S.C. § 47107(n) (3).)

and/or

(2). Assessing a civil penalty up to three times the amount of diverted revenue. The Administrator may impose a civil penalty up to $50,000. The FAA must apply to a U.S. district court for enforcement of a proposed civil penalty that exceeds $50,000. (See 49 U.S.C. § 46301.)

and/or

(3). Requiring assessment of interest on the amount of diverted revenue. (See 49 U.S.C. § 47107(o).)

16.3 Section 47133 and Grant Assurance 25, Airport Revenues. As stated above, since enactment of the AAIA in 1982, sponsors – as a condition of receiving AIP grants – have been required to comply with Grant Assurance 25, *Airport Revenues*, on the use of airport revenue. In the 1996 Reauthorization Act, Congress broadened the applicability of the revenue use prohibition to cover any airport that is the subject of federal assistance, including both public and privately owned public use airports, and airport sponsors that have accepted real property conveyances from the federal government. These revenue use requirements are codified at 49 U.S.C. § 47133.

Accordingly, revenue use violations may be enforced as a violation of contract obligations under the grant assurances, as a violation of federal law under 49 U.S.C. § 47107(l)(m), and may be enforced as a violation of a Surplus Property Deed or other federal land conveyances when applicable.

16.4. Agency Policy.

FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999, (*Revenue Use Policy*) defines airport revenue and implements the requirements of the AAIA and the above acts. (See chapter 15 of this Order, *Permitted and Prohibited Uses of Airport Revenue*.)

Circular No. A-133
Revised to show changes published in the *Federal Register* June 27, 2003
Audits of States, Local Governments, and Non-Profit Organizations

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of States, Local Governments, and Non-Profit Organizations

1. Purpose. This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.

2. Authority. Circular A-133 is issued under the authority of sections 503, 1111, and 7501 *et seq.* of title 31, United States Code, and Executive Orders 8248 and 11541.

16.5. Responsibility.

Regional offices are responsible for resolving single audit findings. The Office of Management and Budget (OMB) single audit clearinghouse will forward the audit findings to the Office of Inspector General (OIG), and the OIG will then forward the finding to the regional offices. New guidance from the Department of Transportation (DOT) requires the FAA to resolve single audit findings within 30 days. The Airport Compliance Division (ACO-100) will provide technical support to the regions, and it will provide status reports to FAA management and to the DOT.

16.6. Detection of Airport Revenue Diversion.

a. Sources of information. To determine if a sponsor has unlawfully diverted revenue, the FAA depends primarily on various sources of information, including:

(1). Annual financial reports submitted by sponsor.

(2). Single audit reports conducted in accordance with the OMB Circular A-133.

(3). Part 16 formal complaints (under 14 CFR Part 16).

(4). Audits conducted by the DOT/OIG.

(5). Financial reviews conducted by the FAA Office of the Associate Administrator for Airports.

(6). Part 13 informal complaints (under 14 CFR Part 13).

(7). Land-use inspections.

(8). Airport staff.

b. Reports. Audit reports on revenue diversion may be issued by the DOT/OIG or by an independent auditor performing a single audit under OMB Circular A-133.

The single audit (or A-133 audit) is an audit of financial statements and federal awards of local governments receiving federal assistance, conducted in accordance with OMB Circular A-133. If audit findings are reported in an A-133 audit, the DOT/OIG will send a copy of the report to the FAA regional airports division. The cognizant office will coordinate with the DOT Single Audit Coordinator to resolve any reported audit findings. ACO-100 will monitor the resolution of those audits and provide guidance and interpretation on the audit requirements.

The OIG may also conduct audits and issue reports on revenue diversion. National reports with revenue diversion findings will be sent to ACO-100; audits on individual airports may be sent to the regional airports division. ACO-100 will monitor the follow-up on those reports. Semi-annually, the DOT/OIG reports to Congress on the status of the FAA's responsiveness and resolution of those revenue diversion findings.

c. Release of Audit Reports. Regional airports divisions shall coordinate the release of any audit report prepared by the OIG to the public with Regional Counsel and ACO-100 shall coordinate such releases with the Assistant Chief Counsel for Airports and Environmental Law, AGC-600, to ensure that the release is in accordance with the Trade Secrets Act (18 U.S.C. 1905) and the Freedom of Information Act (FOIA) (5 U.S.C. 552). (See AIP Handbook, Order 5100.38, chapter 13.)

d. Compliance Reviews. ACO-100 will conduct a financial compliance review of two airports each fiscal year.

e. Interest. Interest on revenue diversion is computed at simple interest at the rate in effect at the time the debt becomes overdue. The rate of interest remains fixed for the duration of the indebtedness. Interest is computed in accordance with the procedures specified in § 47107(o).

f. In cases where the FAA must ascertain compliance with the requirements, reviewing published airport financial data may be useful. In each case, differences among the audit report or complaint, published financial data, and information presented by the sponsor should be discussed and resolved to the extent possible.

16.7. Investigation of a Complaint of Unlawful Revenue Diversion.

a. General. The FAA enforces the requirements imposed on sponsors as a condition of their acceptance of federal grant funds or property through the administrative procedures set forth in 14 CFR Part 16. As such, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel sponsors to produce evidence, and adjudicate matters of compliance within the jurisdiction of the Associate Administrator for Airports.

b. Formal Complaint. When the FAA receives a formal complaint against a sponsor for unlawful revenue diversion, ACO-100 follows the procedures in Part 16 for adjudicating the complaint. After conducting an investigation, the Director of Airport Compliance and Field

Operations (ACO-1) will either dismiss the complaint or issue a Director's Determination, which can impose immediate sanctions or propose future enforcement action, or both.

c. Corrective Action. If, at any point, the airport sponsor takes the corrective action specified in the order, the Director will dismiss the complaint. This is consistent with the practice discussed elsewhere in this Order that the best results can be achieved by a positive, continuing educational program to assist sponsors in knowing what their obligations are and promoting their voluntary compliance with their obligations.

16.8. Investigation without a Formal Complaint.

a. General. When a formal complaint has not been filed but the FAA has an indication from one or more sources that unlawful revenue diversion has occurred, the FAA airports district office (ADO) or regional airports division will notify the sponsor and request that it respond to the allegations. If, after evaluating the sponsor's arguments and submissions, the office determines that unlawful diversion of revenue did not occur, then it will notify the sponsor and take no further action.

b. Finding. If the office makes a preliminary finding that there has been unlawful revenue diversion and the sponsor has not taken corrective action (or has not agreed to take corrective action), the office may forward the matter to ACO-100 for investigation under Part 16. If, after further investigation, ACO-100 finds there is reason to believe there is, or has been, unlawful revenue diversion and the sponsor refuses to terminate or correct the diversion, the Director will issue a Director's Determination under Part 16. However, ACO-100 will close the Part 16 proceeding if the airport sponsor agrees to return the diverted revenue amount plus interest.

c. Office of Inspector General. When the Office of the Inspector General (OIG) issues a report of an investigation with a revenue diversion finding, ACO-100 will proceed with an investigation and attempt to resolve and close the OIG audit.

16.9. Administrative Sanctions. When the Director of Airport Compliance and Field Operations (ACO-1) makes a preliminary finding of unlawful revenue diversion and issues a Director's Determination, ACO-100 first seeks voluntary compliance. Should that fail, the Director may pursue any or all of the following enforcement remedies at his/her discretion subject to any appeal and affirmation by the Associate Administrator for Airports following appeal:

a. Withholding approval of an application for future grants.[41] (See 49 U.S.C. § 47106(d).)

and/or

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[41] As stated in the policy document, *Factors Affecting Award of Airport Improvement Program (AIP) Discretionary Funding*, 64 Fed. Reg. 31031 (June 9, 1999), it is the intent of the FAA generally to withhold AIP discretionary funding to those airports requesting such funding that are being investigated by the FAA for misuse of airport generated revenue.

b. Withholding modification of existing grants. (See 49 U.S.C. § 47111(e).)

and/or

c. Withholding payments under existing grants. (See 49 U.S.C. § 47111(d).)

and/or

d. Withholding approval of a passenger facility charge. (See 49 U.S.C. § 47111(e).)

e. Withholding any amount from funds otherwise available to the sponsor, including funds for other transportation projects, such as transit or multimodal projects. (See 49 U.S.C. § 47107(n)(3).)

f. For violations of the grant assurance or 49 U.S.C. § 47133, the Associate Administrator for Airports may file suit for enforcement in the U.S. district court. (See 49 U.S.C. § 47111(f).)

g. Reverter. FAA may, at its discretion, exercise its right of reverter and enter and, on behalf of the United States, take title to all or any part of the property interests conveyed. (See 49 U.S.C. §§ 47133 and 47151, et seq.) Reverter is discussed in detail in Chapter 23 of this Order, *Reversions of Airport Property.*

16.10. Civil Penalties and Interest.

a. Civil Penalties up to Three Times the Diverted Amount. The Associate Administrator for Airports may seek a civil penalty for a violation of the AIP sponsor assurance on revenue diversion of up to three times the amount of unlawful revenue diversion. Civil penalties up to $50,000 are imposed and adjudicated under 14 CFR Part 13, subpart G. For a proposed civil penalty in excess of $50,000, the FAA must file a civil action in the U.S. district court to enforce the penalty. (See 49 U.S.C. §§ 46301, 46305).

b. Office of the Chief Counsel. The FAA Office of the Chief Counsel (AGC-600) initiates civil penalty actions. AGC-600 must be consulted when considering whether to impose a civil penalty action for airport revenue diversion.

c. Use of Authority. In general, a civil penalty sanction may be appropriate when two conditions apply:

(1). Sponsor Noncompliance. The Director of Airport Compliance and Field Operations has clearly identified a violation to the airport sponsor and has given the sponsor a reasonable period of time to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, but the sponsor has not complied.

(2). Other Remedies Fail. Other enforcement actions against the sponsor, such as withholding grants and payments, would be unlikely to achieve compliance.

d. Interest. The amount necessary for a sponsor to come into compliance includes interest calculated in accordance with 49 U.S.C. § 47107(o). The maximum civil penalty allowed under § 46301(a) of three times the amount unlawfully diverted may also include interest calculated in accordance with 49 U.S.C. § 47107(o).

16.11. Compliance with Reporting and Audit Requirements. The ADOs and regional airports divisions will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements, as described in the *Revenue Use Policy*. Failure to comply with these requirements can result in withholding future AIP grant awards and further payments under existing AIP grants.

16.12. Statute of Limitations on Enforcement. The 1996 Reauthorization Act included a statute of limitations that prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. (See 49 U.S.C. § 47107(n)(7). Accordingly, the FAA may not bring an action for recovery of unlawfully diverted funds later than six (6) years after the date on which the diversion occurred. (See 49 U.S.C. § 47107(n)(7).)

16.13. through 16.17. reserved.

Chapter 17. Self-sustainability

17.1 Introduction. This chapter provides guidance on the requirement that the airport remain as self-sustaining as possible under the circumstances. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to provide guidance to airport sponsors regarding the sponsor's requirement to be as self-sustaining as possible and to ensure that the airport maintains a rate and fee schedule that conforms to the grant assurances and is consistent with the FAA's *Policy Regarding Airport Rates and Charges*, 61 Fed. Reg. 31994, June 21, 1996, and as amended at 73 Fed. Reg. 40430, July 14, 2008) (*Rates and Charges Policy*).

17.2. Legislative History. Congress set forth the requirement for airports to be as self-sustaining as possible in two acts:

a. Section 511(a)(9) of the Airport and Airway Improvement Act of 1982 (AAIA) requires airports to be as self-sustaining as possible under the circumstances at that airport. (See 49 United States Code (U.S.C.) § 47107(a)(13) and Grant Assurance 24, *Fee and Rental Structure.*)

b. Section 112(a) of the Federal Aviation Administration Authorization Act of 1994 (1994 Authorization Act) amended 49 U.S.C. § 47107(l)[42] to require FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999, (*Revenue Use Policy*) to take into account whether sponsors – when

Airports must maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under airport-specific circumstances. Absent an agreement with aeronautical users, the federal obligation to make the airport as self-sustaining as possible does not permit the airport to establish fees for the use of the airfield that exceed the airport's airfield costs. Aeronautical users include general aviation from single-engine operators to corporate flight departments and commercial air carriers. (Photos: FAA)

[42] The referenced section is the small letter "L" (not the number "1").

entering into new or revised agreements otherwise establishing rates, charges, and fees – have undertaken reasonable efforts to be self-sustaining in accordance with 49 U.S.C. § 47107(a)(13).

17.3. Applicability. The self-sustaining requirement, Grant Assurance 24, *Fee and Rental Structure*, applies to both publicly and privately owned airports that are obligated under an Airport Improvement Program (AIP) grant.

17.4. Related FAA Policies. The FAA has included the self-sustaining rule in two policies:

a. FAA's *Policy Regarding Airport Rates and Charges*, 61 Fed. Reg. 31994, June 21, 1996 (*Rates and charges Policy*).

b. FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999 (*Revenue Use Policy*).

A sponsor may charge aviation museums and aeronautical secondary and post secondary education programs conducted by accredited education institutions operating aircraft reduced rental rates to the extent that civil aviation receives reasonable tangible or intangible benefits from such use. However, attention must be paid to whether an aviation museum or post secondary school operates actual aircraft. This is important since a "flying" museum is an aeronautical activity, while one that does not operate aircraft may not be classified as one. (Photo: FAA)

17.5. Self-sustaining Principle. Airports must maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under the particular circumstances at that airport. The requirement recognizes that individual airports will differ in their ability to be fully self-sustaining, given differences in conditions at each airport. The purpose of the self-sustaining rule is to maintain the utility of the federal investment in the airport.

17.6. Airport Circumstances. At some airports, market conditions may not permit a sponsor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services.

In such circumstances, a sponsor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the federal obligation to make the airport as self-sustaining as possible given its particular circumstances.

17.7. Long-term Approach. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the sponsor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

17.8. New Agreements. Sponsors are encouraged to undertake reasonable efforts to make their particular airports as self-sustaining as possible when entering into new or revised agreements or when otherwise establishing rates, charges, and fees.

17.9. Revenue Surpluses. Some airports may have sufficient market power to charge fees that exceed total airport costs. In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenue may be spent under 49 U.S.C. § 47107(b)(1).

Reasonable reserves and other funds to facilitate financing and to cover contingencies are not considered revenue surpluses. The sponsor must use any surplus funds accumulated in accordance with the *Revenue Use Policy*.

Additionally, the progressive accumulation of substantial amounts of surplus aeronautical revenue could warrant an FAA inquiry into whether the aeronautical fees are consistent with the sponsor's obligation to make the airport available on fair and reasonable terms.

The FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

17.10. Rates Charged for Aeronautical Use. Charges for aeronautical uses of the airport must be reasonable. For aeronautical users, the FAA considers charges that reflect the cost of the services or facilities satisfies the self-sustaining requirement. Accordingly, the FAA does not consider the self-sustaining obligation to require the sponsor to charge fair market value rates to aeronautical users.

At some airports, market conditions may not permit a sponsor to establish fees that are sufficiently high to recover aeronautical cost (such as the hangar/fixed-base operator (FBO) facility seen here) and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, a sponsor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible given its particular circumstances. (Photo: FAA)

As explained in more detail in chapter 18 of this Order, *Airport*

Rates and Charges, fees for the use of the airfield generally may not exceed the airport's capital and operating costs of providing the airfield. Aeronautical fees for landside or non-movement area airfield facilities (e.g., hangars and aviation offices) may be at a fair market rate, but are not required to be higher than a level that reflects the cost of services and facilities. In other words, those charges can be somewhere between cost and fair market value. In part, this is because hangars and aviation offices are exclusively used by the leaseholders while airfield facilities are used in common by all aeronautical users.

The FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

17.11. Nonaeronautical Rates. Rates charged for nonaeronautical use (e.g., concessions) of the airport must be based on fair market value (e.g., lease of land at fair market rent subject to the specific exceptions listed in this chapter).

If market rent for nonaeronautical uses results in a surplus, that surplus can be used to subsidize aeronautical costs of the airport. It is to the benefit of aviation and the traveling public that aeronautical users be able to use the airport at rates and charges below the cost of providing the aviation facilities and services if these are effectively subsidized by nonaeronautical revenues. See, for example, *Bombardier Aerospace, et al. v. City of Santa Monica,* FAA Docket No. 16-03-11, January 3, 2004, (available online) where the FAA noted that it promotes the practice of using nonaviation revenues to subsidize aeronautical activities since it reduces the economic impact on aviation users and the aviation public.

17.12. Fair Market Value. Fair market fees for use of the airport are required for nonaeronautical use of the airport and are optional for non-airfield aeronautical use. Fair market pricing of airport facilities can be determined by reference to negotiated fees charged for similar uses of the airport or by appraisal of comparable properties. However, in view of the various restrictions on use of property on an airport (i.e., limits on the use of airport property, height restrictions, etc.), appraisers will need to account for such restrictions when comparing on-airport with off-airport commercial nonaeronautical properties in making fair market value determinations.

17.13. Exceptions to the Self-sustaining Rule: General. While the general rule requires market rates for nonaeronautical uses of the airport, several limited exceptions to the general rule have been defined by congressional direction and agency policy based on longstanding airport practices and public benefit. These limited exceptions include (a) property for community purposes and (b) not-for-profit aviation organizations, (c) transit projects and systems, and (d) military aeronautical units, all of which are discussed in the following paragraphs.

17.14. Property for Community Purposes. A sponsor may make airport property available for community purposes at less than fair market value on a limited basis provided all of the following conditions exist: (a) the property is not needed for an aeronautical purpose, (b) the property is not producing airport revenue and there are no near-term prospects for producing revenue, (c) allowing the community purpose will not impact the aeronautical use of the airport, (d) allowing the community purpose will maintain or enhance positive community relations in

support of the airport, (e) the proposed community use of the property is consistent with the Airport Layout Plan (ALP), and (f) the proposed community use of the property is consistent with other requirements, such as certain surplus and nonsurplus property federal obligations requiring the production of revenue by all airport parcels.

17.15. Exception for Community Use. The following are the circumstances where the FAA will consider community use to be consistent with the self-sustaining requirement. Agreements for community use of airport land should incorporate the following requirements as conditions of use.

a. Acceptance. The local community must use the land in a way that enhances the community's acceptance of the airport; the use may not adversely affect the airport's capacity, security, safety, or operations. Acceptable uses include public parks and recreation facilities, including bike or jogging paths.

When the use does not directly support the airport's operations, a sponsor may not provide land at less than fair market value rent. Accordingly, the airport must generally be reimbursed at fair market rent for airport land used for road maintenance or equipment-storage yards or for use by police, fire, or other government departments.

b. Minimal Revenue Potential. At the time it contemplates allowing community use, the sponsor may only consider land that has minimal revenue-producing potential. The sponsor may not reasonably expect that an aeronautical tenant will need the land or that the airport will need the land for airport operations for the foreseeable future (i.e., master plan cycle). When a sponsor finds that the land may earn more than minimal revenue, but still below fair market value, the sponsor may still permit community use of the land at less than fair market value rent provided the rental rate approximates the revenue that the airport could otherwise earn.

The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, U.S. Coast Guard, the U.S. Air Force Reserve, Civil Air Patrol, and Naval Reserve air units operating aircraft at the airport. (Photo: Top, FEMA; Bottom, USAF)

c. Reclaiming Land. The community use does not preclude reuse of the property for airport purposes. If the sponsor determines that the land has greater value than the community's continued use, the sponsor may reclaim the land for the higher value use.

d. No Airport Revenue. The sponsor generally may not use airport revenue to support the capital or operating costs associated with the community use.

NOTE: As explained in chapter 22 of this Order, *Releases from Federal Obligations*, airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (49 United States Code (U.S.C.) § 303).[43] [44]

17.16. Exception for Not-for-Profit Aviation Organizations.

a. Reduced Rent. A sponsor may charge reduced rental rates to aviation museums and aeronautical secondary and post secondary education programs conducted by accredited education institutions to the extent that civil aviation receives reasonable tangible or intangible benefits from such use. A sponsor may also charge reduced rental rates to Civil Air Patrol units operating aircraft at the airport.

b. In-kind Services. The FAA expects sponsors to charge police or fire fighting units that operate aircraft at the airport reasonable fees for their aeronautical use. However, the airport may offset the value of any services that the units provide to the airport against the applicable airport fees.

17.17. Exception for Transit Projects. When the airport sponsor owns a transit system and its use is for the transportation of airport passengers, property, employees, and visitors, the sponsor may make its property available at less than fair market value rent for public transit terminals, right-of-way, and related facilities without violating the *Revenue Use Policy* or self-sustaining requirements. In such circumstances, the FAA would consider a lease of nominal value to be consistent with the self-sustaining requirement.

17.18. Exception for Private Transit Systems. Airports generally charge private ground transportation providers fair market value rental rates. However, a sponsor may, without violating the *Revenue Use Policy* or self-sustaining requirements, charge private operators less than fair market value rent when the service is extremely limited and where the private transit service – such as bus, rail, or ferry – provides the primary source of public transportation to the airport.

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[43] Department of Transportation (DOT) Section 4(f) property refers to publicly owned land of a public park, recreation area, wildlife or waterfowl refuge, or historic site of national, state, or local significance. It also applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites or that are publicly owned and function as – or are designated in a management plan as – a significant park, recreation area, or wildlife and waterfowl refuge. (See 49 U.S.C. § 303.)

[44] See 23 CFR § 774.11(g) and FHWA and FTA Final Rule; Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, 73 F.R. 13368-01, March 12, 2008 (Interpreting DOT Section 4(f) not to apply to temporary use of airport property.)

17.19. Exception for Military Aeronautical Units. The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, the U.S. Air Force Reserve, U.S. Coast Guard, Civil Air Patrol (CAP) and Naval Reserve air units operating aircraft at the airport. The search and rescue (SAR) and disaster relief roles played by Coast Guard, the U.S. Air Force Auxiliary, and the Civil Air Patrol are also recognized as a prime aeronautical role. These units generally provide services that directly benefit airport operators and safety.

This exception does not apply to military units with no aeronautical mission on the airport.

17.20. through 17.24. reserved.

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Chapter 18. Airport Rates and Charges

18.1. Responsibilities.

The FAA headquarters Airport Compliance Division (ACO-100) will adjudicate rates and charges disputes filed in accordance with 49 Code of Federal Regulations (CFR) Part 16. The Office of the Secretary of Transportation (OST) adjudicates rates and charges disputes filed in accordance with the special procedures for air carrier rate complaints, 49 United States Code (U.S.C.) § 47129 and 49 CFR Part 302. Neither the Secretary nor the FAA set the fees.

The airports district offices (ADOs) and regional airports divisions will advise the aviation community with regard to the *Policy Regarding Airport Rates and Charges* (*Rates and Charges Policy*), meet with parties to resolve disagreements informally, answer correspondence and inquiries, and resolve disputes that are filed (or fall) under 14 CFR Part 13.1. In general, the FAA encourages sponsors and users to negotiate rates and charges agreements and to resolve disputes through alternative dispute resolution processes.

18.2. Policy Regarding Airport Rates and Charges.

a. The *Rates and Charges Policy* provides comprehensive guidance on the legal requirement that airport fees be fair, reasonable, and not unjustly discriminatory. The reasonableness requirement is set forth in three different statutory provisions: (1) the Anti-Head Tax Act (49 U.S.C. § 40116(e)(2)), (2) the Airport and Airway Improvement Act of 1982 (AAIA), as amended (49 U.S.C. 47107(a)(1)(2)(13), and (3) 49 U.S.C. 47129, "Resolution of Airport-Air Carrier Disputes Concerning Airport Fees" (rules at 14 CFR Part 302, Subpart F).

b. The *Rates and Charges Policy* is intended to provide guidance to airport proprietors and aeronautical users, encourage direct negotiation between parties, minimize need for direct federal intervention, and establish standards that FAA will apply in addressing airport fee disputes and compliance issues.

c. 1994 Authorization Act. Section 113 of the FAA Authorization Act of 1994 (1994 Authorization Act) (49 U.S.C. 47129(b)) required the Department of Transportation to issue a policy statement establishing standards or guidelines for determining whether an airport fee is reasonable. (Title 49 U.S.C. § 47129.)

d. Final Policy. OST and FAA published the *Rates and Charges Policy* in the *Federal Register* on June 21 1996 (61 Fed. Reg. 31994).

e. U.S. Court of Appeals Decision. On August 1, 1997, the U.S. Court of Appeals for the District of Columbia Circuit vacated the *Rates and Charges Policy* on the grounds that the Department of Transportation (DOT) established separate policies for airfield and nonairfield aeronautical uses without sufficient justification. In a subsequent order issued on October 15, 1997, the Court clarified that only the following paragraphs of the policy were vacated: 2.4, 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), and 2.6. On

August 7, 2009, in Alaska Airlines Inc. v. DOT, 575 F.3d 750, (D.C. Cir 2009), the Court remanded another matter to DOT to justify or abandon the portion of the policy statement that permits an airport to consider opportunity cost as a measure of fair market value when setting terminal but not airfield costs.

f. 2008 Amendments. On July 8, 2008, OST and FAA issued an amendment to the *Rates and Charges Policy* clarifying that certain practices were permitted and establishing exceptions to the general policy to facilitate use of alternative airfield pricing at highly congested airports. (73 Fed. Reg. 40430; July 14, 2008.) Specifically, the amendment (1) clarifies the 1996 *Rates and Charges Policy* by explicitly acknowledging that airport operators are authorized to establish a two-part landing fee structure consisting of both an operation charge and a weight-based charge in lieu of the standard weight-based charge; (2) expands the ability of the operator of a congested airport to include in the airfield fees of a congested airport a portion of the airfield costs of other, underutilized airports owned and operated by the same proprietor; and (3) permits the operator of a congested airport to charge users of a congested airport a portion of the cost of airfield projects under construction.

g. Availability. The *Rates and Charges Policy*, updated to reflect the 1997 Court of Appeals decision and the 2008 amendments, is available online.

h. Use of the *Rates and Charges Policy*. This chapter summarizes the provisions of the *Rates and Charges Policy* for convenience. The *Rates and Charges Policy* is the official FAA policy on airport rates and charges, and the *Policy* itself should be consulted in any case where an agency opinion or determination on an airport fee is required.

18.3. Aeronautical Use and Users.

a. Aeronautical Use. The FAA defines "aeronautical use" as all activities that involve or are directly related to the operation of aircraft, including activities that make the operation of aircraft possible and safe. Services located on the airport that are directly and substantially related to the movement of passengers, baggage, mail, and cargo are considered aeronautical uses. While many of the provisions of the *Rates and Charges Policy* are oriented toward air carrier fees, the principles of the *Policy* apply to all aeronautical uses of the airport.

b. Aeronautical Users. Individuals or businesses providing services involving operation of aircraft or flight support directly related to aircraft operation are considered to be aeronautical users.

c. Nonaeronautical Use of the Airport. All other uses of the airport are considered nonaeronautical. Aviation-related uses that do not need to be located on an airport, such as flight kitchens and airline reservation centers, are considered nonaeronautical uses. Nonaeronautical uses include public parking, rental cars, ground transportation, as well as terminal concessions such as food and beverage and news and gift shops. Federal law and policy on reasonableness of fees and other terms of airport access do not apply to nonaeronautical uses.

18.4. Definitions.

a. Airfield. For purposes of the *Rates and Charges Policy*, the airfield includes runways and taxiways, public aircraft parking ramps and aprons, and associated aeronautical land, such as land used for navigational aids.

b. Congested airport. Two appeals of the 2008 amendments to the *Rates and Charges Policy* apply only to congested airports. The amendments define an airport as currently congested if it has more than one percent (1%) of national system delays, or if it is determined to be congested in the FAA's Airport Capacity Benchmark Report for 2004 or a later version of that report. An airport is considered a "future congested airport" if it meets the defined threshold in the FAA Future Airport Capacity Task 2 (FACT 2) report, or a later FACT report when issued.

18.5. Principles.

a. Fair and Reasonable. Federal law, as implemented by the *Rates and Charges Policy*, requires that the rates, rentals, landing fees, and other charges that airports impose on aeronautical users for aeronautical use be fair and reasonable.

b. Not Discriminatory. Aeronautical fees may not unjustly discriminate against aeronautical users.

c. Self-sustaining. Sponsors must maintain a fee and rental structure that – in the circumstances of the airport – makes the airport as financially self-sustaining as possible. (See chapter 17 of this Order, *Self-sustainability*, for guidance on the self-sustaining requirement.)

d. Allowable Use. A sponsor may only use its airport revenue for airport capital and operating costs and certain other facilities directly and substantially related to air transportation, as permitted by 49 U.S.C. §§ 47107(b) and 47133. (See chapter 15 of this Order, *Permitted and Prohibited Uses of Airport Revenue*, for guidance on revenue use requirements.)

e. International Operations. Fees imposed on international operations must comply with the international obligations of the United States Government under international agreements.

18.6. Local Negotiation and Resolution.

a. General. Although federal law provides the DOT with authority to intervene in disputes over an airport fee or charge, the DOT primarily relies on the sponsor and its aeronautical users to reach consensus on airport rates and charges. The sponsor may impose a fee unilaterally, after consultation with users, if the fee is fully consistent with the *Rates and Charges Policy*. The sponsor may adopt a fee that varies from the *Rates and Charges Policy* only if users agree.

b. Consultation. As provided for in the *Rates and Charges Policy*, DOT encourages adequate and timely consultation with users prior to implementing rate changes. To permit aeronautical users time to evaluate proposed rate changes, consultation should be well in advance, if practical, of introducing significant changes in charging systems, procedures or level of charges. Adequate

information should be provided so users can evaluate the airport's justification for the change and to assess its reasonableness. Due regard should be given to the views of both the aeronautical users and the airport and its financial needs. The *Rates and Charges Policy* notes that the parties should make a good-faith effort to reach agreement, and encourages airports and aeronautical users to include alternative dispute resolution procedures in their lease and use agreements to facilitate resolution and reduce the need for direct federal intervention to resolve differences over aeronautical fees.

c. Unilateral Action. In the absence of an agreement, sponsors may act in accordance with their proposed rate changes without prior review or approval by FAA. An air carrier may bring a complaint about the fee to OST under 49 U.S.C. § 47129. Any aeronautical user (including an air carrier) may file a complaint about a fee with FAA under Part 16.

d. Alternative Dispute Resolution. Sponsors and aeronautical users may include alternative dispute resolution procedures in their agreements.

18.7. Formal Complaints.

Formal complaints challenging the reasonableness of an airport fee may be challenged by an air carrier in a proceeding before the DOT under 49 U.S.C. § 47129, or in an FAA investigation under 14 CFR Part 16.

a. Complaints Filed with the OST. An air carrier may file a formal complaint with OST under 49 U.S.C. § 47129, within 60 days after the carrier receives written notice of a new or increased airport fee. An airport owner or operator may file a written request for a determination as to whether a fee imposed upon one or more air carriers is reasonable. OST procedures for the adjudication of the complaints are found in 49 CFR Part 302. While the OST is considering a dispute under 49 U.S.C. § 47129, the complainant must pay the contested amount under protest. In the event the DOT finds against the sponsor, the sponsor will ensure the prompt repayment of the disputed fee to the air carrier unless otherwise agreed. Pending issuance of the DOT final determination, the sponsor may not deny an air carrier currently providing air service reasonable access to the airport. Where the parties are unable to resolve their disputes, OST will issue determinations in accordance with 49 U.S.C. § 47129.

b. Complaints filed with the FAA. Any person subject to an airport fee can file a formal complaint concerning the fee with the FAA under 14 CFR Part 16. Part 16 formal complaints are filed with the Office of Compliance and Field Operations (ACO) through the Office of Chief Counsel, and investigated by the Airports Compliance Division (ACO-100). The Director, Office of Compliance and Field Operations (ACO-1), will issue an initial determination on the reasonableness of the fee. The initial determination is appealable to the Associate Administrator for Airports. (See chapter 5 of this Order, *Complaint Resolution*, for additional information on Part 16 procedures.)

Served JUN 30 1995

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 30th day of June, 1995

LOS ANGELES INTERNATIONAL AIRPORT RATES PROCEEDING	Docket 50176

FINAL DECISION

Where the parties are unable to resolve rate disputes, the DOT will issue determinations in accordance with 49 U.S.C. § 47129. Pursuant to this provision, the DOT may determine only whether a fee is reasonable or unreasonable; it may not set fee levels. This is a case involving the Los Angeles International Airport in 1995.

c. Agency Determination. Pursuant to 49 U.S.C. § 47129(a)(3), regardless of whether a complaint is filed under § 47129/Part 302 or Part 16, OST and FAA may only determine whether a fee is reasonable or unreasonable, and may not set the level of the fee.

18.8. Fair and Reasonable.

a. General. Rates, fees, rentals, landing fees, and other service charges imposed on aeronautical users for the aeronautical use of the airport must be fair and reasonable.

b. Method. Sponsors may set fees by ordinance, statute, resolution, regulation, or agreement.

c. Type. Federal law does not require a single rate-setting approach. Accordingly, sponsors may use a residual, compensatory, hybrid, or any other rate-setting methodology so long as the methodology is consistent for similarly situated aeronautical users and conforms to the *Rates and Charges Policy*.

d. Residual. Agreements that permit aeronautical users to receive a cross-credit of nonaeronautical revenues are generally referred to as residual agreements. In a residual agreement, the airport applies excess nonaeronautical revenue to the airfield costs to reduce air

carrier fees; in exchange, the air carriers agree to cover the any shortfalls if the nonaeronautical revenue is insufficient to cover airport costs. In a residual agreement, aeronautical users may assume part or all of the liability for nonaeronautical costs.

A sponsor may cross-credit nonaeronautical revenues to aeronautical users even in the absence of an agreement. However, except by agreement, a sponsor may not require aeronautical users to cover losses generated by nonaeronautical facilities.

A residual rate structure may be accomplished only with agreement of the users.

e. Compensatory. A compensatory agreement is one in which a sponsor assumes all liability for airport costs and retains all airport revenue for its own use in accordance with federal requirements. Aeronautical users are charged only for the costs of the aeronautical facilities they use.

A compensatory rate structure may be imposed on users by ordinance.

f. Hybrid. Sponsors frequently adopt rate-setting systems that employ elements of both residual and compensatory approaches. Such agreements may charge aeronautical users for the use of aeronautical facilities with aeronautical users assuming additional responsibility for airport costs in return for a sharing of nonaeronautical revenues that offset aeronautical costs.

g. Two-part landing fees. An airport proprietor may impose a two-part landing fee consisting of a combination of a per-operation charge and a weight-based charge provided that (1) the two-part fee reasonably allocates costs to users on a rational and economically justified basis; and (2) the total revenues from the two-part landing fee do not exceed the allowable costs of the airfield.

h. Airfield Revenue. Unless users agree otherwise, airfield fees generally may not exceed the airfield capital and operating costs of existing airfield facilities and services. Limited exceptions apply at a congested airport, where fees may include the airfield costs of another airport in the system or the costs of airfield facilities under construction. In each case, total system charges are limited to system costs, even though current fees may exceed airfield costs at the congested airport itself.

i. Rate Base. The sponsor allocates capital and operating costs to airport cost centers and formulates rates to recover costs. The base rate is the list of costs allocated to a cost center, which are recovered from aeronautical users in aeronautical rates.

18.9. Permitted Airfield Costs. Costs properly included in the rate base for an airfield cost center are generally limited to the following:

a. Operating Costs. All operating and maintenance expenses directly and indirectly associated with providing airfield aeronautical facilities and services are operating costs. This includes direct personnel, maintenance, equipment, and utility costs, as well as indirect allocated costs such as police, fire/crash rescue, administrative and managerial overhead, roads and grounds, and utility infrastructure.

b. Capital Costs. Capital costs consist of costs to service debt and debt coverage for the airfield direct and indirect capital costs, including reserve and contingency funds.

18.10. Environmental Costs. Sponsors may include reasonable environmental costs in the rate base to the extent that the airport incurs a corresponding actual expense. The resulting revenues are subject to the requirements on the use of airport revenue.

18.11. Noise. Reasonable environmental costs include sponsor costs for aircraft noise abatement and mitigation measures, both on and off the airport. This includes land acquisition and acoustical insulation expenses to the extent that such measures are undertaken as part of a comprehensive aircraft noise compatibility program.

18.12. Insurance. Reasonable costs of insuring against liability, including environmental contamination. Under this provision, the airport may include the cost of self-insurance in the rate base to the extent that such costs are incurred pursuant to a self-insurance program that conforms to applicable standards for self-insurance practices.

18.13. Causation. Unless otherwise agreed to by aeronautical users, the sponsor must allocate direct and allocated indirect capital and operating costs among cost centers in accordance with the principle of causation.

Sponsors may include direct and indirect capital and operating costs of airfield facilities used by the aeronautical users in the rate base in a manner consistent with the *Rates and Charges Policy*.

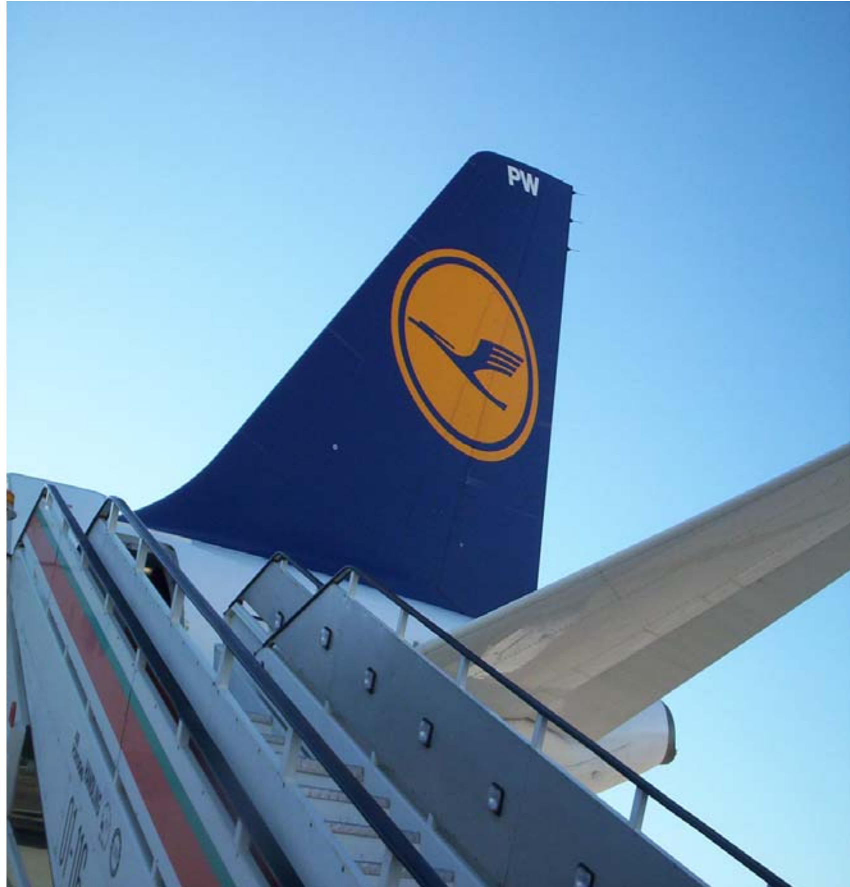
18.14. Facilities under Construction. Once the sponsor puts the facility into service, it may capitalize the sponsor costs incurred during construction and amortize the resulting debt service and carrying costs. The general rule is that a sponsor may not begin to charge for the costs of facilities until they are in use, unless users agree. However, the 2008 amendments to the *Rates and Charges Policy* established a limited exception for airports that experience a defined level of congestion: at a congested airport, the sponsor may include costs of airfield facilities under construction in current fees if the charges would work to relieve or avoid current congestion. The charges are limited to recovery of construction costs with future charges reduced to reflect the costs paid for in advance.

18.15. Costs of another Airport. The costs of one airport may be combined with the costs of another airport, provided the following apply:

a. Both airports have the same sponsor.

b. Both airports are currently in use.

c. The combination of costs is expected to provide aeronautical users with aviation benefits. This third element is presumed satisfied if the other airport is a reliever airport. The test is also presumed satisfied if the first airport meets the test in the *Rates and Charges Policy* as a "congested airport," the second airport has been designated by the FAA as a secondary airport serving the same region, and the higher fees would help relieve or avoid congestion at the first airport. Fees at the second airport must be reduced so that total system fees do not exceed the sponsor's system airfield costs.



The Chicago Convention on International Civil Aviation and other bilateral aviation agreements prohibit unjust discrimination against foreign carriers. When U.S. domestic carriers are engaged in similar international service, these same agreements prohibit airports from imposing fees on foreign carriers that are higher than fees imposed on domestic carriers. When charges to foreign air carriers for aeronautical use are inconsistent with these principles, the DOT will consider such charges unjustly discriminatory or unfair and unreasonable. (Photo: FAA)

18.16. Airport System. For airport system methodologies that were in place as of the effective date of the *Rates and Charges Policy* (June 21, 1996), the DOT will consider a sponsor's claim that those methodologies are reasonable.

18.17. Closed Airport. If a sponsor closes an operating airport as part of an approved plan for the construction and opening of a new airport, the DOT permits reasonable costs for disposition of the closed airport to be included in the rate base of the new airport.

18.18. Maintenance of Closed Airport. Pending reasonable disposition of the closed airport, the sponsor may charge aeronautical users at the new airport for reasonable maintenance costs of the old airport. In some cases, the closing of an airport can have revenue diversion implications. Specifically, the FAA may examine information related to costs expended for the closure and site remediation of an airport that has been closed when no replacement airport has been opened

to replace it. The prime concern for the FAA is to determine whether a sponsor has unlawfully diverted airport revenue for nonairport purposes, such as improving the property for the benefit of a future, nonairport use.

18.19. Project Costs. The sponsor may not include in its rate-base costs paid from government grants or passenger facility charges (PFCs).

18.20. Passenger Facility Charge (PFC) Projects. Where the sponsor funds the development of terminal facilities with passenger facility charges (PFCs), the facilities rental may not be lower than rental fees charged for similar terminal facilities not funded with PFCs. (*Rates and Charges Policy*, section 2.7.2(a).)

18.21. Prohibition on Unjust Discrimination.

a. Prohibition. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

b. Consistent Methodology. The sponsor must apply a consistent methodology in establishing fees for comparable aeronautical users of the airport. When the sponsor uses a cost-based methodology, aeronautical fees imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group. A cost allocation methodology consistent with the *Rates and Charges Policy* must be adopted by the sponsor unless aeronautical users agree otherwise.

c. Reasonable Distinctions. The prohibition on unjust discrimination does not prevent a sponsor from making reasonable distinctions among aeronautical users (such as signatory and nonsignatory air carriers) and assessing higher fees on certain categories of aeronautical users based on those distinctions (such as higher fees for nonsignatory versus signatory air carriers).

d. Foreign Air Carriers. The Chicago Convention on International Civil Aviation and other bilateral aviation agreements prohibit unjust discrimination against foreign air carriers. When domestic air carriers are engaged in similar international service, these same agreements prohibit airports from imposing fees on foreign air carriers that are higher than fees imposed on domestic air carriers. When charges to foreign air carriers for aeronautical use are inconsistent with these principles, the DOT will consider such charges unjustly discriminatory or unfair and unreasonable.

e. Allocation. Sponsors must allocate rate-base costs to their aeronautical users by a transparent, reasonable, and not unjustly discriminatory rate-setting methodology. Sponsors must apply the methodology consistently and, when practical, they must quantitatively determine cost differences.

18.22. Self-sustaining Rate Structure.

a. Requirement. Sponsors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. (The policy on the self-sustaining requirement is discussed in chapter 17 of this Order, *Self-sustainability*.)

b. Revenue Surpluses. In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts required for airport system purposes and for other purposes for which airport revenue may be spent under 49 U.S.C. §§ 47107(b)(1) and 47133. Reasonable reserves and other funds to facilitate financing and to cover contingencies are not surplus. While fees charged to nonaeronautical users may exceed the costs of service to those users, the sponsor must use the surplus in accordance with the revenue use requirements of 49 U.S.C. §§ 47107(b) and 47133. For example, a nonaeronautical surplus may be used to offset aeronautical costs and result in lower fees for aeronautical users or may be used for nonaeronautical airport development purposes.

c. Market Discipline. Over time, the DOT assumes that the limitations on airport revenue use, combined with effective market discipline for nonaeronautical services and facilities, will be effective in holding aeronautical costs to airport revenues while providing reasonable aeronautical fees for services and facilities.

d. Surplus. The progressive accumulation of substantial amounts of surplus airport revenue may warrant an FAA inquiry into whether aeronautical fees are consistent with the sponsor's federal obligations to make the airport available on fair and reasonable terms.

18.23. through 18.28. reserved.

Chapter 19. Airport Financial Reports

19.1. Introduction. This chapter discusses the requirement for sponsors of commercial service airports to file annual financial reports with the FAA headquarters Airport Compliance Division (ACO-100). It also discusses follow-up on audits conducted under the Office of Management and Budget (OMB) Circular A-133, also known as Single Audits.

19.2. Legislative History. Congress, in the FAA Authorization Act of 1994 (1994 Authorization Act) (Public Law (P.L.) No. 103-305), established the requirement for sponsors obligated by Airport Improvement Program (AIP) federal grant assurances to submit to the Secretary and to make available to the public certain airport financial information. The 1994 Authorization Act also requires the Secretary to provide annual summaries of the financial reports to Congressional committees. Congress enacted additional provisions for monitoring and enforcing revenue use in the FAA Reauthorization Act of 1996 (1996 Reauthorization Act).

a. Annual Reports on Payments of Airport Funds and Services. Section 111(a) of the 1994 Authorization Act, codified as § 47107(a)(19), requires airport owners or operators to submit to the Secretary and make available to the public (1) all amounts the airport paid to other government units, as well as the purposes for which each payment was made, and (2) all services and property the airport provided to other government units along with the compensation received for each service or property provided.

b. Annual Financial Reports. Section 111(b) of the 1994 Authorization Act requires a report in a uniform simplified format for each fiscal year of each commercial service airport's sources and uses of funds, net surplus/loss and other information that the Secretary may require. Section 111(b) was not codified in Title 49 of the United States Code (U.S.C.)

c. Single Audit Requirements. Section 805 of the 1996 Reauthorization Act added § 47107(m), *Audit Certification*, relating to the annual audits required of local governments receiving federal assistance. Section 47107(m) requires that these annual audits (called Single Audits because one audit is conducted to cover financial assistance received from all federal programs) include a review and opinion on whether the use of airport funds is consistent with § 47107.

The Single Auditor complies with the review and opinion requirement by following the instructions in the Compliance Supplement to OMB Circular A-133. The Compliance Supplement provides special instructions for each federal program. The special instructions for the Airport Development Program ensure the Single Auditor reviews airport revenues.

The Single Auditors do not provide separate opinions on each federal program. Rather, the Single Audit combines all federal programs into a single report. Accordingly, the FAA does not require Single Auditors to file a separate report on the use of airport revenue.

19.3. Grant Assurance 26, *Reports and Inspections*. Grant Assurance 26, *Reports and Inspections,* implements the financial reporting provisions of the 1994 Authorization Act. Paragraph 26(a) of Grant Assurance 26 requires a sponsor to make available an annual budget report in a form prescribed by the Secretary (in addition to any special financial or operations

reports requested by the Secretary, as required by the 1994 Authorization Act). Form 5100-127 is used to meet this requirement. Paragraph 26(d) of Grant Assurance 26 requires the sponsor to submit an annual report listing in detail (i) all amounts paid by the airport to any other unit of government along with the purposes for which each such payment was made; and (ii) all services and property provided by the airport to other units of government along with the amount of compensation received for providing each such service and property. This report is made using Form 5100-126. Additional guidance can be found in Advisory Circular 150/5100-19C *Guide for Airport Financial Reports Filed by Airport Sponsors*, available online.

Grant Assurance 26, Reports and Inspections, implements provisions of the 1994 Authorization Act requiring sponsors to file financial reports with the FAA.

19.4. Applicability. All commercial service airports that have received an AIP grant since January 1, 1995, are required to comply with statutory financial reporting requirements. Commercial airports are those airports that enplaned 2,500 passengers in the previous calendar year and are receiving scheduled passenger service. (See 49 U.S.C. § 47102.)

19.5. Annual Financial Reports.

a. Form 5100-126, Financial Governmental Payment Report. The FAA requires sponsors to file Form 5100-126 as the annual report on revenue paid to other units of government and on compensation the airport received for services and property provided to other units of government, including in-kind services.

b. Form 5100-127, Operating and Financial Summary. The FAA requires sponsors to file Form 5100-127 as the annual report of their revenues, expenses, and other financial information.

c. Filing Date. The FAA requires all commercial airports to file Forms 5100-126 and 5100-127 within 120 days after the end of their fiscal year. Airport operators may upload the information on these forms directly into the report database using the Compliance Activity Tracking System (CATS). The FAA may grant an extension of 60 days after the filing date if audited financial information is not yet available by the filing due date.

Airports requesting an extension are encouraged to make this request on-line from the CATS website, but can request an extension in writing to the FAA headquarters Airport Compliance Division (ACO-100). No extensions can be granted past June 30 of the calendar year following the sponsor's fiscal year end. If an airport has not received its A-133 audit, it must complete the forms on-line and notate they are "unaudited." Later, if the audited financial statements report significant changes, the sponsor should amend the inputs on-line or notify ACO-100.

All commercial service airports that have received an AIP grant since January 1, 1995, are required to comply with the financial reporting requirement.

d. Responsibility. FAA airports district offices (ADOs) and regional airports divisions are responsible for monitoring sponsor compliance with the financial reporting requirements. ADOs and regional airports divisions are also responsible for reviewing Single Audit reports for revenue diversion findings. ADOs and regional airports divisions may monitor compliance by downloading their region's report status. This is done by logging on to the CATS website and selecting "Reports." This will provide the overdue report list for that region. Failure to file financial reports is a violation of the grant assurances, and may be enforced using the procedures described in chapter 5 of this Order, *Complaint Resolution*.

ACO-100 is responsible for implementing and managing the airport owner/sponsor financial reporting program.

e. Instructions. Advisory Circular (AC) 150/5100-19C, *Guide for Airport Financial Reports Files by Airport Sponsors,* available online, provides line-by-line instructions for completing the financial forms. Airport operators or owners are not required to submit a paper copy if the forms are filed electronically.

f. Electronic Reports Available for Public Inspection. Electronic versions of airport financial forms filed with the FAA are available to the public online. The online database includes only those commercial service airports required to file the financial forms.

FAA makes no representation as to the validity and accuracy of the airport financial data presented. The information presented is based on financial data submitted by each airport, but may not be to the level of detail desired by individuals relying on this information for other purposes. Additional financial information should be requested directly from the airport.

19.6. Procedures for Evaluating the Airport Owners/Sponsors Financial Reporting Program. ACO-100 will review airport owner/sponsor financial reports via the CATS database and identify anomalies that contain potential indicators of revenue diversion.

This analysis is performed on the most recent past three years of information for comparison purposes. Inquiries will be made to the airports to provide explanations for specific anomalies. The staff will provide an informal report to the Division Manager of ACO-100 by end of the fiscal year.

19.7. Single Audit Reports. Local governments that spend $500,000 in federal awards in a fiscal year must obtain a Single Audit that conforms to OMB Circular A-133, *Audits of States, Local Governments, and Nonprofit Organizations*. When the Single Auditor selects the Airport Improvement Program as a major program, it will conduct a review of airport revenues. That

audit will confirm the airport uses its revenues in accordance with the FAA *Policy and Procedures Concerning the Use of Airport Revenue* (*Revenue Use Policy*).
When a Single Audit Report contains findings that pertain to the Airport Improvement Program, the Federal Audit Clearinghouse will forward the report to the DOT Office of Inspector General (OIG). The OIG will then forward the report to the appropriate FAA regional airports division. It is the responsibility of the FAA regional airports division to resolve audit findings. When the findings include resolution of unlawfully diverted airport revenue, the regional airports division should coordinate its resolution efforts with ACO-100.

ACO-100 has the responsibility of working with the regional airports division to resolve these audit findings. ACO-100 is also responsible for providing the deputy Associate Administrator for Airports (ARP-2) with periodic status reports on these findings. Regional airports divisions' responsibilities for the Single Audit are further discussed in the Airport Improvement Program Handbook, Order 5100.38, available online.

The FAA has a statutory requirement to resolve revenue diversion findings within 180 days after receiving the audit report (49 U.S.C. § 47107(n)).

19.8 through 19.11. reserved.

How do I view a financial report?

Airport Financial Reports are publicly available. For viewing there is no need to register or to log on. To view a report:

- Refer to the above, "How do I access the Web site."
- Select "View an Airport Financial Report."
- At the reports page, select an airport. We recommend you first enter the state in which the airport is located. Doing so will narrow the list of airports to those located in the state selected.

How do I register?

Only those wishing to file or amend airport financial reports or FAA personnel wishing to use program queries must register. To do so:

- At the Web site home page, select either "File or amend an Airport Financial Report" or "FAA Airports Division user." At the log in page select "Register".
- Provide the required information and select a user name and password.
- You will receive an e-mail validation of your password. When received, you may log on.

How do I file an airport financial report?

Those wishing to file or amend airport financial reports must register and then log on to the Web site

- Select, "File or Amend Airport Financial Reports."
- Complete the online registration form as explained at, "How do I register."
- Log on to the site by entering your user name and password.
- Select your airport.
- Choose the data entry forms provided.

Does the Web site have a help desk?

You may reach the Airport Financial Reporting Program help desk at (202) 267-3446. Call this number for questions that pertain to filing requirements, filing procedures, and Web site problems.

Web Site for the Airport Financial Reporting Program

Federal Aviation Administration
Airports Compliance Division, AAS-400
800 Independence Avenue, SW
Washington, DC 20591

Telephone (202) 267-3446
Fax (202) 267-5383
Web www.faa.gov/arp/

Background

What is the Airport Financial Reporting Program?

The Airport Financial Reporting Program is an outgrowth of the Federal Aviation Administration Authorization Act of 1994, which requires commercial service airports to annually file financial reports with the FAA.

Which airports must file?

Any airport that meets the following criteria must file:

- The airport is obligated. An airport is obligated if its sponsor agreed to the Airport Improvement Program grant assurances on or after January 1, 1995.
- The airport provides commercial service. Commercial service airports are those airports that enplane 2,500 or more passengers in a calendar year.
- The airport provided commercial service in the preceding calendar year. For example, if the airport had at least 2,500 enplanements in calendar year 2002, it must file reports for its 2003 fiscal year.

Which reports must be filed?

Each commercial service airport must file:

- The Financial Government Payment Report, FAA Form 5100-126. This form is for the payments the airport makes to governmental entities, the services the airport performs for governmental entities, and the land and facilities that the airport provides to such entities.
- The Operating and Financial Summary, FAA Form 5100-127. This form is for the airports revenues, expenses, and other financial information.

Web Site

What is the purpose of the program Web site?

- The Airport Financial Reporting Program Web site electronically gathers and disseminates Congressionally mandated airport financial information.
- The Web site eliminated the need for airports to file hard copy reports.

What information does the Web site make available?

The Web site makes available the airport financial reports of the approximately 550 commercial service airports that have filed reports since 1996.

Who has access to the Web site?

- The public for the purpose of viewing airport financial reports.
- Airport personnel for filing and amending annual financial reports.
- The Federal Aviation Administration for administering the Program.

How do I access the Web site?

To access the Web site go to:

- The Airport Financial Reporting Program Web Site **at cats.faa.gov** or go to
- Crown Consulting. It hosts the site at http://cats.crownci.com.

How do FAA personnel access the program queries?

FAA personnel must:

- Complete the online registration process, as explained at, "How do I register."
- Once registered, log on to the Web site by entering user name and password.

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Chapter 20. Compatible Land Use and Airspace Protection

20.1. Background. Land use planning is an important tool in ensuring that land adjacent to, or in the immediate vicinity of, the airport is consistent with activities and purposes compatible with normal airport operations, including aircraft landing and takeoff. Ensuring compatible land use near federally obligated airports is an important responsibility and an issue of federal interest. In effect since 1964, Grant Assurance 21, *Compatible Land Use*, implementing Title 49 United States Code (U.S.C.) § 47107 (a) (10), requires, in part, that the sponsor:

> *"…take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which federal funds have been expended."*

Incompatible land use at or near airports may result in the creation of hazards to air navigation and reductions in airport utility resulting from obstructions to flight paths or noise-related incompatible land use resulting from residential construction too close to the airport.

Airports present a variety of unique challenges to those involved in community planning. Height restrictions are necessary in the vicinity of airports and airways for the protection of aircraft in flight. Residential housing and other land uses near airports must remain compatible with airports and the airport approach/departure corridors. Additional concerns include the airport's proximity to landfills and wetlands that may result in hazards to air navigation created by flocks of birds attracted to the landfills or wetlands. Unusual lighting in the approach area to an airport can create a visual hazard for pilots. Also, land uses that obscure visibility by creating smoke or steam may be hazardous to flight. Each of these concerns must be addressed in community planning in order to maintain the safety of flight as well as the quality of life expected by community residents.

As communities continue to grow, areas that once were rural in nature can quickly become urbanized. A result of "urban sprawl" is the loss of open space and the resulting loss of airports and/or their utility. Many communities have relied upon their airports as an economic engine. Proximity of industrial parks and recreational areas has proven not only to be compatible, but to be mutually beneficial as well. Some communities have used the resources of an airport to contribute to the quality of life for the local community.

Incompatible land use is one of the most serious problems affecting aviation today. (Above is an aerial view of residential development near the Lancaster Airport in Pennsylvania.) Zoning ordinances should be reviewed to determine what uses are currently permitted around the airport and to find out if there have been any recent changes in zoning. It is important that local land use planners become involved in the airport's master planning process by providing input on the potential impacts that future airport development plans may have on their communities. Coordination between the airport and the zoning entities is extremely important to achieve a successful cohabitation between airport and community. (Photo: FAA)

In addition to the basic economic value of the airport, the preservation of open space and the ability to accommodate emergency medical airlifts are specific examples of this contribution to the community. Increases in air travel are placing an increasing demand on the nation's airports. Environmental concerns and cost may prohibit the establishment of new airports. This means that to accommodate air traffic demand, maximum utility must be achieved from existing airports. For this to happen, the land use in the vicinity of airports must be reserved for compatible uses.

Grant Assurance 21, *Compatible Land Use,* relates to the obligation of the airport sponsor to take appropriate actions to zone and control existing and planned land uses to make them compatible with aircraft operations at the airport. The FAA recognizes that not all airport sponsors have direct jurisdictional control over uses of property near the airport. However, for the purpose of evaluating airport sponsor compliance with the compatible land use assurance, the FAA does not consider a sponsor's lack of direct authority as a reason for the sponsor to decline to take any action at all to achieve land use compatibility outside the airport boundaries.

In all cases, the FAA expects a sponsor to take appropriate actions to the extent reasonably possible to minimize incompatible land. Quite often, airport sponsors have a voice in the affairs of the community where an incompatible development is located or proposed. The sponsor should make an effort to ensure proper zoning or other land use controls are in place.

20.2. Zoning and Land Use Planning.

a. Description. Zoning is an effective method of meeting the federal obligation to ensure compatible land use and to protect airport approaches. Generally, zoning is a matter within the authority of state and local governments. Where the sponsor does have authority to zone or control land use, FAA expects the sponsor to zone and use other measures to restrict the use of

land in the vicinity of the airport to activities and purposes compatible with normal aircraft operations. Restricting residential development near the airport is essential in order to avoid noise-related problems.

Sponsors and local communities should consider adopting adequate guidelines and zoning laws that consider noise impacts in land use planning and development. Similarly, any airport sponsor that has the authority to adopt ordinances restricting incompatible land development and limiting the height of structures in airport approaches according to the standards prescribed in 14 Code of Federal Regulations (CFR) Part 77, *Objects Affecting Navigable Airspace*, is generally expected to use that authority.

b. Guidance. There are a number of sources that can assist an airport sponsor in dealing with noise, obstructions, and other incompatible land uses. Some of these are:

(1). *A Model Zoning Ordinance to Limit Height of Objects Around Airports*, Advisory Circular (AC) 150/5190-4A.

(2). *Citizen Participation in Airport Planning,* AC 150/5050-4.

(3). *Guidelines for Considering Noise in Land Use Planning and Control,* Federal Interagency Committee on Urban Noise, June 1980.

(4). *Hazardous Wildlife Attractants on or Near Airports*, AC 150/5200-33B, August 28, 2007.

(5). *Noise Control Planning,* FAA Order 1050.11A, January 13, 1986.

(6). *Noise Control and Compatibility Planning for Airports*, AC 150/5020-1.

(7). *Federal and State Coordination of Environmental Reviews for Airport Improvement Projects*. (RTF format) – Joint Review by Federal Aviation Administration and National Association of State Aviation Officials (NASAO), issued March 2002.

(8). *Land Use Compatibility and Airports, a Guide for Effective Land Use Planning* (PDF format), issued by the FAA Office of Environment and Energy.

(9). *Compatible Land Use Planning Initiative* (PDF format), 63 Fed. Reg. 27876, May 21, 1998.

(10). *Draft Aviation Noise Abatement Policy 2000* (PDF format) 65 Fed. Reg. 43802, July 14, 2000.

(11). *Airport Noise Compatibility Planning Toolkit – FAA's Initiative for Airport Noise and Compatibility Planning*, issued by the FAA Office of Environment and Energy.

c. **Master Planning and Zoning.** The airport master planning process provides a means to promote land use compatibility around an airport. Incompatible land uses around an airport can affect the safe and efficient operation of aircraft. Within an airport's noise impact areas,

residential and public facilities – such as schools, churches, public health facilities, and concert halls – are sensitive to high noise levels and can affect the development of the airport. Most commercial and industrial uses, especially those associated with the airport, are compatible with airports. An airport master plan is a published document approved by the governmental agency or authority that owns/operates the airport. The airport master plan should be incorporated into local comprehensive land use plans and used by local land use planners and airport planners to evaluate new development within the airport environs. Integration of airport master plans and comprehensive land use plans begins during the development of the master plan. Local municipalities surrounding the airport boundaries must be contacted to collect information on existing land uses in and around airports. Local comprehensive land use plans are also reviewed to determine the types of land uses planned for the future.

Additionally, sponsors should monitor local zoning ordinances to determine what uses are currently permitted around the airport and whether there have been any recent changes in zoning. It is important for local land use planners to become involved in the review and development of the airport's master planning process. They can provide input on potential impacts that future airport development plans may have on communities surrounding the airport. Any conflicts or inconsistencies between airport development plans and the local comprehensive plans should be noted in the airport master plan. The information on future airport expansion and development contained in the airport's master plan should be incorporated in the development of comprehensive land use plans or their subsequent updates or amendments to ensure land use compatibility with the airport. During the development of such plans, planners should coordinate and consult with the airport staff so that the airport's future plans for expansion can be taken into consideration. Local land use planners should review the airport's master plan to determine how future airport projects could affect existing and projected land uses around the airport. Other opportunities for coordination and communication between the airport and local planning agencies include the FAA noise compatibility planning process. (See chapter 13 of this Order, *Airport Noise and Access Restrictions*, for information on aircraft noise compatibility planning.)

Noise compatibility studies provide opportunities for input from airport users, local municipalities, communities, private citizens, and the airport sponsor on recommended operational measures and land use control measures that could minimize or prohibit the development or continuation of incompatible land uses. The airport master plan is also a tool to ensure that planning among federal, state, regional, and local agencies is coordinated. The incorporation and review of these plans provides for the orderly development of air transportation while protecting the public health, safety, and welfare. The legal structure of airport ownership will determine its power to regulate or influence land uses around the airport. Municipalities or counties with this regulatory authority need to be aware of existing and long-term airport development plans and the importance of using that authority to minimize development of incompatible land uses.

d. Reasonable Attempt. In cases where the airport sponsor does not have the authority to enact zoning ordinances, it should demonstrate a reasonable attempt to inform surrounding municipalities on the need for land use compatibility zoning. The sponsor can accomplish this through the dissemination of information, education, or ongoing communication with

surrounding municipalities. Depending upon the sponsor's capabilities and authority, action could include exercising zoning authority as granted under state law or engaging in active representation and defense of the airport's interests before the pertinent zoning authorities. The sponsor may also take action with respect to implementing sound insulation, land acquisition, purchase of easements, and real estate disclosure programs or initiatives to mitigate areas to make them compatible with aircraft operations. Sponsors without zoning authority may also work to change zoning laws to protect airport interests.

e. Definition of Compatible Land Use. Compatibility of land use is attained when the use of adjacent property neither adversely affects flight operations from the airport nor is itself adversely affected by such flight operations. In most cases, the adverse effect of flight operations on adjacent land results from exposure of noise sensitive development, such as residential areas, to aircraft noise and vibration. Land use that adversely affects flight operations is that which creates or contributes to a flight hazard. For example, any land use that might allow tall structures, block the line of sight from the control tower to all parts of the airfield, inhibit pilot visibility (such as glaring lights, smoke, etc.), produce electronic aberrations in navigational guidance systems, or that would tend to attract birds would be considered an incompatible land use. For instance, under certain circumstances, an exposed landfill may attract birds. If open incineration is regularly permitted, it can also create a smoke hazard.

f. Definition of Concurrent Land Use. In some cases, concurrent land use can be an appropriate compatible land use. Concurrent land use means that the land can be used for more than one purpose at the same time. For example, portions of land needed for clear zone purposes could also be used for agriculture purposes at the same time, which would be consistent with Grant Assurance 21, *Compatible Land Use*.

g. Pre-existing Obstructions. (1) Historically, some airports were developed at locations where preexisting *structures* or natural terrain (for example, hilltops) would constitute an obstruction by currently applicable standards. If such obstructions were not required to be removed as a condition for a grant agreement, the execution of the agreement by the government constitutes a recognition that the removal was not reasonably within the power of the sponsor. (2) There are many former military airports that were acquired as public airports under the Surplus Property Act, where the existence of obstructions at the time of development was considered acceptable. At such airports where obstructions in the approach cannot feasibly be removed, relocated, or lowered, and where FAA has determined them to be a hazard, consideration may be given to the displacement or relocation of the threshold.

20.3. Residential Use of Land on or Near Airport Property.

a. General. The general rule on residential use of land on or near airport property is that it is incompatible with airport operations because of the impact of aircraft noise and, in some cases, for reasons of safety, depending on the location of the property. Nonetheless, the FAA has received proposals to locate residences immediately adjacent to airport property or even on the airport itself, as part of "airpark" developments. "Airpark" developments allow aircraft owners to reside and park their aircraft on the same property, with immediate access to an airfield. Proponents of airparks argue that airparks are an exception to the general rule because aircraft

owners will accept the impacts of living near the airport and will actually support the security and financial viability of the airport.

b. FAA position. The FAA considers residential use by aircraft owners to be no different from any residential use, and finds it incompatible with the operation of a public use airport. It is common for private airparks to impose restrictions on the use of the airfield, such as night curfews, because aircraft owners have the same interest as other homeowners in minimizing noise and sleep disturbances at home. The FAA has no problem with such restrictions at private unobligated airparks operated by the resident owners for their own benefit. At federally obligated public-use airports, however, the existence of the incompatible land use is not acceptable. First, aircraft owners are entitled to the same protection from airport impacts as any other residents of the community. Second, the likelihood that residents of an airpark will seek restrictions on the use of the airport for the benefit of their residential use is very high, whether or not they own aircraft. A federally obligated airport must provide reasonable access to all users. Restrictions on the use of the airport for the benefit of airpark residents is not consistent with the obligation to provide reasonable access to the public.

c. On-airport and off-airport residential use. The general policy against approval of on-airport and off-airport residential proposals is the same. There are, however, different considerations in the review and analysis of on-airport and off-airport land use. The FAA has received proposals for airparks or co-located homes and hangars both on the airport itself or off of the airport, with "through-the-fence" access.

20.4. Residential Airparks Adjacent to Federally Obligated Airports.

a. General. In several instances, the FAA has received requests from airport sponsors and developers interested in developing residential airparks adjacent to federally obligated airports. These types of development include "through-the-fence" access to the airport and generally include aircraft hangars or parking co-located with individual residences.

The FAA has no problem with private residential airparks since there is no federal obligation for reasonable access. Residential owners can limit access to the airport as they wish. However, FAA approval of such developments on federally obligated airports cannot be justified. First, residential property owners tend to seek to limit airport use consistent with their residential use, which is contrary to the obligation for reasonable public access to the airport. Second, developers can tend to view Airport Improvement Program (AIP) grants for the airfield as a subsidy of the development, increasing the value of the airpark development at no cost to the developer or residents. The FAA's AIP program is not a funding mechanism for improving or subsidizing private and residential development.

Any residential use existing on the airport or any residential use granting "through-the-fence" access is an incompatible land use.

Any residential use on an airport or residential use granting "through-the-fence" access is an incompatible land use.

b. FAA Position. Permitting development of a residential airpark near a federally obligated airport, through zoning approval or otherwise, would be inconsistent with Grant Assurance 21, *Compatible Land Use*. The FAA expects sponsors to oppose zoning laws that would permit residential development near airports.

For this purpose, the FAA considers residential use to include: permanent or long-term living quarters; part-time or secondary residences; and developments known as residential hangars, hangar homes, campgrounds, fly-in communities or airpark developments – even when co-located with an aviation hangar or aeronautical facility.

Allowing residential development on federally obligated airports is incompatible with aircraft operations and conflicts with several grant assurance and surplus property requirements, as mentioned above. Residential development inside federally obligated airports is inconsistent with federal obligations regarding the use of airport property.

Accordingly, the FAA will not support requests to enter into any agreement that grants access to the airfield for the establishment of a residential airpark since that access would involve a violation of Grant Assurance 21, *Compatible Land Use.*

In several instances, the FAA has received requests from airport sponsors and developers interested in developing residential airparks adjacent to federally obligated airports. These types of development generally include residential hangar sites and a "through-the-fence" access to the airport. While these types of development have taken place at some private use airports, it does not provide the basis to justify FAA approval of such developments on federally obligated airports. Seen here is Spruce Creek in Florida. (Photo: CAP)

c. "Through-the-Fence." Off-airport residential airparks are privately owned and maintained residential facilities. They are not considered aeronautical facilities eligible for reasonable access to a federally obligated airport. The airport sponsor is under no federal obligation to allow "through-the-fence" access for these privately

owned residential airparks. Allowing such access in most cases could be an encumbrance on the airport in conflict with Grant Assurance 5, *Preserving Rights and Powers*. In addition, residential hangars with "through-the-fence" access are considered an incompatible land use at federally obligated public use airports. (For additional information on "through-the-fence" agreements, see paragraph 12.7, "Agreements Granting 'Through- the-Fence' Access" in chapter 12 of this Order, *Review of Aeronautical Lease Agreements*.)

d. Releases. The FAA will not release airport property from its federal obligations so that it can be used for residential development. Also, the FAA will not release airport land for off-airport use with "through-the-fence" access to the airfield. Obligated airport land may not be released unless the FAA finds that it is no longer needed for airport purposes. Since the requested off-airport use would involve basic airport functions such as aircraft parking and taxiing, the FAA could not find that the property was no longer needed for an airport use. A request to release airport land for a residential airpark will be denied as inconsistent with both policies.

20.5. Residential Development on Federally Obligated Airports.

a. General. This guidance sets forth FAA policy regarding residential development on federally obligated airports, including developments known within the industry as residential hangars and airpark developments. FAA airports district offices (ADOs) and regional airports divisions are responsible for ensuring that residential developments are not approved when reviewing a proposed ALP or any other information related to the airports subject to FAA review. There is no justification for the introduction of residential development inside a federally obligated airport. It is the sponsor's federal obligation not to make or permit any changes or alterations in the airport or any of its facilities that are not in conformity with the ALP, as approved by the FAA, and that might, in the opinion of the FAA, adversely affect the safety, utility, or efficiency of the airport.

b. Background. The FAA differentiates between a typical pilot resting facility or crew quarters and a hangar residence or hangar home. The FAA recognizes that certain aeronautical uses – such as commercial air taxi, charter, and medical evacuation services – may have a need for limited and short-term flight crew quarters for temporary use, including overnight and on-duty times. There may be a need for aircraft rescue and fire fighting (ARFF) quarters if there is a 24-hour coverage requirement. Moreover, an airport manager or a fixed-base operator (FBO)[45] duty manager may have living quarters assigned as part of his or her official duties. Living quarters in these cases would be airport-compatible if an airport management or FBO job requires an official presence at the airport at off-duty times, and if the specific circumstances at the airport reasonably justify that requirement.

However, other than the performance of official duties in running an airport or FBO, the FAA does not consider permanent or long-term living quarters to be an acceptable use of airport property at federally obligated airports. This includes developments known as airparks or fly-in

[45] A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

communities, and any other full-time, part-time, or secondary residences on airport property – even when co-located with an aviation hangar or aeronautical facility. While flight crew or caretaker quarters may include some amenities, such as beds, showers, televisions, and refrigerators, these facilities are designed to be used for overnights and resting periods, not as permanent or even temporary residences for flight crews, aircraft owners or operators, guests, customers, or the families or relatives of same.

The definition of flight crew is limited to those individuals necessary for the operation of an aircraft, such as pilot-in-command (PIC), second in command, flight engineer, flight attendants, loadmasters, search and rescue (SAR) flight personnel, medical technicians, and flight mechanics. It does not include the families, relatives, or guests of flight crewmembers not meeting the preceding definition.

An effort to obtain residential status for the development under zoning laws may indicate intent to build for residential use. Airport standards, rules, and regulations should prevent the introduction of residential development on federally obligated airports. The FAA expects the airport sponsor to have rules and regulations to control or prevent such uses, as well as to oppose residential zoning that would permit such uses since these uses may create hazards or safety risks between airport operations and nonaeronautical tenant activities. If doubts exist regarding the nature of a proposed facility, the airport sponsor may ask FAA to evaluate the proposed development. Also, the FAA may conduct a land use inspection to determine the true nature of the development; the FAA would then make a determination on whether the facility is compatible with the guidance provided herein.

c. Authority and Compliance Requirements. Allowing residential development, including airport hangars that incorporate living quarters for permanent or long-term use, on federally obligated airports is incompatible with airport operations. It conflicts with several grant assurance requirements.

Under Grant Assurance 5, *Preserving Rights and Powers*, an airport sponsor should not take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. The private interests of residents establishing private living can conflict with the interests of the airport sponsor to preserve its rights and powers to operate the airport in compliance with its federal obligations. It should not be assumed that the interests of the sponsor and that of a homeowner located on the airport will be the same or that because the homeowner owns an aircraft, he or she will automatically support the airport on all aviation activities. In addition, local laws relating to residences could restrict the airport operator's ability to control use of airport land and to apply standard airport regulations.

Under Grant Assurance 19, *Operation and Maintenance*, airport sponsors will not cause or permit any activity or action that would interfere with the intended use of the airport for airport purposes. Permanent living facilities should not be permitted at public airports because the needs of airport operations may be incompatible with residential occupancy from a safety standpoint.

Under Grant Assurance 21, *Compatible Land Use*, airport sponsors, to the extent possible, must ensure compatible land use both on and off the airport. Residential development in the vicinity of airports may result in complaints from residents concerned about personal safety, aircraft noise, pollution, and other quality-of-life issues. Bringing residential development onto the airport, even in the form of residential hangars, increases the likelihood that quality-of-life issues may lead to conflicts with the airport sponsor and appeals for restrictions on aircraft operations. Moreover, an airport sponsor permitting on-airport residential living quarters will have greater difficulty convincing local zoning authorities to restrict residential development off-airport. Therefore, airport sponsors are encouraged to:

(1). Explicitly prohibit the development of residential living quarters on the airport in all tenant leases and subleases.

(2). Develop minimum standards that require the explicit advanced approval of all tenant subleases by the airport sponsor.

(3). Include clauses in all tenant leases stating that unauthorized development of residential living quarters may be declared an event of default under the lease and that the airport sponsor may declare any noncomplying subleases null and void.

(4.) Convert any existing living quarters into nonresidential use at the earliest opportunity, especially if the airport sponsor holds title to the living quarters**.**

d. Conclusion. Permitting certain on-airport development, including residential development, conflicts with several federal grant assurances and federal surplus property obligations. Such residential development may have some or all of the following undesirable consequences:

(1). Aircraft noise complaints.

(2). Proposed restrictions or limitations on aircraft and/or airport operations brought by the residential tenants.

(3). The execution of easements, leases, and subleases that encumber airport property for nonaeronautical uses at the expense of aeronautical uses.

(4). Increased likelihood of vehicle/pedestrian deviations (V/PDs) due to residents, guests, and unsupervised children unfamiliar with an operating airfield environment; unleashed pets roaming the airfield; and the interaction between private vehicles and aircraft that compromise safe airfield operations.

(5). Increased public safety and legal liability risks, including fire hazards, if codes have been compromised by the co-location of residential living quarters within hangars and other aeronautical facilities.

(6). Line-of-sight obstructions and operational limitations due to the greater height of two-story hangars.

e. Summary. Residential development, either standing alone or collocated as part of a hangar or other aeronautical facility, is not an acceptable use of airport property under the federal grant assurances or surplus and nonsurplus property federal obligations. The ADOs and regional airports divisions have the responsibility for ensuring that residential development is not approved as part of a review of a proposed ALP and that airport property is not released for residential development.

20.6. through 20.10. reserved.

Sample Easement and Right-of-Way Grant

The easement and right of way hereby granted includes the continuing right in the Grantee to prevent the erection or growth upon Grantors' property of any building, structure, tree, or other object, extending into the air space above the aforesaid imaginary plane,

(OR USE THE FOLLOWING)

extending into the air space above the said Mean Sea level of (i.e., 150) feet,[1]

(OR USE THE FOLLOWING)

extending into the air space above the surface of Grantors' property;[1]

and to remove from said air space, or at the sole option of the Grantee, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree or other objects now upon, or which in the future may be upon Grantors' property, together with the right of ingress to, egress from, and passage over Grantors' property for the above purposes.

TO HAVE AND TO HOLD said easement and right of way, and all rights appertaining thereto unto the Grantee, its successors, and assigns, until said (full name of airport) shall be abandoned and shall cease to be used for public airport purposes.

AND for the consideration hereinabove set forth, the Grantors, for themselves, their heirs, administrators, executors, successors, and assigns, do hereby agree that for and during the life of said easement and right of way, they will not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon Grantors' property any building, structure, tree, or other object extending into the aforesaid prohibited air space, and that they shall not hereafter use or permit or suffer the use of Grantors' property in such a manner as to create electrical interference with radio communication between any installation upon said airport and aircraft, or as to make it difficult for flyers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the airport or as otherwise to endanger the landing, taking off, or maneuvering of aircraft, it being understood and agreed that the aforesaid covenants and agreements shall run with the land.

In consideration of the premises and to assure Grantee of the continued benefits accorded it under this Easement, (name of mortgagee), owner and holder of a mortgage dated ________________________ and recorded ____________________ covering the premises above described, does hereby covenant and agree that said mortgage shall be subject to and subordinate to this Easement and the recording of this Easement shall have preference and precedence and shall be superior and prior in lien to said mortgage irrespective of the date of the making or recording of said mortgage instrument.[2]

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[2] Local recordation and subordination practices must also be met. If subordination is necessary, in which case the mortgagee must join in the agreement, the above language is suggested.

FAIR DISCLOSURE STATEMENT

A disclosure statement, adhering to the form of the statement below, shall be provided to and signed by each potential purchaser of property within the Airport Influence Area as shown on the approved Airport Land Use Drawing. The signed statement will then be affixed by the Seller to the agreement of the sale.

The tract of land situated at

____

in ___________________________________ (County and State), consisting of approximately ____________________ acres which is being conveyed from ________________________ to _________________________ lies within ____________________ miles of __________________(airport name) may be subjected to varying noise levels, as the same is shown and depicted on the official Zoning Maps.

CERTIFICATION

The undersigned purchaser(s) of said tract of land certify(ies) that (he) (they) (has) (have) read the above disclosure statement and acknowledge(s) the pre-existence of the airport named above and the noise exposure due to the operation of said airport.

SUGGESTED DISCLOSURE TO REAL ESTATE BUYERS

Customarily, someone will request a letter from the municipality about outstanding charges and assessments against a property. Something similar to this language, adapted for your airport, can be incorporated into a letter sent to buyers and title companies in preparation for closing.

"Please be advised that the subject property is located within the height restriction zone of the (blank) airport, or is located within a similar distance from the airport. It is conceivable that standard flight patterns would result in aircraft passing over (or nearly so) the property at altitudes of less than (blank) feet. Current airport use patterns suggest that the average number of takeoffs/touchdowns exceeds (blank) annually. A property buyer should be aware that use patterns vary greatly, with the possibility of increased traffic on (blank). The airport presently serves primarily recreational aircraft, and there are no current initiatives to extend any runway beyond the current (blank) length. Airport plans allow for runway extension in the future, which might impact the number and size of both pleasure and non-pleasure aircraft. Generally, it is not practical to redirect or severely limit airport usage and/or planned-for expansion, and residential development proximate to the airport ought to assume, at some indefinite date, an impact from air traffic."

Sample FAA Position Letter on Residential Airparks - Page 1

U.S. Department of Transportation
Federal Aviation Administration

Office of Associate Administrator for Airports

800 Independence Ave., SW.
Washington, DC 20591

AUG 2 9 2005

Mr. Hal Shevers
Chairman
Clermont County-Sporty's Airport
Batavia, OH 45103

Dear Mr. Shevers:

Thank you for your letter of July 18. In your letter, you suggested the Federal Aviation Administration promote developing residential airparks as a means to improve airport security and reduce the closure rate of general aviation airports. Residential airparks developed next to an airport usually rely on "through-the-fence" agreements to gain access to the airfield.

First, I would like to make clear that the FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any use of airport land they like. A public airport receiving Federal financial support is different, however, because it is operated for the benefit of the general public. Also, it is obligated to meet certain requirements under FAA grant agreements and Federal law. Allowing residential development on or next to the airport conflicts with several of those requirements.

An airpark is a residential use and is therefore an incompatible use of land on or immediately adjacent to a public airport. The fact there is aircraft parking collocated with the house does not change the fact that this is a residential use. Since 1982, the FAA has emphasized the importance of avoiding the encroachment of residential development on public airports, and the Agency has spent more than $300 million in Airport Improvement Program (AIP) funds to address land use incompatibility issues. A substantial part of that amount was used to buy land and houses and to relocate the residents. Encouraging residential airparks on or near a federally obligated airport, as you suggest, would be inconsistent with this effort and commitment of resources.

Allowing an incompatible land use such as residential development on or next to a federally obligated airport is inconsistent with 49 USC §47104(a) (10) and associated FAA Grant Assurance 21, *Compatible Land Use*. This is because a federally obligated airport must ensure, to the best of its ability, compatible land use both off and on an airport. We would ask how an airport could be successful in preventing incompatible residential development before local zoning authorities if the airport operator promotes residential airparks on or next to the airport.

Additionally, residential airparks, if not located on airport property itself, require through-the-fence access. While not prohibited, the FAA discourages through-the-fence operations because

Sample FAA Position Letter on Residential Airparks - Page 2

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they make it more difficult for an airport operator to maintain control of airport operations and allocate airport costs to all users.

A through-the-fence access to the airfield from private property also may be inconsistent with security guidance issued by the Transportation Security Administration (TSA). TSA created guidelines for general aviation airports: Information Publication (IP) A-001, *Security Guidelines for General Aviation Airports*. The TSA guidelines, drafted in cooperation with several user organizations including the Aircraft Owners and Pilots Associations (AOPA), recommend better control of the airport perimeter with fencing and tighter access controls. Accordingly, we do not agree with your view that a residential airpark and the associated through-the-fence access points can be said to improve airport security. In fact, multiple through-the-fence access points to the airfield could hinder rather than help an airport operator maintain perimeter security.

Finally, we find your statement that general aviation airports have been closing at an alarming rate to be misleading, because it is simply untrue with respect to *federally* obligated airports. In fact, the FAA has consistently denied airport closure requests. Of approximately 3,300 airports in the United States with Federal obligations, the number of closures approved by the FAA in the last 20 years has been minimal. The closures that have occurred generally relate to replacement by a new airport or the expiration of Federal obligations. AOPA has recognized our efforts. In its latest correspondence to the FAA on the *Revised Flight Plan 2006-2010*, AOPA stated, "the FAA is doing an excellent job of protecting airports across the country by holding communities accountable for keeping the airport open and available to all users."

For the above reasons, we are not able to support your proposal to promote the development of residential airparks at federally obligated airports.

I trust that this information is helpful.

Sincerely,

Original signed by:
Woodie Woodward

Woodie Woodward
Associate Administrator
for Airports

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Chapter 21. Land Use Compliance Inspection

21.1. Introduction. This chapter provides guidance for conducting land use inspections at federally obligated airports. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to conduct a minimum of two (2) land use inspections annually per region for general aviation (GA) airports, and to resolve issues identified during the inspections. The FAA headquarters Airport Compliance Division (ACO-100) will report the results of these inspections to Congress.

21.2. Background. The purpose of the land use inspections is to determine whether a sponsor is in compliance with its federal obligations for land use. These federal obligations accrue to the sponsor when the sponsor accepts grants or transfers of property. Land use is an important aspect of successful and lawful airport management and operation.

21.3. Elements of the Land Use Inspection. The inspections are built on several processes – airport selection, data gathering, preinspection, onsite inspection, and corrective actions. The inspections contribute to the completeness of land use records and supporting data that may be useful for formal and informal compliance determinations.

21.4. Responsibilities. In accordance with the guidance provided below, the ADOs or regional airports divisions are responsible for conducting the land use inspections. ADOs and state block grant agencies are expected to support the regional efforts. ACO-100 will provide guidance and technical support.

21.5. Authority.

a. Congressional Requirement. In Senate Report No. 106-55 issued in May 1999, Congress directed the FAA to conduct land use inspections at all airports with lands acquired with federal assistance. It required the FAA to report on the survey results, including the scope of improper and noncompliant land use changes, the proposed enforcement and corrective actions, changes made to FAA's guidelines for use by ADOs and regional airport divisions to assure more consistent and complete monitoring and enforcement, and the extent of FAA approved land releases. Accordingly, the FAA developed the Regional Land Use Inspections Program, which requires the FAA to conduct a minimum of 18 inspections (two per region) per year, and to conduct additional inspections as needed and where resources allow.

b. Annual Report to Congress. Section 722 of Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) mandates that the FAA compile the data collected from these inspections, along with other relevant information, and report it to Congress. (See 49 United States Code (U.S.C.) § 47131, *Annual Report*.)

The report must include:

(1). a detailed statement of airport development completed;

(2). the status of each project undertaken;

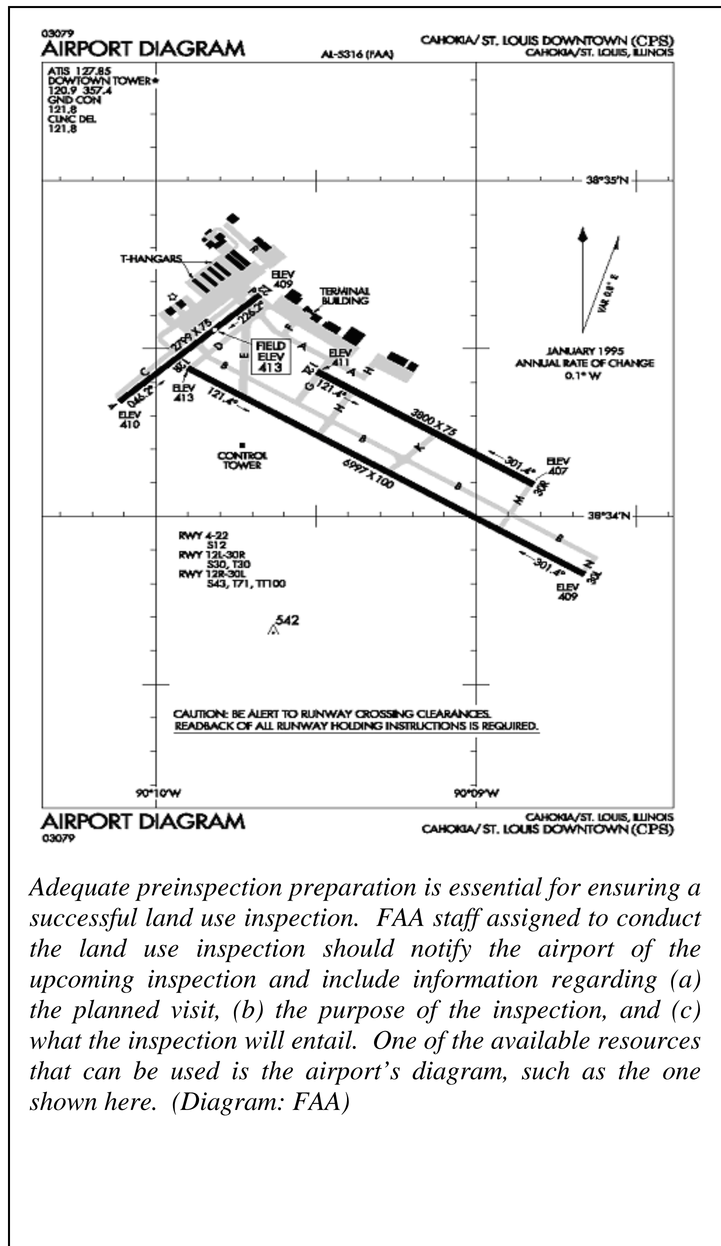
(3). the allocation of appropriations;

(4). an itemized statement of expenditures and receipts; and

(5). a detailed statement listing airports that the Secretary believes are not in compliance with grant assurances or other requirements with respect to airport lands and including the circumstances of such noncompliance, the timelines for corrective action, and the corrective action the Secretary intends to take to bring the airport sponsor into compliance.

The statute also states that FAA does not have to conduct an audit or make a final determination before including an airport on the list referred to in paragraph 21.5.b(5) directly above.

(A sample post-inspection land use report is provided at the end of this chapter.)



Adequate preinspection preparation is essential for ensuring a successful land use inspection. FAA staff assigned to conduct the land use inspection should notify the airport of the upcoming inspection and include information regarding (a) the planned visit, (b) the purpose of the inspection, and (c) what the inspection will entail. One of the available resources that can be used is the airport's diagram, such as the one shown here. (Diagram: FAA)

21.6. Land Use Inspection Guidance.

a. Selection Process

A purely random process in selecting airports for land use inspections is not considered to be efficient due to the limited number of inspections to be conducted on a yearly basis in each FAA region. By selectively targeting airports, the positive impact of the inspection program can be maximized. A "one-size-fits-all" approach is not necessarily the most efficient. Selection criteria should be defined and then used to provide FAA regional airports divisions with the

needed flexibility to adapt to each case while yielding the necessary data required to meet the statutory requirements under 49 U.S.C. § 47131.

Therefore, each FAA regional airports division should develop its own selection process using the variables, conditions, and recommendations listed in this chapter. Coordination – especially preinspection coordination – with the ADOs and state aeronautical agencies would be appropriate. ADOs and state block grant aeronautical agencies may be the most knowledgeable and familiar with specific airport conditions and potential compliance problems. Assistance from, and the involvement of, state block grant agency officials is essential when conducting inspections in those states. When and if noncompliance situations are uncovered as a result of the land use inspections, the state block grant agency should be in a position to play a role in requesting and supervising corrective action and notification, as well as informal resolution.

b. Selection Data

The information needed to identify airports for selection in land use inspections is available from many sources. The most valuable tool in selecting an airport for inspection is prior knowledge of compliance problems. Prior knowledge can come from several sources, including:

(1). Past Inspections: Previous site inspections may include site visits by FAA airports personnel, visits by FAA personnel outside of airport compliance (such as FAA Airport Certification Safety Inspectors conducting a Part 139 inspection), and site visits by others outside of FAA, provided they are knowledgeable about some aspects of airport compliance (such as state inspectors performing FAA Form 5010 inspections).

(2). Complaints: Telephone, written, or informal complaints (Part 13.1 Reports) from users or tenants; formal complaints filed with FAA headquarters.

(3). Documents: Historical file review, recent and updated Airport Layout Plan (ALP) and Exhibit "A," as well as previous versions of both.

c. Selecting Airports for Inspection

In developing guidance for regional administration on the land use inspection portion of any airport compliance program, it is reasonable to emphasize those airports with the largest potential for abuse. Although not directly determining the priority of airport selection, several factors may assist in selecting a particular airport for a land use inspection. These factors include:

(1). Specific request from FAA Headquarters. ACO-100 may request an airport land use inspection when that inspection would directly benefit a current investigation or formal complaint or otherwise address a potential land use problem.

(2). Excessive number of requests for airport property release. An excessive number of requests for airport property releases and/or a significant amount of released land may require additional oversight. This situation could lead to an increase in the potential for misuse of airport property. It could generally indicate systematic nonaeronautical use of the airport.

(3). Size, classification, and total number of operations at an airport. The size, classification, and total number of operations at an airport are important elements in selecting an airport. This is because of the potential high return that can be derived from the land use inspection given the acreage, amount of federally funded property, role and importance of the facility, number of based aircraft, and level of operations.

d. Preinspection Preparation

Adequate preinspection preparation is essential in ensuring a successful land use inspection. FAA staff assigned to conduct the land use inspection should notify the airport of the upcoming inspection and include information regarding the planned visit, the purpose of the inspection, and what the inspection will entail. The preinspection preparation could last anywhere from a half day to a full day depending on the specifics of the airport, such as airport size, number of tenants, and availability of land use property records. Several issues may be encountered during a land use inspection. These usually fall within the following categories: Use of airport property, conformity to the ALP, continuing special conditions, disposal of grant acquired land, disposal of surplus property, approach protection**,** and compatible land usage within airport property. (This should not be confused with requirements under Grant Assurance 21, *Compatible Land Use*, which

Approved interim or concurrent revenue-production uses may not interfere with safe and efficient airport operations. These uses will terminate as soon as the land is needed for aeronautical use. For instance, if airport property is used for farming around the Air Traffic Control (ATC) tower in a revenue-generating capacity (above), the FAA would expect the airport to terminate that interim or concurrent use in order to accommodate, for example, aircraft parking. During a land use inspection, it is important to review the record for such approved uses and then verify during the site visit that such uses are followed. The photo below shows airport property being used as a golf course on an interim basis. This can generate airport revenue. However, the airport must retain its ability to return the land to aeronautical use at its convenience without regard to the wishes of the golf course. In many instances, airport sponsors have resisted the need to revert to an aeronautical use because of the "perception" that the golf course now belongs to the community and not to the airport. In other instances, airports have avoided providing needed aeronautical projects to keep the golf course in operation. This can be prevented by not approving these types of uses or by imposing special conditions such as an automatic termination after a few years. (Photos: FAA)

covers compatible land use *outside* the airport.).

If necessary or applicable, the FAA person conducting the inspection should obtain from the airport, the ADO, or the state block grant aeronautical agency any relevant information or documentation to review during the preinspection preparation. The first phase of the preinspection process should include a review of all relevant airport data available in the ADO and regional airports division, as suggested below:

(1). Obligating Documents. Review applicable grant, surplus, and nonsurplus property documents to understand the specific commitments of the airport owner, especially any special conditions in such documents. The intent of the land use inspection is to ensure that all airport property, including each area of surplus property or grant funded land, is used or is available for use for the purposes intended by the land conveyance or grant agreement.

The bulk of the preinspection preparation process should focus on inconsistencies between the ALP, Exhibit "A," or any other land use document relevant to the airport sponsor's land use obligations. One of the most important steps at this stage is to identify the difference between land that constitutes airport property (actual airport site) and land the airport owns, which may include other property not adjacent to the airport. For example, the airport boundary delineated on the ALP may not show property the airport owns outside that boundary, yet that property may be obligated. This knowledge will be used during the onsite inspection to confirm the land uses visually. (Photos: FAA)

(2). Land Use Maps/Land Files. The majority of the preinspection preparation process conducted by FAA personnel should focus on inconsistencies between the ALP, Exhibit "A," parcel maps, or any other land use document relevant to the airport sponsor's land use and planning.

Documents such as airport diagrams and the airport facility directory (AFD) should also be consulted for general familiarization. One of the most important steps at this stage is to identify the difference between land that constitutes airport property (actual airport site) and land the airport owns, which may include other property not adjacent to the airport. For example, the airport boundary delineated on the ALP may not show property the airport owns outside that boundary, yet that property may be federally obligated. This knowledge will be used during the onsite inspection to confirm the land uses visually. Things to do or consider when reviewing land files include, but are not limited to:

(a). Review the most current ALP and compare it with older ones. There should be no actual or proposed development or use of land and facilities contrary to an ALP previously approved by the FAA. Ensure that the Exhibit "A" was updated when new grants were issued or when an FAA land release was issued. Pay particular attention to buildings or structures that could turn

into obstruction problems. If an ALP is out of date or fails to depict existing and planned land uses accurately, make inquiries and take appropriate actions.

(b). Determine whether the Exhibit "A" needs to be updated.

(c). Review and compare the history of land acquisitions and releases.

(d). Identify general land uses, both current and planned. This would include considerations such as whether a use is aeronautical or nonaeronautical, whether uses such as industrial/commercial and agricultural are appropriate, and how buildings and hangars built for aeronautical use are actually being used.

(e). Identify all easements and all temporary and concurrent uses.

(f). Compare FAA and state block grant records, if applicable or required.

(3). Self-certification Documents. The person conducting the inspection should review any documents and records of self-certification, if applicable. Although self-certification may be an important element of a regional airport compliance program, it is not a substitute for an actual land use inspection. However, self-certification data can be used as background or reference information.

(4). Grant-Acquired Land, Surplus and Nonsurplus Property. While reviewing airport property and land use documents such as the ALP or Exhibit "A," pay particular attention to all land acquired with grant funding, including land acquired for noise protection, as well as surplus and nonsurplus property. Is this land still being used for the purpose for

The most common improper and noncompliant land uses are situations where nonaeronautical leaseholds are (1) located on designated aeronautical use land without FAA approval, (2) not shown on the ALP, or (3) located on property not released by FAA. It also includes permitting dedicated aeronautical property to be used for nonaeronautical uses. Some examples of improper nonaeronautical uses on airport property designated for aeronautical uses are depicted here. (Photos: FAA)

which it was acquired? Also note whether the conditions associated with any previous disposal are being followed.

(5). Release Documentation. Review all documentation relating to past releases and disposal of airport property. Identify land released by tract or legal description. Check that release conditions or requirements (i.e., environmental requirements, height restrictions, designated uses of proceeds from land sales or leases, fair market value (FMV), and general compatibility requirements) are followed. Also look at the amount of land released (or to be released). Compare this information with correspondence files, land files, ALP and Exhibit "A." Determine if land released for sale has been sold, the deed recorded by the county recorder's office, and proceeds deposited into the airport account.

(6). Master Plan, Part 150, and Environmental Impact Statements. Review the Master Plan, any Part 150 studies, any environmental impact statements (EIS), and any other planning and environmental documents for relevant information. Environmental determinations might be relevant for understanding land uses.

(7). General Correspondence. Review recent general correspondence, including complaints, with the airport sponsor or any airport official or representative regarding issues at the airport that may be relevant to the land use inspection.

(8). Leasehold Review. Obtain a list of leaseholds, both aeronautical and nonaeronautical, so they are known to the inspection team before the onsite inspection occurs. In addition, use this leasehold information to crosscheck the ALP and Exhibit "A" for appropriate land uses.

(9). Special Requirements. Review any special requirements. These are conditions other than those controlled by project payments under the Airport Improvement Program (AIP). Such special conditions might include specific commitments regarding the disposition of proceeds from the disposal of surplus property and any other continuing pledges undertaken by the airport sponsor. It might also include compatible land use requirements or development restrictions.

e. Onsite Inspection Procedures

With adequate preinspection preparation, the actual onsite inspection will be easier and should last approximately half a day. Below are several specific activities that should be included in the onsite inspection:

(1). Determine whether any improvements being currently processed under FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, or that are under construction are inconsistent with the ALP or other land use requirements. No actual or proposed development or use of land and facilities should be contrary to the FAA-approved ALP.

(2). Confirm land uses. Each land area should be identified and verified to ensure its intended or approved use corresponds to the actual use. Such identification should extend to aeronautical service areas, industrial areas, agricultural areas, recreation areas, and those parcels that help in protecting aerial approaches.

(3). Review and compare airport property and the ALP. Specifically note whether all land acquired with federal funds, including land acquired for noise mitigation, is still being used for the purpose for which it was acquired. The FAA must approve any concurrent compatible use of land purchased with federal funds.

(4). Determine whether there are incompatible land uses on airport property. Check for building restriction lines (BRL). If these are not on the ALP, recommend they be included at the next cycle.

(5). Review leases, use agreements, and applicable financial data (such as airport account records and appraisals) if appropriate or required based on inconsistencies between depicted and actual land use.

(6). Ensure that all airport property released from its federal obligations is, in fact, being used in accordance with the release document and any special conditions or requirements.

f. Problem Areas

There are many types of issues that could arise or be identified during or after a land use inspection. Several of these may be indicative of improper and noncompliant land use. Examples of these include:

(1). Missing release documents. Release documents cannot be found to substantiate the ALP or Exhibit "A." In several instances, specific airports have told FAA that certain property was released from federal obligations or an ALP shows airport property released from federal obligations, yet no release documents can be found. Without the actual release documents, there is no way to confirm whether the property was actually released and/or if special conditions were issued along with the release.

(2). Outdated ALP. An outdated ALP has the potential to result in many improper and noncompliant land uses.

(3). Special conditions. Failure to comply with special conditions, restrictions, reservations, or covenants associated with land releases makes it difficult to determine whether the land is being used properly. It also makes it difficult to reconcile actual versus approved land use. For example, it would be an improper land use if the FAA released airport land under special land use conditions that include a specific use, but the airport is not using the land in accordance with the special conditions in the release. Other examples of violations of the sponsor’s obligations include failing to sell FAA-released property at fair market value following an appraisal as required in the release, or not using the sale proceeds for airport purposes.

(4). ALP and Exhibit "A" conflict. An ALP may show airport property to be a nonaeronautical leasehold while the Exhibit "A" depicts the land in question as grant acquired property. It is possible to have an actual nonaeronautical use correctly depicted on the ALP but conflicting with the Exhibit "A." In determining obligations, Exhibit “A” takes precedence since it is part of the grant agreement establishing the obligation. Where a question or conflict is found, Exhibit “A”

from all grants within the 20 years prior to the inspection should be reviewed to determine if the sponsor changed the description of obligated airport property, possibly without FAA being aware.

In determining obligations, Exhibit "A" takes precedence since it is part of the grant agreement establishing the obligation.

In addition to being a serious safety issue, the pavement at this airport inspected by the FAA needs obvious repair. Letting airport pavement deteriorate to this level is inconsistent with the sponsor's grant assurances. (Photo: FAA)

(5). Nonaeronautical leaseholds. The most common improper and noncompliant land uses are situations where nonaeronautical leaseholds are located on designated aeronautical use land without FAA approval or on property not released by FAA, and permitting dedicated aeronautical property to be used for nonaeronautical uses. Examples of typical uses include using hangars to store vehicles or other unrelated items. Other improper land uses found in the past have included using aeronautical land for nonaeronautical purposes such as animal control facilities, nonairport vehicle and maintenance equipment storage, aircraft museums, and municipal administrative offices. (NOTE: Approval of an ALP showing future nonaeronautical land use does not constitute FAA approval for that nonaeronautical use when it may actually occur. The ALP is a planning document only. FAA approval will be required at the time the land is to be used for a nonaeronautical purpose.)

(6). Incompatible Land Uses. Incompatible land uses include obstructions or residential construction built on airport property or in violation of conditions of released land or residential development within grant funded aircraft noise compatibility land. Introducing a wildlife attractant or failure to take adequate steps to mitigate hazardous wildlife at the airport can also result in an incompatible land use.[46] Incompatible land uses can include wastewater ponds, municipal flood control channels and drainage basins, sanitary landfills, solid waste transfer stations, electrical power substations, water storage tanks, golf courses, and other bird attractants. Other incompatible uses would be towers or buildings that penetrate Part 77 surfaces or are located within a runway protection zone (RPZ), runway object free area (ROFA), object free zone (OFZ), clearway or stopway.

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[46] For information related to the impact on aviation of wildlife, refer to *Hazardous Wildlife Attractants On or Near Airports*, Advisory Circular (AC) 150/5200-33B, and *Wildlife Strikes to Civil Aircraft in the United States 1990-2007*, Report of the Associate Administrator for Airports, Office of Airport Safety and Standards.

(7). Eminent Domain. An improper land use may include a situation involving eminent domain. For example, a local government may have taken one or more parcels of airport property without FAA approval through eminent domain in order to widen a road.[47]

(8). Airspace Determination Cases. A favorable airspace determination on a proposed structure does not by itself satisfy land use compliance requirements. There is a misconception among airport sponsors that if a proposed structure is accepted by the FAA based on airspace standards, it constitutes FAA *de facto* approval of proposed land use. That is not the case. For example, a hangar on the airport might not pose an airspace issue, but if that hangar is intended to be used as a residential hangar, it would still represent a compliance problem as an incompatible land use. The regional airports division or ACO-100 makes the determination on land use compliance separately from any related airspace determination, and the regional airports division should advise the sponsor of the distinction between the two independent FAA determinations.

(9). Unapproved interim or concurrent uses. An unapproved use might occur following approval for farming near the RPZ if a land use inspection finds permanent structures instead of the authorized farming use. It is also an unapproved land use if nonsurplus land transferred for approach protection was approved for farming purposes for a three-year period, but the lease term is for more than three years or the lease shows a rental rate set at less than fair market value. The sponsor must resolve this type of land use issue promptly. The inspection team should pay particular attention to golf courses on airport property as an interim or concurrent use. This is because experience has shown airport sponsors are reluctant to give up the facility later on and return the land to its aeronautical function. Also, experience has

The most common improper and noncompliant land uses are situations where nonaeronautical leaseholds are located on designated aeronautical use land without FAA approval (not shown on the ALP) or on property not released by FAA. It also includes permitting dedicated aeronautical property to be used for nonaeronautical uses. Such typical uses include using hangars to store vehicles or other unrelated items. Other improper land uses found in the past include using aeronautical land for nonaeronautical purposes such as animal control facilities, nonairport vehicle and maintenance equipment storage, aircraft museums, and municipal administrative offices. As shown here at the Van Nuys Airport in California, prime aeronautical property is being used for vehicle storage for a local car dealership. Following FAA intervention, the airport sponsor took corrective action. (Photo: FAA)

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[47] See also discussion of Halfmoon Bay Airport in *Montara Water & Sanitary District v. County of San Mateo*, outlined in chapter 23 of this Order, *Reversions of Airport Property*.

shown that golf course operations create revenue use problems, particularly since golf courses may be operated at below fair market value rents. Close attention should also be exercised in cases where the proposed interim use involves shooting ranges. In most instances, shooting ranges should not be permitted at all, and should only be considered in very limited and unusual circumstances. A range can be inherently hazardous unless properly controlled and mitigated. Moreover, use as a shooting range may be difficult to discontinue later if the land is needed for an aeronautical use.

NOTE: As discussed in chapter 22 of this Order, *Releases from Federal Obligations*, care must be taken when considering recreational use to avoid encumbering the property under provisions of section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303).[48]

(10). Roads and Other Structures. A public road built through airport property without FAA approval is a problem if it impacts an RSA, Part 77 surfaces, the RPZ, or an OFZ. This is especially problematic if the property where the RSA sits was acquired with federal assistance. The sponsor may have constructed roads or allowed nonsponsor roads to be built on and through airport property, effectively isolating airport parcels from the rest of the airport and making them unsuitable for aeronautical use. At the same time, if a sponsor permits structures to be erected in the RSA, this would raise safety issues and potentially be a violation of its federal obligations.

While the purpose of the inspection is to determine the extent of improper and noncompliant land use, the person conducting the land use inspection should nonetheless advise the airport sponsor of other grant assurance violations, as well as any recommended remedies and deadlines for the sponsor to complete corrective action.

g. Corrective Action. Corrective action should be initiated when discrepancies are found following an inspection. A letter stating the results of the inspection and including all land use discrepancies should be sent to the airport sponsor as soon as practical. The letter should include detailed information on how the airport can return to compliance with its federal obligations. It should also include a timeline for completion. The letter could be as simple as requesting an updated ALP within 120 days or requesting the airport to submit a formal request for a land release to correct a land use situation within 30 days. In some cases, the corrective action may be as drastic as requiring the removal of an obstruction to air navigation. Failure to take corrective action will lead to compliance action by FAA. Often, improper use of airport property could lead to violations of additional federal obligations or grant assurances, such as revenue use and exclusive rights. While the purpose of the inspection is to review land use, the person conducting the land use inspection should nonetheless advise the airport sponsor of other grant assurance violations noted, as well as any recommended remedies and deadlines for the sponsor to complete corrective action. However, only noncompliant land use needs to be reported to

[48] Section 4(f) property refers to public parks and recreation lands, wildlife and waterfowl refuges, and historic sites. It also applies to wild and scenic rivers. Section 4(f) was recodified as section 303(c).

ACO-100 for inclusion in the annual report to Congress. ACO-100 will include noncompliant land uses in the Report to Congress if those land uses remain unresolved at the end of the fiscal year.

h. Post-Inspection Land Use Report. It is important to maintain adequate records of all land use inspections. The relevant land use information collected from the inspection should be compiled in a post-inspection land use report, which will include narrative comments.

Although there is no set format for compiling this report, suggested sections or headings of a post-inspection land use report include:

- Inspection site location
- Individual conducting the inspection
- Date of inspection
- Background
- Findings
- Required corrective action
- Timeline for corrective action
- Conclusion

Narrative comments should be included detailing any inconsistencies or noncompliance situations discovered during the inspection, as well as the necessary corrective action(s) as appropriate. Within 30 days of completing the land use inspection, but before the end of the fiscal year in which the inspection took place, the land use inspector who performed the inspection should forward a copy of the land use report to ACO-100.

21.7. Sample Correspondence. The end of this chapter has several samples of correspondence related to land use inspections.

21.8. through 21.12. reserved.

Follow-Up and Corrective Action Sample, Page 1

U.S. Department
Of Transportation

**Federal Aviation
Administration**

Central Region
Iowa, Kansas
Missouri, Nebraska

901 Locust
Kansas City, Missouri 64106-2325

June 7, 2004

Mr. Paul Sasse
City Manager
City of Independence
120 North 6th Street
Independence, KS 67301

Dear Mr. Sasse:

Independence Municipal Airport
Land Use Compliance Inspection
Independence, Kansas

A representative of the Federal Aviation Administration conducted a land use inspection of the Independence Municipal Airport on Wednesday, May 19, 2004. The purpose of the inspection was to ensure that the airport is in compliance with the terms of its Federal obligations dealing specifically with the use of airport property.

The inspection revealed that the City of Independence (City) has been leasing airport property to the Independence Gun Club for $1 a year. As we discussed in our meeting, this does not appear to be in compliance with the requirement that the rental of surplus airport property for non-aeronautical activities shall generate fair market rent or with the requirement that the airport owner will maintain a fee and rental structure to make the airport as self-sustaining as possible.

In order to make the airport as self-sustaining as possible, fair market value must be obtained for the lease. All revenue generated by the airport is considered to be airport revenue and must be used on the airport for airport purposes.

It is our understanding that the current lease with the Independence Gun Club is a yearly lease and will expire on September 9, 2004. We recommended, and you agreed, that the City would receive fair market value for the lease of this property when the City renegotiates the lease agreement. Your local attorney should become familiar with the provisions of the lease agreement to ensure that the leasing arrangements would not impair the City's ability to comply with its Federal obligations.

Overall, the Independence Municipal Airport appears to be a well-maintained and well-run airport. You are knowledgeable about the tenants, their activities, and have a good understanding of the grant assurances. Based on the land-use inspection, it appears that the City of Independence is in compliance with its land use obligations.

Thank you for your cooperation during the inspection. Please call me at (816) 329-2642, if you have any questions.

Sincerely,

Nicoletta S. Oliver
Airports Compliance Specialist

cc:
AAS-400
Mr. Tony Royse, CMC
Director of Finance-City Clerk
City of Independence
120 N. 6th Street
Independence, KS 67301

Follow-Up and Corrective Action Sample, Page 2

POST-INSPECTION LAND USE REPORT

Date:

Prepared By: Roger O. Hall
Airports Program Manager
Airports Division, FAA Southern Region

I. <u>Inspection Site Location</u>

Opa Locka Airport (OPF), Miami-Dade County, FL

II. <u>FAA Representatives</u>

Roger O. Hall, Airport Programs Manager, Airports Division, Atlanta, Georgia
Ilia A. Quinones, Program Manager, Orlando Airports District Office

III. <u>Miami-Dade Aviation Department (MDAD) Contacts</u>

Carlos F. Bonzon, Ph.D., P.E., Interim Aviation Director
Steve Baker, Deputy Aviation Director
Susan Warner Dooley, Assistant Aviation Director, Business Operations
Bruce Drum, Assistant Aviation Director, Airside Operations GA Airports
Manuel Rodriguez, Manager of Development
Jose A. Ramos, Chief, Aviation Planning
Carol Anne Klein, Professional Compliance
Ana Sotorrio, Associate Aviation Director, Governmental Affairs
Judy Seidner, Executive Assistant to the Interim Director
Greg Owens, Manager General Aviation Business Development
Chris McArthur, Airport Manager
George Manion, General Aviation Airports Supervisor

IV. <u>Date of Inspection</u>

April 12-14, 2005

V. <u>Purpose</u>

In response to a General Accounting Office report issued in May 1999 entitled *"Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement"* and language in Senate Report No. 106-55, also issued in May 1999, the FAA adopted a program to conduct annual land-use inspections at various airports where land was acquired through Federal assistance programs.

The data collected by these inspections is compiled and included in an Annual Airport Improvement Program Report to Congress. This report lists airports that are not in compliance with grant assurances or other requirements with respect to airport lands.

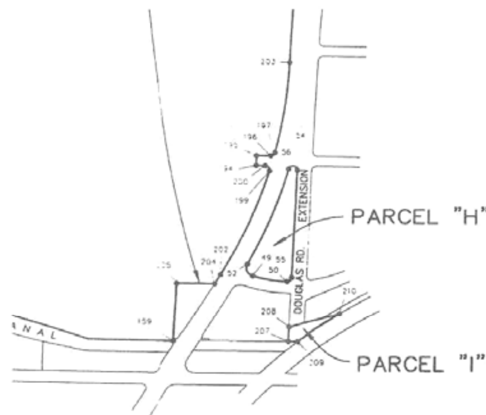
VI. <u>Opa Locka Airport Land Background</u> - The following is based on records and files kept by the FAA Orlando Airport District Office:

A. <u>Federal Land Transferred To The County:</u>

On November 16, 1961, the General Services Administration (Government) transferred two parcels of land to the Board of County Commissioners of Dade County. The primary tract, Parcel No. 1, contained about 1739 acres. Within this tract, the federal government retained ownership of Parcel No. 3. This is a 29.65-acre parcel (see insert below) that is the current site of the United States Coast Guard (USCG) Station, Miami.

Sample Post-Inspection Land Use Report, Page 1

The other tract transferred to the County, Parcel No. 2, was a small area encompassing only about 0.36 acres. This small tract was detached from Parcel No. 1 and was located north of the Opa Locka Canal, east of the Douglas Road Extension, and north of the Seaboard rail line.

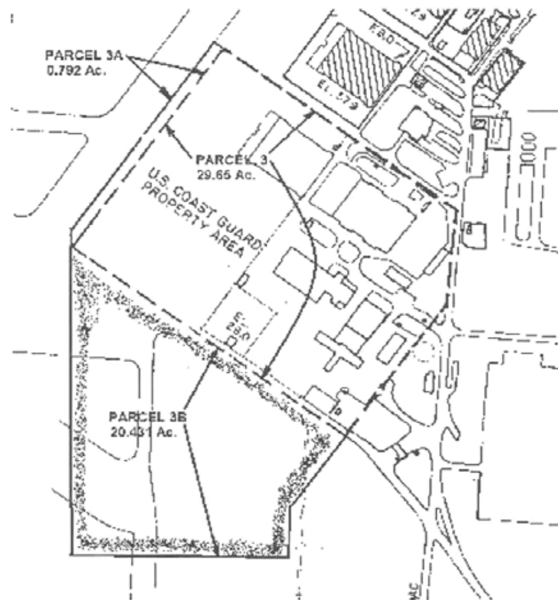


B. County Land Transferred To The USCG:

On April 17, 1969, the County transferred two parcels, by quitclaim deed, to the USCG. Parcel No. 3B contained 20.431 acres and adjoined the southwesterly side of Parcel No. 3 (see insert below). Parcel No. 3A consisted of 0.792 acres and adjoined the northwesterly side of Parcel No.3. No records were found to show the FAA approved disposal and transfer of Parcels 3A and 3B.

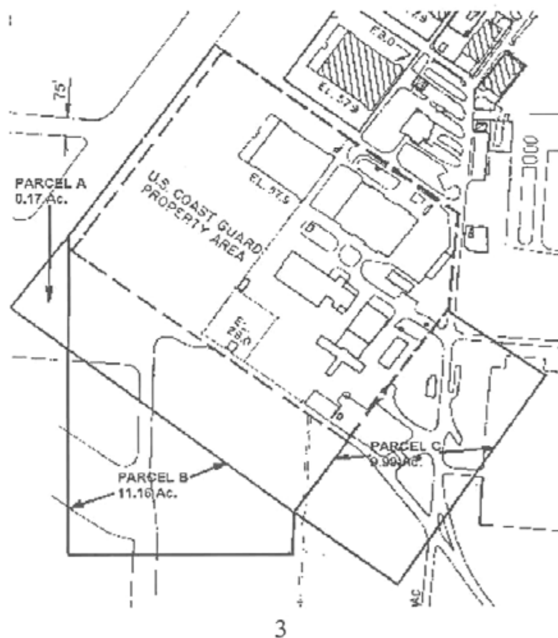
2

Sample Post-Inspection Land Use Report, Page 2



C. County – USCG Reciprocal Lease Agreement:

Circa 1993, the County and USCG drafted a no-cost, reciprocal lease agreement that was renewable annually for 29 years. The FAA has received a completed copy of the original agreement. The FAA also has a copy of a resolution dated July 13, 1993, in which the County Commission approved the agreement. The agreement provides the USCG will lease Parcel "B" (this is a portion of Parcel No. 3B that was transferred by the County to the USCG in 1969) to the County for purposes of expanding RW-12/30. In exchange, the County leased Parcels "A" and "C" to the USCG. The lease shows the USCG needed "A" and "C" to expand their facilities (see insert below). Parcel "B" contains 11.16 acres, Parcel "A" contains 0.17 acres, and Parcel "C" contains 9.99 acres.



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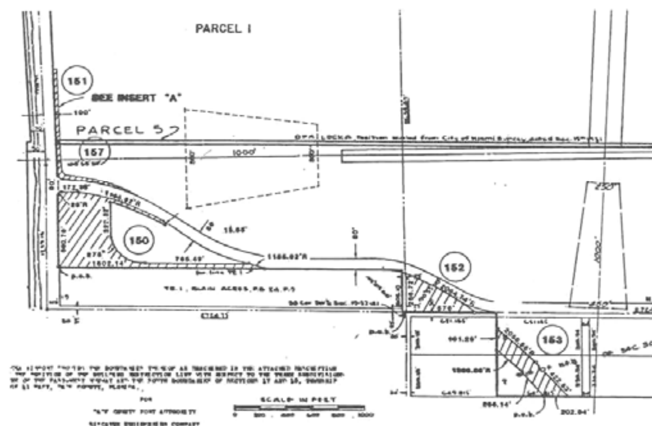
During the land-use inspection, County representatives indicated that Congress had approved the exchange of Parcel "B" for Parcels "A" and "C". However, no confirmation of Congressional approval has been provided. To FAA's corporate knowledge, the FAA did not approve this transfer. The FAA representatives conducting the inspection were concerned the boundaries of Parcel "C" may encompass several airport roads as well as a public apron and utility right of ways. Because the Airport can be damaged if the CG chooses to exercise their option to develop, occupy, or just "fence in" Parcel "C," it is important to clarify if there are plans to replace or compensate the County for the loss of these facilities if this were to happen. Paragraph 10.b of the unsigned agreement between the County and USCG provides the USCG will compensate the County for losses because of construction but it is unclear if this means the USCG will compensate the County for the loss of airport roads, apron, and possibly utilities and other improvements.

While there is a copy of the County-USCG quitclaim deed in the FAA's files for the 1969 transfer of Parcels 3A and 3B, there is no record the FAA or Congress approved the exchange of Parcel B for Parcels A and C.

D. FAA Releases of Property Transferred to The County

On March 13, 1979, the FAA executed three separate releases. These releases were for the primary electrical distribution system, the water distribution system, and the sewage treatment system. Ownership of the various utility system facilities was sent to departments of County government or to private utility companies.

On June 26, 1989, the FAA released five parcels containing 13.257 acres. The County sold these parcels to the Florida Department of Transportation to accommodate constructing Gratigny Parkway along the southwest perimeter of the airport. The parcels were labeled 150, 151, 152, 153 and 157 (see below).



E. Grant Acquired Land:

1. Federal Aid to Airport Program (FAAP)

- Project 9-08-054-D201 dated June 21, 1962 – The work description for this grant included, "Acquisition additional clear zone land runway 9-27; acquire additional land runway 9-27 development (portion of Parcel 4)." Special Condition No. 11 of the grant stated, "… the United States will not participate in the acquisition of … Lot 8, 9 and10 Venetian Acres." This special condition also provided, " … Dade County… will obtain the abandonment of all public streets to the extent that such streets are included within Parcel 4 except NW 156 Street from the West line of NW 47th Avenue to the east line of NW 42nd Avenue which NW 156 Street will remain open to public use." This appears to be the airport property purchased in fee title that is located on the north side of Biscayne Canal.

- Project 9-08-054-D603 dated June 20, 1966 – The grant work description included, "Acquire land, airport development (a fee simple title acceptable to the Administrator, to Parcel 5, 13 acres)…" Parcel 5 appears to be the Opa Locka Canal Right of Way based on a survey dated December 15th, 1931, which ran approximately due east and west between Red Road and NW 47th Avenue.

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- Project 9-08-054-D705 dated June 27, 1967 – The grant work description stated, "Acquire land (fee simple title acceptable to the Administrator) in parcel 6W, 46.34 acres, for clear zone to runway 9L, and in parcel 6N, 73.69 acres, as joint clear zones to runways 18R and 18L; and an avigation easement acceptable to the Administrator in parcel 6E, 42.18 acres, as a clear zone to runway 27R."

On March 7, 1978, this grant was amended. The obligation to acquire interest in Parcel 6N was deleted, the acreage to be acquired for Parcel 6W was reduced from 46.34 acres to 41.01 acres, and the acreage to be acquired for Parcel 6E was reduced from 42.18 acres to 27.82 acres.

2. Airport Development Aid Program (ADAP)

- Project 5-12-0047-02 dated September 10, 1979 – The grant work description stated, "Reimburse land clear zone/approach protection runway 9L (5.78 acres)…"

3. Airport Improvement Program (AIP) - Development Land

- None

4. Airport Improvement Program (AIP) - Noise Compatibility Land

- None

5. Sponsor-Donated Land

- None

F. FAA Releases of Grant Obligations:

On June 22, 1989, the FAA released the five parcels mentioned earlier containing 13.257 acres from grant obligations. Again, these are the parcels that were sold to the Florida Department of Transportation to accommodate Gratigny Parkway. These parcels were designated 150, 151, 152, 153 and 157. There were no other releases of grant obligations in the FAA's files.

G. Federal Commitment and Investment

- Total Airport Improvement Program (AIP) Funding - $21,640,966.00
- 3 ILS systems, 2 approach lighting systems, and various visual approach slope indicator systems
- Design/Publication of Instrument Approach Procedures: Runways 9L, 27R, 12, and 30

H. Airport Statistics (2004 Terminal Area Forecast)

Estimated Number of Based Aircraft – 300
Estimated Number of Operations – 130,000

VII. County's obligations pertaining to use and disposal of airport property: Over the years, the County has accepted federal assistance in the form of funds and land transfers to assist in developing and protecting the airport. The following are the land-related obligations the County accepted:

A. Surplus Property

The County is obligated through quitclaim deeds to the terms and conditions listed in each, individual transfer document. These obligations require the land be used for airport purposes for the use and benefit of the public on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right. Also, the obligations include a provision prohibiting the use, leasing, or sale of the property for other than airport purposes without the written consent of the FAA. The FAA must also determine that use of released property will not adversely impact the airport. Also, general grant assurances 5, 24 and 25, contained in AIP development grants that have been accepted within the past 20 years, apply.

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B. FAAP land Acquired Before December 31, 1967

At OPF, the obligations in FAAP grants that were carried out before December 31, 1967, have expired except for the provisions for compliance with civil rights requirements and the prohibition against exclusive rights. However, general assurances 5, 24 and 25 contained in AIP development grants, which have been accepted within the past 20 years, apply.

C. FAAP and ADAP Land Acquired After December 31, 1967.

If obligations in a FAAP or ADAP grant were still in effect at the time the County carried out an AIP grant after December 31, 1987, the land obligations in the 1988 AIP-07 grant also apply to land acquired under those FAAP and ADAP grants.

D. Land Donated to the Airport by the Airport Owner (County).

General grant assurances 4, 5, 24 and 25 contained in AIP development grants, which have been accepted within the past 20 years, apply.

VIII. Findings:

A. Exchange of County Parcels "A" and "C" for USCG Parcel "B"

The unsigned, no-cost agreement between these parties, circa 1993, provided the County would exchange Parcels "A" and "C" for Parcel "B." The USCG appears to be using the portion of Parcel C located on the west side of NW 44th Court. Their use of this area has not impacted any County-owned facilities. The USCG has not moved into the remaining portion of Parcel "C" where County roads and public apron areas exist. The County is interested in completing this exchange with the CG. It is recommended the County ask the USCG to transfer or release the unused portion of Parcel "C" to the County with the understanding that if a future need for expansion develops, a new agreement to be approved by the FAA will be fashioned. The FAA will likely require that a new agreement contain provisions for the USCG to compensate the County for the loss of civil aviation facilities, if compensation is appropriate. The FAA has not released Parcels 3A, 3B, "A" and "C" from Surplus Property and grant obligations.

The County should request the FAA take approval action on the past net transfers of fee title (3A and 3B) to the USCG and ask that these properties be released from Surplus Property and grant obligations. If the County's fee interest in Parcels "A" and "C" has been transferred, these areas will need to be released as well. On the County's federally obligated airports, we stress that FAA approval action is required before disposing of airport property or converting aeronautical property to a nonaeronautical use.

B. Nonaeronautical uses of airport property by the County or other agencies not approved by the FAA

1. Perimeter Highways and Opa Locka Canal:

It appears three County highways were developed around the perimeter of the airport subsequent to the 1961 transfer of the airport to the County. Also, Opa Locka Canal appears to have been moved to another position on the airport some time after Parcel 5 was bought under the 1966 FAAP Project 9-08-054-D603. The highway development appears to include:

a. Expansion of Red Road (N.W. 57th Avenue) from a two-lane to a four-lane highway. This appears to have taken roughly 50 feet of airport property along almost the entire western edge of the airport,

b. Extension and expansion of N.W. 135th Street along the south side of the airport between LeJune Road (37th Avenue) to Red Road, and

c. Development of Douglas Road into a four-lane connector along the entire eastern side of the airport between N.W. 42nd Avenue and 37th Avenue.

The right-of-ways for these roads and for the Opa Locka Canal appear to be either entirely or partially on former airport property. The FAA has no record of releasing property for these purposes from grant or surplus property obligations.

While the airport does not appear to have been harmed by these changes since the roads provide improved access to the airport for aeronautical users and contribute toward higher land values for both aeronautical and nonaeronautical tenants, it is important to clarify when these actions took place and how much land is involved. It appears the FAA could have agreed with the use of airport property for development and improvements to roads and canals since they improve accessibility, property

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values, and usability of the airport and may have found the value of land lost to these improvements was offset by the increase in access of airport, usable airport property, and land values. As corrective action, it is recommended the County formalize these changes to airport property by requesting the FAA release this land from federal obligations.

C. Other Non-Aeronautical Uses of Airport Property Not Approved By The FAA -

1. The FAA has not approved the arrangements between the County and the tenants or users of airport property for the large sewage pump station, the WASA easement, the prison, the parking areas in the Runway 9R runway protection zone, the organization that set up an athletic (cricket) field on the east side of the airport, and the aeronautical tenants that park nonaeronautical trailers and recreation vehicles on aeronautical lease-holds. It is recommended these agreements be formalized and submitted to the FAA for review.

RV In Hangar

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Non-Aeronautical Trailers

Prison

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Pump Station

The Arabian Nights Festival and other community uses and/or buffers or activities, to the extent practicable are subject to receipt of a fair market value return for the use of the land. On occasion, the FAA does concur with a community, interim use of airport property for a non-profit, non-aeronautical purpose. These proposed uses should be coordinated with the FAA.

A portion of the airport property located on the southeastern section of the airport has been determined of historical significance. We understand an archeological survey was performed on this section of the airport to meet requirements of the State Historic Preservation Office. We would normally expect the state to either release this area so development could continue or require that it remain protected for further investigation. We understand the County has met state requirements but that an organization with the County also has either formal, legal authority or informal authority over development on this archeological site as well as on the World War II era hangars near the current airport traffic control tower. We ask that the County explain what legal authority this local group has on the destiny of airport property and facilities and reevaluate the appropriateness of maintaining this local designation on the site as well as over the World War II era hangars.

2. Brothers to the Rescue. A nonaeronautical monument has been established on airport property next to LeJune Rd in memory of the Brothers to the Rescue. This memorial is not located now on prime aviation property and would have received FAA approval as an interim nonaeronautical use. However, corrective action is needed between the County and the Brothers to the Rescue organization to assure that should the current site be needed for airport purposes the memorial will be moved to another site subject to approval by the FAA. The agreement should state that airport revenues will not be used for the maintenance of the monument or to move the memorial unless a means of recovering the cost is established from nonaeronautical contributions or some other nonaeronautical source.

D. Leasing of Airport Property

Leaseholds – The County has either carried out or has under consideration three master leases. These leases have been in-place for a few years. During this land-use inspection, there was little to no development obvious on these properties. Also, the lessees have been relieved of paying a ground lease rate for the property within their respective control. For any interested party to get access to the airport for either an aeronautical or nonaeronautical purpose, they must negotiate with one of these master leaseholders.

In recent years, the FAA has conducted informal reviews under 14 CFR, Part 13 of allegations of unreasonable, discriminatory conditions being posed by the master lease arrangements. These leases are viewed as possibly forming conditions that would be the basis for potential conflicts with federal obligations about reasonable access, the prohibitions against exclusive rights, preservation of the County's rights and powers, and the airport being as self-sufficient as possible. As a result, MDAD and the

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County have developed a heightened awareness of their federal obligations and some corrective actions are anticipated in this area. It is recommended that the County also establish current rates and charges for both aviation and non-aviation use of the Opa Locka Airport property based on current appraisals.

The external areas surrounding the perimeter of the airport have been almost completely developed. It would seem, without the benefit of a market survey, that if commercial development is going to continue to grow and prosper in this area, the airport is the last large, vacant area for potential development and growth. The demand for the use of airport property on the approach to Runway 9L for other than aviation use is reflective of this potential. The establishment of non-aviation use rates similar to those on the Miami Lakes area that abuts the airport on the west, can provide an opportunity for the County to maximize the economic development potential of the balance of the Opa Locka Airport and enhance the airport's self-sustainability.

It is recommended that these tenants' control of undeveloped areas be reduced to having no more than the amount of land needed for their own proposed development. The holding of lands by individual tenants in excess to this need, could result in 'land banking'. This is normally found to limit investment opportunities and discourage other potential tenants from negotiating directly with the County for immediate use of airport property.

D. ALP and Exhibit A Property Map

These documents should accurately reflect the airport's land inventory. The FAA representatives noted deficiencies. We recommend that the County update both of these documents as soon as possible. Corrective land use related actions involve (1) the inclusion of the Runway Protection Zone (RPZ) easements acquired to protect the ends of the runways, in particular on 9L/27R; (2) the future acquisition of an avigation easements needed on the northwest corner of the airport; (3) the losses of airport land due to road construction and due to the right of way utilized for the realignment of the Opa Locka Canal; (4) the inclusion of Parcel 1 (0.36 acres) on the southeast corner of the airport; and (5) the remnants left on the northeast corner and southeast corner when the N.W.42nd-37th Avenue Connector was built.

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U.S Department of Transportation
Federal Aviation Administration

Western-Pacific Region
Airports Division

Federal Aviation Administration
P.O. Box 92007
Los Angeles, CA 90009-2007

March 22, 2004

Robert D. Field
Economic Development Agency
Aviation Division
44-199 Monroe Street, Suite B
Indio, CA 92201

Dear Mr. Field:

Blythe Airport (BLH)
Land Use Inspection

This letter is in regard to the Federal Aviation Administration (FAA) inspection visit to Blythe Airport (BLH) on February 19, 2004. The FAA coordinated its inspection with the 5010 compliance inspection by the Caltrans Division of Aeronautics. We wish to thank you for the time and attention your staff devoted to our visit and for their cooperation during the inspection. This letter provides the findings and recommendations resulting from the FAA land-use inspection.

The inspection serves as a means for the FAA to perform surveillance and compliance oversight of federally obligated airports in order to assess if airport land uses comply with federal requirements. The inspections are part of a national program that is being conducted pursuant to Senate Report No. 106-55, dated May 1999. Congress directed that the FAA conduct land-use inspections at airports that have received federal assistance in order to detect if unauthorized land uses exist. The FAA must disclose in its reports to Congress the identity of all airports that have unauthorized land uses, along with the FAA's plan for eliminating those unauthorized uses.

During our inspection, we toured the airport to assess the current uses of airport facilities. We found that airport land uses did not fully comply with federal requirements. Of all the non-conforming land uses observed at BLH, most were previously brought to the attention of Riverside County (County). They are:

Auto-truck stop	Drag racing sand track
County fire station	Con-Way Transportation Services
County animal shelter	U.S. Border Patrol
Skeet and Trap Club	County Sheriff shooting range
Police use of terminal	

The FAA is concerned about non-aeronautical activities at federally obligated airports because non-aeronautical uses of airport land does not represent the highest and best use of obligated airport land. More importantly, airport sponsors pledge to operate airports in accordance with specific federal

Sample Notification of Violation, Page 1

standards in exchange for federal airport aid. In simple terms, this means making airports available exclusively for aeronautical activities and airport purposes in the service of civil aviation, commerce, and national security.

The non-aeronautical users at BLH are conducting activities whose operational needs do not require them to be located at an airport. We are aware that BLH has vacant land. However, the availability of vacant airport land does not justify a non-aeronautical use, nor does it override the County's obligation to operate BLH for airport purposes. Without proper planning and approval, non-aeronautical uses are not justified.

In previous correspondence to the County we pointed out that the grant assurances, as well as the surplus property conveyance deed, placed specific obligations on the County. Assurance 19, Operation and Maintenance, does not permit any activity that interferes with BLH's use for airport purposes. Assurance 22, Economic Nondiscrimination, requires that BLH be available for aeronautical activities on reasonable terms. One of the conditions in the conveyance deed stipulates that the airport will be used for airport purposes.

FAA policy does permit exceptions to the above requirements. In accordance with that policy, when airport land is not immediately needed for airport purposes, the FAA may concur with its use on a temporary basis for a non-aeronautical purpose. Interim use, as it is called, is based on the premise that there is no immediate aeronautical demand, and the land is presently in excess of the airport's current needs. Therefore, a temporary non-aeronautical use will produce revenue rather than leave the land vacant and unproductive. Furthermore, the non-aeronautical use will not displace aeronautical users who could make a higher and better use of the land.

Interim use does not relieve the airport sponsor of its federal airport obligations. Rather, interim use is a temporary arrangement. It must produce revenue for the airport. Most importantly, it must be approved by the FAA. Since it is temporary, it is subject to periodic reassessment by the FAA to determine whether or not the non-aeronautical use is still justified.

Assurance 25, Fee and Rental Structure, dictates that the airport must be as self-sustaining as possible. In accordance with this principle, whenever a non-aeronautical use exists, it must generate income for the airport based on the commercial fair market value of the property. Non-aeronautical users may not be given free rent or nominal rental rates. Compensation does not always have to be monetary. If non-aeronautical users provide tangible services to the airport, the value of those services may offset a portion of the fair market rental rate. However, reciprocal arrangements that permit tenant services to offset rent must be documented in a written agreement. The agreement should identify the tenant services, the value of the services, and the amount of rent that is being offset.

We are aware that many of the non-aeronautical activities at BLH have been there for many years. This long-term use may have given the mistaken impression that these non-aeronautical activities have become a permitted use of obligated airport land. However, the federal obligations established in the conveyance deed and grant assurances, requiring aeronautical uses of the airport, have never been waived. They still require that the airport be used for airport purposes. Therefore, the non-aeronautical uses represent a non-conforming use of the airport.

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We first brought these non-conforming uses to the County's attention in 2000. In a letter to the County dated June 12, 2000, we advised the County to establish a cohesive plan for the airport's non-aeronautical uses so their presence on obligated airport land would comply with federal requirements, including the payment of fair market rent. We instructed the County to integrate a strategy for relocating, eliminating, or restricting non-aeronautical uses into the airport master planning process. We informed the County that non-aeronautical users must pay the commercial market value rent for the property they occupy. We advised the County that, henceforth, the non-aeronautical uses required FAA review and approval every three years to determine if they were still justified.

In addition, we pointed out that the airport property leased to Con-Way Transportation Services was more suitable for an aeronautical use. Con-Way was granted a lease on favorable terms that included an option to purchase its leasehold site. We advised that it was unrealistic to expect that Con-Way would be able to exercise an option to buy an airport parcel that is needed for aeronautical purposes. Furthermore, Con-way's presence is not contributing a tangible benefit to the airport or civil aviation. It may even be displacing potential aeronautical uses because of its proximity to the airfield.

Unfortunately, since 2000, the County has not implemented any corrective action measures to mitigate or eliminate the non-conforming uses at BLH. We have no evidence that all non-aeronautical tenants are paying market value rents. An Airport Master Plan was completed in 2001, and it does not contain a plan for the eventual disposition of all the non-aeronautical uses.

During the inspection, along with the above, we identified an airport maintenance shortcoming. Assurance 19, Operation and Maintenance, requires that the airport be maintained in a safe and serviceable condition at all times. We observed that the truck-auto stop property is littered with garbage and debris. It also appears that transient vehicles are using the property as a waste and refuse disposal site. Since the refuse is not being cleared and removed, winds are apparently blowing it towards the airfield, where it becomes a hazard to aircraft. The County is not exercising sufficient control to prevent a tenant from creating unsatisfactory conditions that are deleterious to the airport and its aviation users.

There is another airport land-use issue that requires reconsideration. The City of Blythe proposed to sublease an old abandoned building, along with five acres of land, to the First Composite Group (Group), d.b.a., the General Patton Army Air Museum. The Group proposes to establish an army air museum to store and display World War II memorabilia. We visited the Group's current leasehold property located at Chiriaco Summit Airport. Based on our inspection of the Group's property, we concluded that the Group does not operate an aviation museum. Therefore, the Group's tenancy would represent another non-aeronautical use of airport land at Blythe. As a consequence, the FAA objects to the proposed sublease agreement and does not approve of another non-aeronautical tenant at BLH.

To conclude, we are instructing the County to formulate a corrective action plan in accordance with the following guidance:

1. The plan should contain the actions the County will take to realign, eliminate, or relocate the non-aeronautical uses. This may include a

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proposal identifying a non-aeronautical-use area that the FAA may approve in accordance with statutory requirements.

2. For all non-aeronautical uses, the County will prepare a statement for the FAA showing the amount of rent that each tenant is currently paying. If any of these users are providing services to the airport in lieu of rent, the statement will describe the services and the actual monetary value of the services.

3. If non-aeronautical users are to remain at the airport, the County will explain why each must be located at the airport, what benefit the airport derives from their presence, and evidence that the airport is being compensated with market rental payments.

4. If non-aeronautical users are paying no rent or below market value rent, the County will immediately impose a rental obligation on these tenants based on a fair market value assessment of the property.

5. Henceforth, non-aeronautical users who are allowed to remain on the airport will be subject to tri-annual reviews. The County will be required to justify their airport presence and obtain approval from the FAA for their continued use of the airport for non-aeronautical purposes.

6. The auto-truck stop should be directed to clean its leasehold property and keep it clean to prevent litter from migrating to the airfield.

7. If a new or revised proposal for an airport museum is contemplated, it will be submitted to the FAA for review and approval, which approval must be obtained before an agreement is executed.

We shall expect your reply containing the County's proposed plan and implementation schedule. Please mail the reply within 60 days after your receipt of this letter to:

Federal Aviation Administration
Airports Division, AWP-620.1
P.O. Box 92007
Los Angeles, CA 90009

In closing, be advised that Section 722 of Public Law 106-181 (April 5, 2000) amended 49 USC 47131 and requires, as part of the Secretary's annual report to Congress, the inclusion of a detailed statement listing airports that the FAA believes are not in compliance with grant assurances or other requirements with respect to airport land use. The report includes a description of the non-compliance issues, the timeliness of corrective actions by airports, and the actions the FAA intends take to bring the airport sponsors into compliance. Based on the Section 722 requirement, BLH will be included in the annual report to Congress. If the County chooses not to take suitable corrective action and the non-conforming conditions continue, the FAA may initiate action to enforce the grant agreements.

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We look forward to your response. In the meantime, if you have any questions or wish to discuss this matter, please call me at (310) 725-3634.

Sincerely,

Original Signed by
Tony Garcia

Tony Garcia
Airports Compliance Specialist

Ellsworth L. Chan, Manager
Safety and Standards Branch

cc: Charles Hull
Tom Turner

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Chapter 22. Releases from Federal Obligations

22.1. Introduction. This chapter discusses the laws, regulations, policies, and procedures pertaining to sponsor requests for a release from federal obligations and land use requirements. The FAA Administrator's authority to grant a release depends on the type of obligating document, such as a property conveyance or grant agreement.

The FAA Administrator's authority to grant a release depends on the type of obligating document, such as a property conveyance or grant agreement. It also depends on the type of grant agreement, such as airport planning, noise mitigation, or airport improvement. Furthermore, the timing and circumstance of the particular document affects the Administrator's ability to grant a release. In all cases, the benefit to civil aviation is the FAA's prime concern. (Photo: CAP)

Any property, when described as part of an airport in an agreement with the United States or defined by an airport layout plan (ALP) or listed in the Exhibit "A" property map, is considered to be "dedicated" or obligated property for airport purposes by the terms of the agreement. If any of the property so dedicated is not needed for present or future airport purposes, an amendment to, or a release from, the agreement is required.

In all cases, the benefit to civil aviation is the FAA's prime concern and is represented by various considerations. These include the future growth in operations; capacity of the airport; the interests of aeronautical users and service providers; and the local, regional, and national interests of the airport. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to review the release request and to execute the release document, if appropriate.

22.2. Definition. A "release" is defined as the formal, written authorization discharging and relinquishing the FAA's right to enforce an airport's contractual obligations. In some cases, the release is limited to releasing the sponsor from a particular assurance or federal obligation. In other cases, a release may permit disposal of certain airport property.

22.3. Duration and Authority. When the duration of the physical useful life of a specific grant improvement ends, the sponsor is automatically released from its federal obligations for that grant without any formal action from the FAA. The physical useful life of such a facility extends to the time it is serviceable and useable with ordinary day-to-day maintenance. However, airport land acquired with federal assistance under the Airport Improvement Program (AIP) and/or conveyed as surplus or nonsurplus property is federally obligated in perpetuity (forever).

The Administrator has delegated to ADOs and regional offices the authority to release, modify, or amend assurances of individual sponsor agreements under specific circumstances as prescribed in this chapter. ADOs and regional airports divisions do not have the authority to modify the list of assurances in a grant agreement. In addition, ADOs do not have the authority to effect a release permitting the abandonment, sale, or disposal of a complete airport. (See Order 1100.5, *FAA Organization - Field*, issued February 6, 1989.)

22.4. FAA Consideration of Releases.

a. General. Within the specific authority conferred upon the FAA Administrator by law, the Administrator will, when requested, consider a release, modification, reform, or amendment of any airport agreement to the extent that such action has the potential to protect, advance, or benefit the public interest in civil aviation. Such action may involve only relief from specific limitations or covenants of an agreement or it may involve a complete and total release that authorizes subsequent disposal of federally obligated airport property. Major considerations in granting approval of a release request include:

(1). The reasonableness and practicality of the sponsor's request.

(2). The effect of the request on needed aeronautical facilities.

(3). The net benefit to civil aviation.

(4). The compatibility of the proposal with the needs of civil aviation.

Any release having the effect of permitting the abandonment, sale, or disposal of a complete airport must be referred to the Director of Airport Compliance and Field Operations (ACO-1) for approval by the Associate Administrator for the Office of Airports (ARP-1). (See Order 1100.5, *FAA Organization – Field*, issued February 6, 1989.)

b. Types of Federal Obligations. Generally, a sponsor can be federally obligated by the following actions:

(1). Acceptance of a federal grant for an aeronautical improvement, including land for aeronautical use. Property listed on the Exhibit “A” of a grant agreement is obligated, regardless of how it was acquired or its purpose.

(2). Acceptance of a conveyance of federal land.

(3). Federal grants for a military airport program (MAP), for noise, and for planning. Planning grants contain a limited list of assurances and do not impose all of the obligations of a development grant.

(4). Acquisition of property with airport revenue, regardless of whether the property is on the Exhibit "A" or ALP.

(5). Designation of property for aeronautical purposes on an ALP. Once designated for aeronautical use, the property may not be used for nonaeronautical purposes without FAA approval.

c. Types of Release Requests. Various conditions and circumstances can affect the manner and degree of sponsor federal obligations and the procedures for release from these obligations. A sponsor can request different kinds and degrees of release, including the following general categories:

(1). Change in the use, operation, or designation of on-airport property.

(2). Release and removal of airport dedicated real or personal property or facilities for disposal and/or removal from airport dedicated use.

22.5. Request for Concurrent Use of Aeronautical Property for Other Uses.

If aeronautical land is to remain in use for its primary aeronautical purpose but also be used for a compatible revenue-producing nonaeronautical purpose, no formal release request is required. This is considered a concurrent use of aeronautical property and requires FAA approval. Aeronautical property may be used for a compatible nonaviation purpose while at the same time serving the primary purpose for which it was acquired. For example,

The FAA will consider releases from federal obligations, changes in use, and changes in designation according to the types of release requests in connection with the various federal obligations. In some cases, FAA's approval of a change in use is not a release of a specific federal obligation. Rather, it may represent FAA's concurrence with a sponsor's proposed change in use to eliminate any potential impact on a general federal obligation to provide aeronautical access and to operate and maintain infrastructure. For example, the FAA should not release property on the approach end of a runway if this results in a structure or construction that would impact the airport. As shown here, the highway on the lower left corner of the photograph has resulted in an extensive displaced threshold, diminishing the utility of the airport. (Photo: CAP)

there may be concurrent use of runway clear zone land and low growing crops to generate revenue.

Airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (49 United States Code (U.S.C.) § 303).[49] [50]

Airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C., recodified at section § 303).

a. Surplus Property Land and Concurrent Use. In some cases, surplus property land is designated as aeronautical use by its transfer documents. If so, a sponsor must request a release of its federal obligation to use such land for aeronautical purposes if it wishes to use it for nonaeronautical purposes exclusively. However, if the sponsor will continue to use the land for its primary aeronautical function, then a compatible nonaeronautical use could be considered a concurrent use. Such a concurrent use would not require a release from the surplus property requirement.

The FAA should review such concurrent use to ensure it is compatible with the primary aeronautical use of the surplus property land. FAA should also confirm that nonaeronautical use does not prevent the use of the land for needed aeronautical support purposes. Surplus property designated for aeronautical use should not be approved for concurrent nonaeronautical use if such use degrades – or potentially degrades – the aeronautical utility of the parcels in question.

b. Grant Land and Concurrent Use. Land purchased pursuant to an FAA grant is presumed to be in pursuit of an aeronautical purpose. However, some grant land may be suitable for concurrent use. Requests to use grant land for concurrent use should be approved by FAA. This consent can be in the form of an amendment to an ALP. Grant land may be used for a compatible nonaviation purpose while at the same time serving the primary purpose for which it was acquired.

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[49] Department of Transportation (DOT) Section 4(f) property refers to publicly owned land of a public park, recreation area, wildlife or waterfowl refuge, or historic site of national, state, or local significance. It also applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites or that are publicly owned and function as – or are designated in a management plan as – a significant park, recreation area, or wildlife and waterfowl refuge. (See 49 U.S.C. § 303.)

[50] See 23 CFR § 774.11(g) and FHWA and FTA Final Rule; Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, 73 F.R. 13368-01, March 12, 2008 (Interpreting DOT Section 4(f) not to apply to temporary use of airport property.)

As with surplus property, grant land designated for aeronautical use should not be approved for concurrent nonaeronautical use if such use degrades – or potentially degrades – the aeronautical utility of the parcels in question.

22.6. Request for Interim Use of Aeronautical Property for Other Uses. The ADOs and regional airports divisions may consent to the interim use (not more than five (5) years) for nonaviation purposes of dedicated aeronautical land. This is the case whether or not the land was acquired with grant funds, is surplus property, or is otherwise dedicated for aeronautical use. A request for a use that would exceed three (3) years should be subject to concurrent use guidelines. FAA approval shall not be granted if the FAA determines that an aeronautical demand is likely to exist within the period of the proposed interim use.

Aeronautical demand might be demonstrated by the existence of a qualified aeronautical service provider expressing interest in such property for aeronautical use, or by projected growth in airport operations. Interim use should not be incompatible with current or foreseen aeronautical use of the property in question or other airport property. If the land in question is grant land, FAA consent or approval must be based on a determination that the property as a whole has not ceased to be used or needed for airport purposes within the meaning of the applicable statute.

Interim use represents a temporary arrangement for the use of airport land for nonaeronautical purposes. Therefore, it must be anticipated that the interim use will end and the land will be returned to aeronautical use. If a proposed nonaeronautical use will involve granting a long-term lease or constructing capital improvements, it will be difficult – if not impossible – to recover the land on short notice if it is needed for aeronautical purposes. Such a use is not interim and should not be treated as such. Therefore, interim use should not be approved if the proposed use will prevent the land from being recovered on short notice for airport purposes. Interim use proposals should be carefully evaluated to ensure that what is being proposed as a temporary arrangement is not really a long-term or permanent change in land use.

The ADOs and regional airports divisions may consent to the interim use of dedicated aeronautical property for nonaviation purposes. Regardless of how the property was acquired, these FAA offices have the authority to decide whether the airport may use such property for nonaeronautical purposes or not.

22.7. Release of Federal Maintenance Obligation. A partial release may be granted to an airport sponsor to remove the obligation to maintain specific areas of the airport pursuant to Grant Assurance 19an, *Operation and Maintenance*. Such circumstance would occur when airport facilities are no longer needed for civil aviation requirements. It is unlikely that a total release would be granted under the circumstances. Note that a release from the maintenance obligation is not a release from all the terms of Grant Assurance 19 since many of the obligations in that assurance apply to the airport as a whole.

a. Other Terms. A release of the federal maintenance obligation does not constitute a release of the land from other applicable terms and conditions or covenants with the applicable compliance agreements. The most common example of such a release is when airport sponsors request the FAA to release a particular parcel of land or facility from the federal obligation dedicating it to aeronautical use. This, in turn, may permit revenue producing nonaeronautical use of the parcel. The same result can be obtained without a formal maintenance obligation release, simply by approving a change to the ALP showing the parcel in question as nonaeronautical.

b. Unsafe. When it becomes unsafe for aeronautical purposes, the airport sponsor may have to discontinue an aviation use (i.e., a dilapidated taxiway). FAA's Flight Standards office should be involved in all matters related to decisions dealing with, or relying upon, a safety assessment. If the airport sponsor no longer requires the use of the runway, it must seek a release from Grant Assurance 19, *Operation and Maintenance*.

22.8. Industrial Use Changes. Certain surplus property restrictions prohibiting the use of the property as an industrial plant, factory, or similar facility have been repealed by Public Law (P.L.) No. 81-311. The FAA will issue the releases or corrections to eliminate restrictions that may have been repealed or modified by laws, such as these industrial use restrictions.

22.9. Release of National Emergency Use Provision (NEUP).

a. General. Practically all War Assets Administration (WAA) Regulation 16 and P.L. No. 80-289 instruments of disposal of real and related personal property also contain the National Emergency Use Provision (NEUP). Under this provision, the United States has the right to make exclusive or nonexclusive use of the airport or any portion thereof during a war or national emergency. This provision is similar in all such instruments.

A request for release of the NEUP should be limited to parcels that are no longer needed for aviation purposes. The NEUP represents the U.S. Government's interest and ability to reactivate an airport as a military facility in case of war or national emergency. This provision has been used several times. One example is the former Naval Air Station (NAS) Miami, which in 1952 was reactivated as a Marine Corps Air Station during the Korean War. The Navy Department took over the facility from its civilian sponsor from 1952 through 1958, after which it was returned to civilian control. In other cases, old World War II installations decommissioned after the War were never reactivated. Since many had excessive parcels of land, such as the one depicted here, the FAA has granted several releases for disposal over the years and, if permitted by DoD, released the NEUP as well. (Photo: USAF)

(See a sample NEUP legal description and release request at the end of this chapter.)

b. Procedures. The FAA may grant a release from this provision, which is often referred to as the recapture clause. When requesting a release of the NEUP clause, the airport sponsor must provide the FAA with adequate information, including property drawings and property description, in duplicate. However, the concurrence of the Chairman of the Department of Defense (DoD) Airports Subgroup Office [HQ USAF/XOO-CA, 1480 Air Force Pentagon, Room 4D1010, Washington DC 20330-1480] is also required. FAA must make the request to DoD.

The FAA regional airports division will forward the documentation required to the FAA headquarters Airport Compliance Division (ACO-100). If approved, ACO-100 will then request DoD's concurrence. Upon receipt of DoD concurrence, ACO-100 will forward the determination to the FAA regional airports division for release of the NEUP.

The FAA regional airports division must provide a copy of the release instrument to the appropriate Army Corps of Engineers District Engineer's office. The FAA will not approve a request for release of the NEUP involving the whole airport. In addition, DoD generally does not concur with a request for release of the NEUP if the release involves actual runways, taxiways, or aprons. A request for release of the NEUP should be limited to parcels that are no longer needed for aviation purposes.

The NEUP represents the U.S. Government's interest in and ability to reactivate an airport as a military facility in case of war or national emergency. This provision has been used several times. One example is the former Naval Air Station (NAS) Miami, which in 1952 was reactivated as a Marine Corps Air Station during the Korean War. The Navy Department took over the facility from its civilian sponsor from 1952 and 1958, after which it was returned to civilian control.

In other cases, old World War II installations decommissioned after the war were never reactivated. Since many had excessive parcels of land, the FAA granted several releases for disposal over the years and, when permitted by DoD, released the NEUP as well.

22.10. Release from Federal Obligation to Furnish Space or Land without Charge. FAA may release a sponsor from Grant Assurance 28, *Land for Federal Facilities*. Before granting this release, the ADO or regional airports division should evaluate all pertinent facts and circumstances and obtain concurrence from other offices within the FAA such as Air Traffic and Airways Facilities, the National Oceanic and Atmospheric Administration (NOAA), or other interested and qualified federal entities. The office may accomplish the release either by discharging the sponsor from the assurance or through an amendment to the grant agreement.

22.11. Release of Reverter Clause. In order to promote appropriate private investment in airport facilities, the sponsors of surplus property may seek to remove a provision giving the United States the option to revert title to itself in the event of default of the sponsor to the conditions of its surplus property federal obligations. This reverter clause is an important remedy intended to be reserved to the United States Government; it will not normally be released

and the ADOs cannot grant such a release. Any such proposal to release the sponsor from the reverter clause shall be referred to ACO-1 for consideration.

22.12. Exclusive Rights Federal Obligations cannot be Released without Release and Disposal of the Parcel or Closure of Airport. Any airport that has received federal assistance is subject to the exclusive rights provision discussed in chapter 8 of this Order, *Exclusive Rights*. This federal obligation exists for as long as the airport is used as an airport. Therefore, there is no provision for a release from this federal obligation without disposal of the parcel involved or disposal of the entire airport.

22.13. Federal Obligations Imposed with the Airport Layout Plan and Exhibit "A." A sponsor has a federal obligation to maintain an up-to-date ALP and is required to present an accurate Exhibit "A" upon the execution of a federal grant. The sponsor is required to continue developing the airport according to the approved land uses associated with those documents and in accordance with proposed changes submitted to the ADO or regional airports division for consideration, documentation, and approval.

22.14. Procedures for Operational Releases or Requests for Change in Use. For releases other than land, the sponsor must begin with a formal request signed by an authorized official. Although a specific format is not required, the request should include the following:

a. Affected agreement(s)/ federal agreements.

b. Modification requested.

c. Need for the modification.

d. Facts and circumstances that justify the request.

e. State and local law pertinent to the document.

f. Description of facilities involved.

g. Source of funds for the facility's original acquisition.

h. Present condition of facilities.

i. Present use of facilities.

22.15. Release of Federal Obligations in Regard to Personal Property, Structures, and Facilities. Personal property, structures, and facilities may have been acquired through a federal surplus property conveyance, a federal grant, or through purchase with airport revenue. Personal property, structures, or facilities acquired with federal assistance require a release or federal procedure. Personal property, structures, or facilities acquired through nonfederal sources and not using airport revenue do not require a release or federal procedure. Nonetheless, these items of personal property, structures, or facilities should be considered assets of the airport account.

a. Surplus Property Releases of Personal Property, Structures, and Facilities. Surplus airport property falling into the categories of personal property, structures, and facilities may be released from all inventory accountability (whether or not the airport at which they are located is included in chapter 13, *Civil Airports Required by Department of Defense for National*

Emergency Use, of FAA Order 5190.2R, *List of Public Airports Affected by Agreements with the Federal Government*) when it has been determined that such property acquired with federal funds:

(1). Is beyond its useful life;

(2). Has deteriorated beyond economical repair or rehabilitation;

(3). Is no longer needed;

(4). Has been replaced;

(5). Is to be traded to obtain similar or other property needed for the airport;

(6). Has been destroyed or lost by fire or other uncontrollable cause and the ensured value, if any, has been credited to the airport fund; or

(7). Has been, or should be, removed or relocated to permit needed airport improvement or expansion, including salvage or other use, elsewhere on an airport.

b. Abandonment, Demolition, or Conversion of Grant Funded Improvements. The FAA may grant a release that permits the sponsor to abandon, demolish, or convert property (other than land) before the designated useful life expires. The ADO or regional airports division may grant the release when any of the following apply:

- The facility is no longer needed for the purpose for which it was developed.
- Normal maintenance will no longer sustain the facility's serviceability.
- The facility requires major reconstruction, rehabilitation, or repair.

c. Disposal of Grant Funded Personal Property. Grant funded personal property should be maintained on the sponsor's inventory for the useful life of the specific equipment. The federal obligation regarding personal property expires with the useful life of the specific piece of property. Should the sponsor desire to dispose of personal property prior to the expiration of its useful life, it should consult with the ADO or regional airports division prior to seeking release from its obligations.

d. Reinvestment of Federal Share. After the FAA has determined that a release of grant funded improvements is appropriate and that the release serves the interest of the public in civil aviation, the FAA may require the sponsor, as a condition of the release, to reimburse the federal government or reinvest in an approved AIP eligible project. The amount to be reimbursed or reinvested is an amount representing the unamortized portion of the useful life of the federal grant remaining at the time the facility will be removed from aeronautical use. Special circumstances involving the involuntary destruction of the improvement or equipment would be an exception. Depreciation of personal property may follow a different formula related to its

useful life or actual value. The FAA will require a specific project or projects and a timeline for completion for reinvestment in a new AIP eligible project.

All land described in a project application and shown on an Exhibit "A" constitutes the airport property federally obligated for compliance under the terms and covenants of a grant agreement. A sponsor is federally obligated to obtain FAA consent to delete any land described and shown on the Exhibit "A."

22.16. All Disposals of Airport Real Property. All land described in a project application and shown on an Exhibit "A" constitutes the airport's federally obligated property. A sponsor is federally obligated to obtain FAA consent to delete any land described and shown on the Exhibit "A."

FAA consent shall be granted only if it is determined that the property is not needed for present or foreseeable public airport purposes. When federally obligated land is deleted, the Exhibit "A" and the approved ALP should be revised as appropriate. Where the action involves the deletion of land not acquired with federal financial assistance, there is no required reimbursement of grant revenues. However all proceeds are treated as airport revenue. Also, the airport account must receive fair market value (FMV) compensation for all deletions of airport real property from the airport (i.e., from Exhibit "A") even if the sponsor does not sell the property or sells the property below fair market value.

After airport property is released, there are continuing restrictions on the released property. The ADO or regional airports office must include in any deed, lease, or other conveyance of a property interest to others a restriction that (a) prohibits the erection of structures or growth of natural objects that would constitute an obstruction to air navigation, and (b) prohibits any activity on the land that would interfere with, or be a hazard to, the flight of aircraft over the land or to and from the airport, or that interferes with air navigation and communication facilities serving the airport. The photo above, taken from one of Cincinnati Lunken Airport's runways, illustrates the clear runway safety areas (RSAs) resulting from not permitting the erection of obstacles near runways. (Photo: FAA)

a. Continuing Right of Flight over all Airport Land Disposals. A total release permitting sale or disposal of federally obligated land must specify that the sponsor is obligated to include in any deed, lease, or other conveyance of a property interest to another a reservation assuring the public rights to fly aircraft over the land released and to cause inherent aircraft noise over the land released. The following language must be used:

This is hereby reserved to the (full name of the grantor or lessor), its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein (state whether conveyed or leased). This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the (official airport name).

b. Continuing Restrictions on Released Property. The ADO or regional airports division must include in any deed, lease, or other conveyance of a property interest to others a restriction that:

(1). Prohibits the erection of structures or growth of natural objects that would constitute an obstruction to air navigation.

(2). Prohibits any activity on the land that would interfere with or be a hazard to the flight of aircraft over the land or to and from the airport, or that interferes with air navigation and communication facilities serving the airport. These restrictions are set forth in the instrument of release and identify the applicable height limits above which no structure or growth is permitted. The airport sponsor will compute these limits according to the currently effective FAA criteria as applied to the airport. The ADO, regional airports division, and airport sponsor will not incorporate advisory circulars, design manuals, Federal Aviation Regulations (found in Title 14 Code of Federal Regulations (CFR)), or other such documents by reference in the instruments or releases issued by the FAA in lieu of actual computed limits.

22.17. Release of Federal Obligations in Regard to Real Property Acquired as Federal Surplus Property.

Airport sponsors receive surplus real property in many various sizes and shapes. Often the property is not ideally sized or arranged to serve the evolving needs of the airport. Adjustments can be made that benefit the airport. The airport sponsor must convince the FAA that its plans for the use, and possible disposal, of surplus property benefit the airport.

a. General Policy. A total release permitting the sale and disposal of real property acquired for airport purposes under the Surplus Property Act shall not be granted unless it can be clearly shown that the disposal of such property will benefit civil aviation. If any such property is no longer needed to support an airport purpose or activity directly (including the generation of revenue for the airport), the property may be released for sale or disposal upon a demonstration that such disposal will produce an equal or greater benefit (to the airport or another public airport) than the continued retention of the land.

In no case shall a release be granted unless the FAA determines that the land involved can be disposed of without adversely affecting the development, improvement, operation, or maintenance of the airport where the land is located. Any approved disposal must not be in excess of the present and foreseeable needs of the airport. Such a release has the effect of authorizing the conversion of a real property asset into another form of asset (cash or physical improvements) that better serves the purpose for which the real property was initially conveyed. This objective is not met unless an amount equal to the current fair market value (FMV) of the property is realized as a consequence of the release and such amount is committed to airport purposes.

b. Purpose of Release. The airport owner requesting a release of surplus airport land must identify and support the reason for which the release is requested. One justification of a release could be a showing that the expected net proceeds from the sale of the property at its current market value will be required to finance items of airport development and improvement where that need has been confirmed with FAA concurrence.

In no case shall a release be granted unless the FAA determines that the land involved can be disposed of without adversely affecting the development, improvement, operation, or maintenance of the airport where the land is located. Any approved disposal must be in excess of the present and foreseeable future needs of the airport. Such a release has the effect of authorizing the conversion of a real property asset into another form of asset (cash or physical improvements) that better serves the purpose for which the real property was initially conveyed. Special care should be applied to ensure that no property that could be used for aeronautical purposes, including aeronautical protection, is released. This 1944 photograph of Grenier Field in New Hampshire, which is Manchester Airport today, clearly shows how important it is to apply the release process with caution. Unused land belonging to the base might be released and, over time, incompatible land uses could take hold. Today, Manchester airport is significantly encroached upon. (Photo: USAF)

The FAA may consider requests for release from sponsors demonstrating that more value may be obtained from a disposal of specific parcels than the retention of those parcels for revenue production under leasing. Such a proposal would need to overcome the preference for holding surplus property land and leasing it for aeronautically compatible purposes that also generate airport revenue. Special care should be applied to ensure that no property that could be used for aeronautical purposes,

including aeronautical protection, is released.

c. Determining Fair Market Value. A sale and disposal of airport property for less than its fair market value is inconsistent with the intent of the statute and shall not be authorized. The value to be placed on land for which a release has been requested shall be based on the present appraised value (for its highest and best use) of the land itself and any federal improvements initially conveyed with the property.

In many cases, the original buildings and improvements may have outlived their useful life and a determination may have been made by FAA that no further federal obligation to preserve or maintain them exists. If they have been replaced under such circumstances, or if additional improvements have been added without federal financing, the value of such improvements does not need to be included in the appraisal for purposes of determining the fair market value of the surplus property. However, the value realized from the disposal of any improvement owned by the airport sponsor must be treated as airport revenue.

d. Appraisals. A release authorizing the sale and disposal of airport land shall not be granted unless the fair market value has been supported by at least one independent appraisal report acceptable to the FAA. Appraisals shall be made by an independent and qualified real estate appraiser. The requirement for an appraisal may be waived if the FAA determines that:

(1). The approximate fair market or salvage value of the property released is less than $25,000;

or

(2). The property released is a utility system to be sold to a utility company and will accommodate the continued airport use and operational requirements;

or

(3). It would be in the public interest to require public advertising and sale to the highest responsible bidder in lieu of appraisals.

e. Application of Proceeds from the Sale of Surplus Real Property. Title 14 CFR Part 155.7(d) requires that any release of airport land for sale or disposal shall be subject to a written commitment of the airport sponsor to receive a fair market value for the property. FAA shall not issue a release without this commitment. Part 155 can be found in Appendix K of this Order.

(1). The net proceeds realized from the sale of surplus property – or the equivalent amount if the property is not sold – must be placed in an identifiable interest bearing account to be used for the purposes listed in (2) below.

(2). The proceeds of sale must be used for one or more of the following purposes as agreed to by FAA and reflected in the supporting documentation for the deed of release:

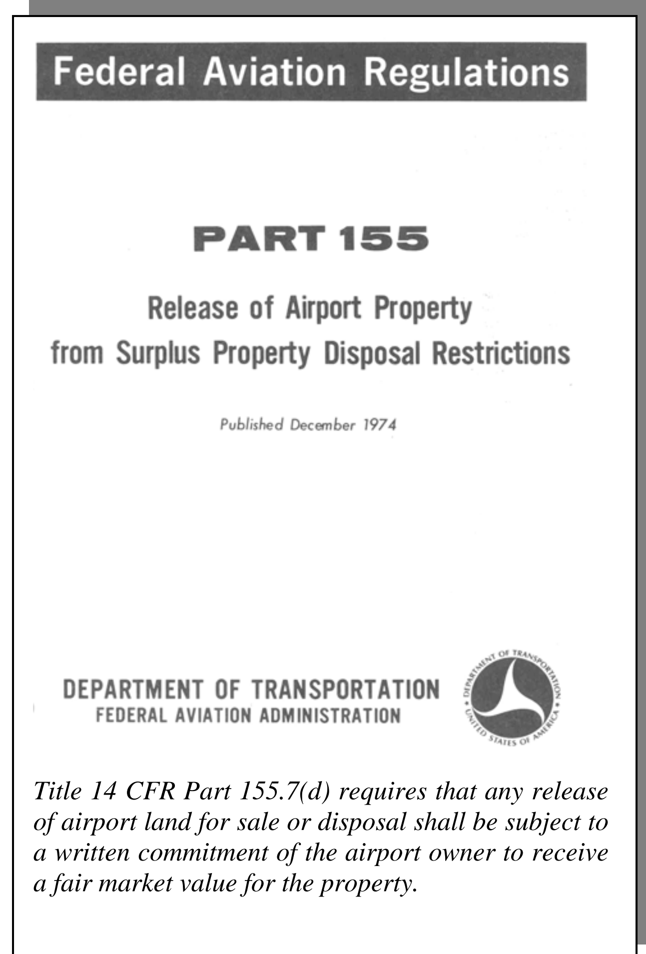
(a). Eligible items of airport development set forth in the current airport grant program and reflected in the airport's capital improvement program (CIP).

(b). Any aeronautical items of airport development not eligible under the grant program.

(c). Retirement of airport bonds that are secured by pledges of airport revenue, including repayment of loans from other federal agencies.

(d). Development of common use facilities, utilities, and other improvements on dedicated revenue production property that clearly enhances the revenue production capabilities of the property.

(3). All aeronautical improvements funded by the proceeds of sale will be accomplished in accordance with current applicable FAA design criteria or such state standards as have been approved by the FAA.



Title 14 CFR Part 155.7(d) requires that any release of airport land for sale or disposal shall be subject to a written commitment of the airport owner to receive a fair market value for the property.

(4). Any interest earned by the account holding the proceeds of sale may be used for the operating and maintenance of the aeronautical portion of the airport or to enhance the revenue producing capability of the aeronautical activities at the airport.

22.18. Release of Federal Obligations in Regard to Real Property Acquired with Federal Grant Assistance.

The FAA grants funds for the purchase of real property for aeronautical use. Over time, however, such acquisitions may result in parcels that are no longer needed for aeronautical use. A sponsor may then (a) be released by FAA from the responsibility to maintain a grant-acquired parcel for its originally intended aeronautical use (making it available for nonaeronautical use to generate airport revenue), (b) be released by FAA to use the parcel for a concurrent or interim nonaeronautical use to generate airport revenue, or (c) be released by FAA to dispose of the parcel at fair market value.

Also, grant-acquired real property can be exchanged for other property not held by the sponsor but that serves an airport purpose more effectively than the originally acquired parcel. However, a grant land swap cannot result in a net loss in the value of the federal interest in the grant land.

Federal obligations of the grant land should be formally released and transferred to the new parcel.

22.19. Effect of not Receiving or Receiving a Grant after December 30, 1987.

a. Not Receiving a Grant after December 30, 1987.

(1). Applicability. This paragraph is applicable to any request for release for sale or disposal of any airport land acquired with funds from the Federal Aid to Airports Program (FAAP), the Airport Development Aid Program (ADAP), or the Airport Improvement Program (AIP) and where the sponsor has not received additional grants after December 30, 1987. A sponsor's request must assure that the federal government shall be reimbursed or the federal share of the net proceeds will be reinvested (a) in the airport, (b) in a replacement airport, or (c) in another operating public airport.

(2). Reimbursement. The requirement for reimbursement shall apply only where there is no alternative to invest in a replacement or operating public airport owned or to be owned by the sponsor. However, the sponsor may elect to reinvest the federal share of the net proceeds in any other grant-obligated public airport by contract between the respective airport owners with FAA concurrence. FAA concurrence in such a contract is contingent upon such funds being used for grant-eligible airport development. Except where the grant agreement specifically provides otherwise (by special condition), the amount to be reimbursed shall be the amount of the federal share of the grant times the net proceeds from sale of the property at its current fair market value.

(3). Reinvestment. Reinvestment of the total net proceeds (both federal and sponsor share) is required if the sponsor continues to own or control – or will own or control – a public airport or a replacement public airport. Reinvestment shall be accomplished within five (5) years (or a timeframe satisfactory to the FAA Administrator) for specified items of airport improvement in the order of priority established for releases of surplus airport property in paragraph 22.17.e above.

Unlike surplus property, the purposes for which land was acquired under FAAP/ADAP/AIP did not include nonaeronautical income production. If reinvestment cannot be accomplished within five (5) years or if the net proceeds derived exceed the cost of grant-eligible airport development, reimbursement of the remaining share will be required.

b. Receiving a Grant after December 30, 1987.

(1). Land for Airport Purposes (Other than Noise Compatibility Purposes). A sponsor entering into a grant after December 30, 1987, under the Airport and Airway Improvement Act of 1982 (AAIA), as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987 (1987 Airport Act), is to dispose of land at fair market value when the land is no longer needed for airport purposes. This also applies to land purchased under FAAP/ADAP/AIP after December 30, 1987. The federal share of the sale proceeds of the land is to be deposited into the Trust Fund. The sponsor will retain or reserve an interest in the land to ensure it will be used only for purposes compatible with the airport.

For a request to release an entire airport that is to be replaced by another new or existing airport, the general policy is to treat the proposal as a trade-in of the land and facilities developed with federal aid at the old airport toward the acquisition and development of better facilities at the new airport. (Photo: FAA)

(2). Land for Noise Compatibility Purposes. A sponsor entering into a grant after December 30, 1987, under the AAIA, as amended by the 1987 Airport Act, will dispose of noise land at fair market value when the land is no longer needed for noise compatibility purposes. This also applies to land purchased under FAAP/ADAP/AIP. An interest or right shall be reserved in the land to ensure it will be used only for purposes that are compatible with the noise levels generated by aircraft. The portion of the disposal proceeds that represent the federal government's share is to be reinvested in another approved noise compatibility project, reinvested in an approved airport development project or deposited into the Trust Fund. Disposal of noise land may be by sale, long-term lease, or exchange. (See Program Guidance Letter (PGL) 08-2, Management of Acquired Noise Land: Inventory – Reuse – Disposal, dated February 8, 2008, updated March 26, 2009 (available on the FAA web site).

22.20. Release of Entire Airport.

a. Approval Authority. The FAA Associate Administrator for Airports (ARP-1) is the FAA approving official for a sponsor's request to be released from its federal obligations for the purpose of abandoning or disposing of an entire airport before disposal can occur. That authority is not delegated. A copy of the sponsor's request, including related exhibits and documents, and a copy of the FAA Airports regional statement supporting and justifying the proposed action shall be provided to ARP-1.

b. Replacement Airport. In the instance of a disposal of an entire airport that is to be replaced by a new or replacement airport, the general policy is to treat the proposal as a trade-in of the land and facilities developed with federal aid at the old airport for the acquisition and development of better facilities at a new or replacement airport.

Release under these circumstances is contingent upon transferring federal grant obligations to the new or replacement airport. The release would become effective upon the transfer of the federal grant obligations to the new airport, when the new airport becomes operational. Development costs for the new airport in excess of the value from the disposal of the old airport would be eligible for AIP assistance. In these circumstances, the availability of a new and better airport is the basis for determining that the old one is no longer needed and that its useful life has expired. The original grant agreement is then terminated with the transfer of the grant obligations. (See Appendix T of this Order, *Sample FAA Letter on Replacement Airport*, regarding replacement airport.)

22.21. Procedures for the Application, Consideration, and Resolution of Release Requests. The ADO or regional airports division will base its decision to release, modify, reform, or amend an airport agreement on the procedures and guidelines outlined in this chapter and on the specific factors pertinent to the type of agreement and the release requested.

22.22 General Documentation Procedures. The sponsor's proposed release, modification, reformation, or amendment is a material alteration of its contractual relationship with the FAA. If approved, the results may have a substantial impact on the service that the sponsor provides to the aeronautical public. Accordingly, the ADOs and regional airports divisions must fully document all such actions to include the following:

a. A complete description of the airport sponsor's federal obligations, including grant history, surplus property received, reference to appropriate planning documents (Exhibit "A" or ALP) with notations on additional land holdings and land use.

b. A complete description of all terms, conditions, and federal obligations that may need to be modified in order to achieve the result requested by the sponsor.

c. The sponsor's justification for release, modification, reformation, or amendment.

d. The ADO or regional office's determination for public notice and comment or documentation of the notice and a summary of comments received.

e. The ADO or regional office's preliminary determination on the request.

f. The endorsement of the FAA official authorized to grant the request.

22.23. Airport Sponsor Request for Release. The sponsor must submit its request for release, modification, reformation, or amendment in writing signed by a duly authorized official of the sponsor. Normally, the sponsor submits an original request and supporting material to the ADO or regional airports division. If the FAA or other federal agencies require it, the sponsor may need to submit additional copies of the request and supporting material to headquarters offices or to the offices of other federal agencies.

22.24. Content of Written Requests for Release. Although no special format is required, the sponsor must make its request specific and indicate, as applicable, the following:

a. All obligating agreement(s) with the United States.

b. The type of release or modification requested.

c. Reasons for requesting the release, modification, reformation or amendment.

d. The expected use or disposition of the property or facilities.

e. The facts and circumstances that justify the request.

f. The requirements of state or local law, which the ADO or regional office will include in the language of the approval document if it consents to, or grants, the request.

g. The involved property or facilities.

h. A description of how the sponsor acquired or obtained the property.

i. The present condition and present use of any property or facilities involved.

22.25. Content of Request for Written Release for Disposal. In addition to the above, the sponsor must include the following in its request for release involving disposal of capital items:

a. The fair market value of the property.

b. Proceeds expected from the disposal of the property and the expected use of the revenues derived.

c. A comparison of the relative advantage or benefit to the airport from the sale of the property as opposed to retention for rental income.

d. Provision for reimbursing the airport account for the fair market value of the property if the property is not going to be sold upon release, for example, if the municipality intends to use it for a new city office building or sports complex.

e. A description of any intangible benefits the airport will realize from the release. The sponsor may submit a plan substantiating a claim of intangible benefits to the airport accruing from the release, the amount attributed to the intangible benefits, and the merit of applying the intangible benefits as an offset against the fair market value of the property to be released.

NOTE: Only benefits to the airport may be cited as justification for the release, whether tangible or intangible. The nonaviation interest of the sponsor or the local community – such as making land available for economic development – does not constitute an airport benefit that can be considered in justifying a release and disposal.

The nonaviation interest of the sponsor or the local community does not constitute an airport benefit that can be considered in justifying a release and disposal.

22.26. Exhibits to the Written Request for Release.

a. Drawings. The sponsor must attach to each copy of the request scaled drawings showing all airport property and airport facilities that are currently federally obligated by agreements with the United States. The sponsor should attach other exhibits supporting or justifying the request, such as maps, photographs, plans, and appraisal reports, as appropriate.

Although desirable, the FAA does not require scaled ALP drawings to support a request for release. If the FAA grants the release, the drawing serves to explain or depict the effect on the airport graphically. The drawings do not serve as the document by which the release is granted, and unless a release has been executed in accordance with the

The reasonableness and practicality of the sponsor's request for release of airport property is related to the necessary aeronautical facilities and the priority of the need. In addition, the evaluation should consider the net benefit to be derived by civil aviation and the compatibility of the proposal with the needs of civil aviation, including the balance of benefits to all users as well as to the public at large. For example, as shown in the photograph above, a request for release of the property where aircraft are parked or where a hangar is located would be denied because the property is serving an aeronautical function. On the other hand, in a case such as the one depicted below, where airport property is separated by a road, the FAA may concur in releasing the property in question for revenue-producing nonaeronautical use provided it generates fair market value for the airport, is not needed for any aeronautical function, and its use is compatible with airport operations. (Photos: FAA)

guidance contained in this chapter, the FAA will not approve any drawing inconsistent with the sponsor's current federal obligations.

b. Height and Data Computations. If the release contemplates change of use or disposal, the sponsor must provide height limit computations to limit the height of fixed objects to ensure navigation and compatible land use. It is essential to prevent an incompatible obstruction to air navigation from being located near the airport on property the airport once owned.

c. Application of Sale Proceeds. If the release action requested would permit a sale or disposal of airport property, the sponsor should provide documentation about the intended use of proceeds and evidence that the proceeds from disposal represent fair market value.

22.27. FAA Evaluation of Sponsor Requests. When the ADOs or regional airports divisions receive a request supported by the appropriate documentation and exhibits, they need to evaluate the total impact of the sponsor's proposal on the airport and the sponsor's federal obligations. This evaluation includes consideration of pertinent factors such as:

a. All of the ways in which the sponsor is federally obligated, both in its operations and its property. This includes specific federal agreements and use obligations.

b. The sponsor's past and present compliance record under all its airport agreements and its actions to make available a safe and usable airport for aeronautical use by the public. If there has been noncompliance, evidence that the sponsor has taken or agreed to take appropriate corrective action.

c. The reasonableness and practicality of the sponsor's request in light of maintaining necessary aeronautical facilities and the priority of the airport in the National Plan of Integrated Airport Systems (NPIAS).

d. The net benefit to be derived by civil aviation and the compatibility of the proposal with the needs of civil aviation, including the balance of benefits to aeronautical users relative to the public at large.

e. Consistency with the guidelines for specific types of releases, as discussed in this chapter.

22.28. FAA Determination on Sponsor Requests. The FAA will not release more property than the sponsor has requested. The statutes, regulations, and policy applicable to the specific types of agreements involved must guide the decision to grant or deny the request based on the evaluation factors. In addition, the FAA must determine if FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*, requires an environmental review procedure. Further, it must be determined if one of the following conditions exists:

a. The public purpose for which an agreement or a term, condition, or covenant of an agreement was intended to serve is no longer applicable. The FAA should not construe the omission of an

airport from the NPIAS as a determination that such an airport has ceased to be needed for present or future airport purposes.

b. The release, modification, reformation, or amendment of an applicable agreement will not prevent accomplishment of the public purposes for which the airport or its facilities were federally obligated, and such action is necessary to protect or advance the interest of the United States in civil aviation.

c. The release, modification, reformation, or amendment will federally obligate the sponsor under new terms, conditions, covenants, reservations, or restrictions determined necessary in the public interest and to advance the interests of the United States in civil aviation (such as compatible land use for land that is disposed of).

d. The release, modification, reformation, or amendment will conform the rights and federal obligations of the sponsor to the statutes of the United States and the intent of the Congress, consistent with applicable law.

22.29. FAA Completion of Action on Sponsor Requests. The ADO or regional airports division will advise the sponsor that its request is granted or denied. It will also indicate if special conditions, qualifications, or restrictions apply to the approval. The approving FAA office may issue a letter of intent to approve the request in advance of the actual release, at the request of the sponsor.[51] (See also section 22.32 of this chapter, *FAA Consent by Letter of Intent to Release – Basis for Use*.)

a. FAA Approval Action. If FAA approves the request or an acceptable modification of the request, the ADO or regional airports division will prepare the necessary instruments or documents. The ADO or regional airports division will initiate parallel action to amend all related FAA documents (i.e., NPIAS, ALP, Exhibit "A," and FAA Form 5010, *Airport Master Record*) as required to achieve consistency with the release. The sponsor must thereafter provide the ADO or regional airports division with any acknowledgment or copies of executed instruments or documents as required for FAA record purposes.

b. Content of Release Document. The formal release will cite the agreements affected and identify specific areas or facilities involved. The ADO or regional airports division will notify the sponsor of the binding effect of the revised federal obligations.

22.30. FAA Denial of Release or Modification. When the ADO or regional airports division determines that the request is contrary to the public interest and therefore cannot grant the request, it will advise the airport sponsor in writing of the denial.

[51] All such letters of intent should cite any specific understandings reached by the ADO and airport sponsor.

22.31. Procedures for Public Notice for a Change in Use of Aeronautical Property.

a. Summary. This section sets forth FAA guidance for public notice of the agency's intent to release aeronautical property or facilities from federal obligations under the grant assurances and surplus property agreements.

Section 125 of *The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century* (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's federal obligation to use certain airport land for nonaeronautical purposes.

b. Responsibilities. The ADOs or regional airports divisions are responsible for complying with the requirements of the statute and policy guidance governing the notice and release of aeronautical property.

c. Authority. Section 125 of AIR-21 has been codified as amendments to 49 U.S.C. §§ 47107(h), 47125, 47151, and 47153.

See a sample *Notification Memo for Federal Register Notice Governing the Notification and Release of Aeronautical Property* and a *Sample Federal Register Notice Governing the Notification and Release of Aeronautical Property* at the end of this chapter.

d. **Scope and Applicability.** As a matter of policy, the FAA will provide public notice of a proposed release of a sponsor from its federal obligations regarding any land, facilities, and improvements used or depicted on an ALP for aeronautical use where the release would affect the aeronautical use of the property, including certain releases for which notice is not expressly required by section 125 of AIR-21. Public notice requirements apply to release of the following types of property:

(1). Land acquired for an aeronautical purpose (except noise compatibility) with federal assistance in accordance with 49 U.S.C. § 47107(c)(2)(B).

(2). Land (surplus property) provided for aeronautical purpose in accordance with 49 U.S.C. § 47151.

(3). Land conveyances of the United States Government for aeronautical purposes in accordance with 49 U.S.C. § 47125.

(4). Land used as an aircraft movement area with federally financed airport improvements.

e. Purpose. Airport property becomes federally obligated for airport purposes when an airport sponsor receives federal financial assistance. The FAA land release procedures evaluate the sponsor's request for release of land to the extent that such action will protect, advance, or benefit the public interest in civil aviation or, specifically, the public's investment in the national airport system. Section 125 of AIR-21 requires the FAA to solicit and consider public comment as a part of the agency's decision making on a sponsor's request for release.

f. Procedures. At least 30 days prior to the agency's determination of an airport sponsor's request to release aeronautical property or facilities, notice must be published in the *Federal Register* to afford the public an opportunity to comment. Public notice is also an opportunity for the FAA to obtain additional information as a part of its evaluation of the airport sponsor's request. It allows the FAA to take public comment into account in the agency's decision making. Public notice is not required for:

(1). Approval of the interim use of airport property on a short-term period, generally not exceeding five (5) years;

(2). Grant of utility or other types of easements that will have no adverse effect on the aeronautical use of the airport;

(3). Release of aeronautical property as a part of a major environmental action in which public notice and comment is an integral part of the environment review; or

(4). Release of noise compatibility land.

22.32. FAA Consent by Letter of Intent to Release – Basis for Use.

a. Use of Letter of Intent. Release and disposal of facilities developed through federal assistance is often necessary to finance replacement facilities. The sponsor may, therefore, request a letter of intent to release even if it is merely to permit the sponsor to determine the market demand for portions of the available airport property proposed for release and disposal.

b. Letter of Intent Contingencies. The ADO or regional airports division may issue such a letter of intent to release if the letter contains appropriate conditions and makes clear that actual release is specifically contingent upon adequate replacement facilities being developed and becoming operable and available for use.

c. Binding Commitment. The letter represents a binding commitment (subject to future appropriations) and an advance decision to release the property once specific conditions have been met. It should be used only when all of the required conditions pertinent to the type of release sought have been met or are specifically made a condition of the pledge contained in the letter of intent. In addition, such a letter should cite any specific understandings reached regarding anticipated problems in achieving the substitution of airport properties (i.e., who pays for relocation of various facilities and equipment and the cost of extinguishing existing leases). The letter should specify a reasonable time limit on the commitment to release. The sample *Letter of Intent to Release Airport Property* at the end of this chapter will assist in drafting such a letter.

22.33. The Environmental Implications of Releases.

a. When a sponsor accepts a federal airport development grant or a conveyance of federal surplus property for airport purposes, the sponsor incurs specific federal obligations with respect to the uses of the property. FAA action is required to release a sponsor from federal obligations in the

event the sponsor desires to sell the airport land. This action is normally categorically excluded, but may require an environmental assessment in accordance with the provisions of chapter 3, "Environmental Action Choices," of FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*.

In this case, the assessment shall address the known and immediately foreseeable environmental consequences of the release action. As with other federal actions regarding land, appropriate coordination with federal, state, or local agencies shall be completed for applicable areas of environmental consideration (i.e., historic and archeological site considerations, section 4(f) lands, wetlands, coastal zones, and endangered species).[52] In such cases, coordination with the State Historic Preservation Officer is required.

b. In making the final determination, the responsible federal official shall consider the effects of covenants that will encumber the title and the extent of federal ability to enforce these covenants subsequent to the release action. The standard conditions of release relative to the right of flight, including the right to make noise from such activity and the prohibition against erection of obstructions or other actions that would interfere with the flight of aircraft over the land released, may be considered as mitigating factors and may be included in environmental assessments when required. When the intended use of released land is consistent with uses described and covered in a prior environmental assessment, the prior data and analysis may be used as input to the present assessment. When the conditions set forth in the applicable sections of FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*, apply, a written reevaluation may be used to support the property release.

c. In some cases, another federal agency may be the lead agency responsible for preparing an environmental assessment and environmental impact statement, if required. In these circumstances, the FAA may be a cooperating agency. To support the release action, the FAA may then adopt the environmental document prepared by the other agency in accordance with the provisions of Council of Environmental Quality (CEQ) 1506.3.

d. Long term leases that are not related to aeronautical activities or airport support services have the effect of a release for all practical purposes, and shall be treated the same as a release. Such leases include convenience concessions serving the public such as hotel, ground transportation, food and personal services, and leases that require the FAA's consent for the conversion of aeronautical airport property to revenue-producing nonaeronautical property. Long-term leases are normally those exceeding 25 years.

22.34. through 22.37. reserved.

[52] See FAA Order 5050.4A, *Airport Environmental Handbook*, for additional information.

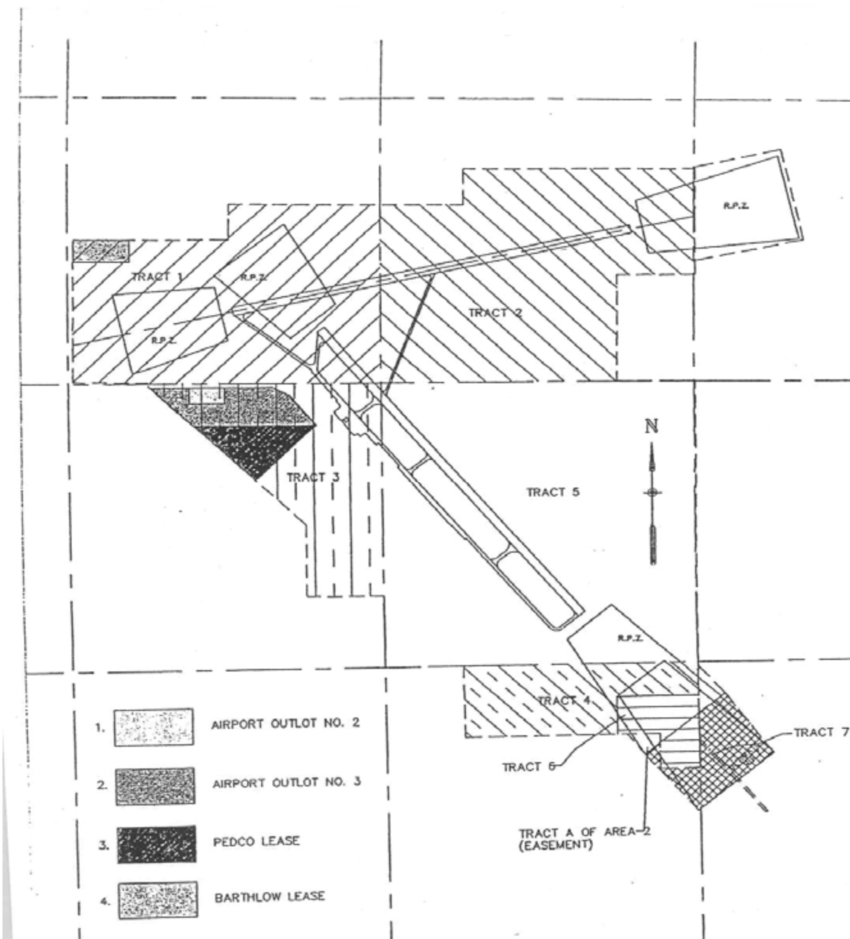
Sample NEUP Legal Description

Legal Description

1. That portion of Tract 3 of the Pierre Municipal Airport, consisting of the parcels designated as Airport Outlot 2 and Airport Outlot 3, located in the North half (1/2), Section thirty five (35), Township one hundred eleven (111) North, Range seventy nine (79) West, Hughes County, South Dakota.

2. That portion of Tract 3 of the Pierre Municipal Airport, consisting of the parcels designated as the Pedco Lease, described as starting at the southwest corner of "B" Street right of way, the point of beginning; thence south easterly along the south westerly property line of lot 6, Airport outlot 3, extended, a distance of 1441.45 feet; thence north easterly a distance of 1416.11 to the south east corner of "B" street right of way, thence west a distance of 2015.64 feet to the point of beginning.

3. That portion of Tract 1 of the Pierre Municipal Airport, consisting of the parcel designated as the Barthlow lease, located in the north 400 feet of the east 1050 feet of the west 1083 feet of the southwest quarter (1/4) of section twenty six (26), Township one hundred eleven (111) North, Range seventy nine (79) West.



The FAA will not approve a request for release of the National Emergency Use Provision (NEUP) involving the whole airport. In addition, the Department of Defense (DoD) generally does not concur with a request for release of the NEUP that involves actual runways, taxiways, or aprons. A request for release of the NEUP should be limited to parcels that are no longer needed for aviation purposes. Above is a sample visual and legal description of the specific parcels of land to which the release from the NEUP would apply. (Diagram: FAA).

Sample NEUP Release Request

U.S. Department of Transportation
Federal Aviation Administration

Office of the Associate Administrator for Airports

800 Independence Ave., SW.
Washington, DC 20591

JUN 23 2006

Mr. Timothy W. Bennett
Chairman, DOD Airports Subgroup
HQ USAF/XOO-CA
1480 Air Force Pentagon, Room 4D1010
Washington, DC 20330-1480

Dear Mr. Bennett:

The Federal Aviation Administration (FAA) has received a request from the Fort Wayne-Allen County Airport Authority (FWACAA) for the release of the National Emergency Use Provision (NEUP) on land at the Fort Wayne International Airport in Fort Wayne, Indiana.

The property containing the Fort Wayne International Airport, formerly known as Baer Army Airfield, was transferred to the city of Fort Wayne (the airport sponsor that later became the FWACAA) under the provisions of Section 13, Public Law 80-289 of the Surplus Property Act of 1944. The transfer document includes the NEUP provision.

As a matter of Policy, the FAA does not request a release from the NEUP for all airport property conveyed. However, we do concur with the release of the NEUP on certain designated parcels of airport property that are not currently required for aeronautical purposes. The subject land for this NEUP release request, approximately 2.44 acres, is not currently required for aeronautical purposes and is needed for the relocation of Indianapolis Road. The FAA concurs with the use of the parcel for non-aeronautical use. The attached property map and legal description depicts the subject parcel.

Consequently, in accordance with Section 7-7(d), Chapter 7, FAA Order 5190.6A *Airport Compliance Requirements*, we request the concurrence of the Department of Defense in the release of the NEUP provision on the tract of property described above and as shown in the attached documents.

Thank you in advance for your consideration. If you have any questions or need further assistance, please contact Mr. Miguel Vasconcelos at (202) 267-8730.

Sincerely,

Charles Erhard, Manager
Airport Compliance Division, AAS-400

Enclosures

Sample DoD Response to FAA NEUP Release Request

THE SECRETARY OF DEFENSE
WASHINGTON DC 20030-1480

DOD
POLICY BOARD
ON FEDERAL AVIATION

HQ USAF/A3O-AA
1480 Air Force Pentagon, Rm 4D1010
Washington DC 20330-1480

14 Jul 06

Mr. Charles C. Erhard
Manager, Airport Compliance Division, AAS-400
Federal Aviation Administration
800 Independence Avenue SW
Washington DC 20591

Mr. Erhard

This is in response to your letter of June 23, 2006, requesting the release of approximately 2.44 acres of property at the Fort Wayne International Airport, Indiana from the National Emergency Use Provision (NEUP).

The Airports Subgroup, on behalf of the Department of Defense, concurs with the FAA to release of the NEUP on the designated parcels of airport property that are not currently required for aeronautical purposes (as shown in the attached property map and legal description). A copy of the release instrument must be provided to the appropriate District Corps of Engineers' office.

Sincerely

TIMOTHY W. BENNETT
Chairman
DOD Airports Subgroup

Attachments:
1. Property Map
2. Legal Description

U.S. Department of Transportation
Federal Aviation Administration

Memorandum

Airports District Office
11677 South Wayne Road
Suite 107
Romulus, MI 48174

Subject: ACTION: Federal Register Notice, Public Notice for Waiver of Aeronautical Land-Use Assurance Wood County Regional Airport, Bowling Green, Ohio

Date: July 7, 2004

From: Irene Porter, Manager
Detroit Airports District Office, DET ADO-600

Reply to Attn. of: Jagiello
734-229-2956

To: Regulations Division, Office of the Chief Counsel, AGC-200
THRU: Manager, Safety/Standards Branch, AGL-620
Regional Counsel, AGL-7

Attached are the original and two (2) copies of the Federal Register notice for Public Notice For Waiver of Aeronautical Land-Use Assurance at Wood County Regional Airport, Bowling Green, Ohio.

This notice is submitted to be docketed by the Regulations Division Staff for publication in the Federal Register.

Please insert the date, which is 30 days after the date of publication in the Federal Register, under "**DATES**: Comments must be received on or before ________."

Irene R Porter

Irene Porter

Attachment (3)

cc: AGL-620 w/attachments (for information)
AAS-400 w/attachments (for information)

Notification Memo for Federal Register Notice Governing the Notification and Release of Aeronautical Property

Federal Aviation Administration Public Notice For Waiver Of Aeronautical Land-Use Assurance

Hallock Municipal Airport, Hallock, MN

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to nonaeronautical use and to authorize the sale and/or conversion of the airport property. The proposal consists of two parcels of land containing a total of 4.18 acres located on the north side of the airport along County Road 13.

These parcels were originally acquired under Grant No. FAAP-01 in 1964. The parcels were acquired for a runway that has since been abandoned and replaced by a new primary runway in a different location. The land comprising these parcels is, therefore, no longer needed for aeronautical purposes and the airport owner wishes to sell a 4.0 acre parcel for an agricultural implement dealership and convert 0.18 acres of another parcel for use as a city wastewater lift station site. The income from the sale/conversion of these parcels will be reinvested in the airport for extending the useful life of the runway pavement.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the Federal Register on February 16, 1999. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the *Federal Register* 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATE: Comments must be received on or before [Insert date which is 30-days after date of publication in the *Federal Register*.]

ADDRESSES: Send comments on this document to Mr. Gordon L. Nelson, Program Manager, Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450-2706.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Noel, City Administrator, 163 South 3rd Street, Hallock, MN 56728, telephone (218)843-2737; or Mr. Gordon L. Nelson, Program Manager, Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450-2706, telephone (612)713-4358/FAX (612)713-4364. Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: Following are legal descriptions of the property located in Kittson County, MN: That part of Section 24, T161N, R49W described as follows: Commending at an iron monument at the NW corner of said Section 24; thence South 89 degrees 40 minutes 33 seconds East, assumed bearing, along the north line of said Section 24 a distance of 2523.77 feet; thence South 27 degrees 29 minutes 58 seconds East, a distance of 33.72 feet to an iron pipe monument; being the point of beginning of the tract to be described; thence North 89 degrees 40 minutes 34 seconds East, parallel with north line of said Section 24 a distance of 400 feet to an iron pipe monument; thence South 22 degrees 18 minutes 25 seconds East, parallel with and 40 feet perpendicular to the westerly right-of-way line of Burlington Northern, Inc. railroad, a distance of 437.34 feet to an iron pipe monument; thence South 67 degrees 41 minutes 37 seconds West 317.57 feet to an iron pipe monument; thence North 27 degrees 29 minutes 58 seconds West 589.49 feet to the point of beginning, containing 4.00 acres, more or less.

That part of the NE1/4 of the NW1/4 of Section 24, T161N, R49W bounded as follows: Beginning on the north line of said Section 24 at a point which lies 557.00 feet west of the northeast corner of the NW1/4 being the point of beginning of the tract to be described; thence South 0 degrees 19 minutes 27 seconds West, assumed bearing, along a line perpendicular to said section line a distance of 172.82 feet; thence North 27 degrees 22 minutes 40 seconds West, a distance of 195.19 feet to the north line of said Section 24, thence South 89 degrees 40 minutes 33 seconds East, a distance of 90.74 feet along the north line of said section back to the point of beginning, containing 0.18 acres, more or less.

Issued in Minneapolis, MN on December 11, 2006

Robert A. Huber
Manager, Minneapolis Airports District Office
FAA, Great Lakes Region

Sample Federal Register Notice Governing the Notification and Release of Aeronautical Property

Sample Letter of Intent to Release Airport Property - Page 1

U.S. Department of Transportation
Federal Aviation Administration

Detroit Airports District Office
11677 South Wayne Road
Suite 107
Romulus, MI 48174

April 17, 2006

Mr. Kent L. Maurer, Manager
Jackson County- Reynolds Field
3606 Wildwood Avenue
Jackson, Michigan 49202

Dear Mr. Maurer:

Jackson County Airport-Reynolds Field, Jackson, Michigan
Letter of Intent to Release Airport Property (Approximately 68 Acres)
Parcels 15A and 62

This "Letter of Intent to Release Airport Property" is being issued in response to Mr. Chip Kraus' letter, dated May 11, 2005, and supporting documentation requesting the Federal Aviation Administration (FAA) to release the County of Jackson, Michigan (hereinafter referred to as "sponsor") of its obligations to maintain as airport property 2 parcels of land (Parcels 15A and 62). This property is located in the northeast quadrant of the airport as currently depicted in the Airport Layout Plan (ALP) and Exhibit A. This land is to be sold and/or leased for proposed use as commercial development.

The FAA is authorized to grant a release of airport property from disposal restrictions if it is determined that (1) the property to which the release relates no longer serves the purpose for which it was made subject to the terms, conditions, reservations, or restrictions concerned, and (2) the release will not prevent accomplishing the purpose for which the property was made subject to the terms, conditions, reservations, or restrictions, and is necessary to protect or advance the interests of the United States in civil aviation.

The FAA finds that Parcels 15A and 62 are no longer required for current or future public airport purposes, nor would the release thereof prevent the accomplishment of the public airport purpose for which the airport facilities were obligated.

Accordingly, this Letter of Intent represents a decision by the FAA to release Parcels 15A and 62 upon submission and/or consideration of the following conditions:

a. The County should keep the FAA informed of its timetable for redevelopment of the two parcels. The County shall submit for review detailed information relating to the marketing and proposed use of the property.

b. If a sale is contemplated, present to FAA a draft sales or lease agreement or agreements the County intends to execute with a prospective buyer/lessee for the property in question and disclose the sale price or rental value to be determined based upon fair-market valuation. You should submit documented evidence (such as a rezoning application and approval) indicating that Parcels 15A and 62 are rezoned in a manner that is compatible with airport operations (for example "non-residential" i.e. C-2) and consistent with Condition a. above.

c. Federal Aviation Regulation (FAR) Part 77 (recodified as 14 Code of Federal Regulations (CFR) Part 77) surfaces must be adhered to relating to any building, structure, poles, trees, or other object on the property relating to Jackson County Airport-Reynolds Field. The County will retain a right of entry onto the property conveyed to cut, remove, or lower any object, natural or otherwise, of a height in excess of 14 CFR Part 77 surfaces relating to the airport. This public right shall include the right to mark or light as obstructions to air navigation, any and all objects that may at any time project or extend above said surfaces.

d. A notice consistent with the requirements of 14 CFR Part 77 (FAA Form 7460-1) must be filed prior to constructing any facility, structure, or other item on the property.

e. The property shall not be used to create electrical interference with communication between the installation upon the airport and aircraft, make it difficult for fliers to distinguish between airport lights and others, impair visibility in the vicinity of the airport, or endanger the landing, taking off, or maneuvering of aircraft.

f. A right of flight for the passage of aircraft in the airspace above the surface of the property shall be maintained (easement) specifying that any noise inherent in the operation of any aircraft used for navigation shall be allowed.

g. The property shall not be used to create a potential for attracting birds and other wildlife that may pose a hazard to aircraft in accordance with current FAA guidance.

h. The Hurd-Marvin Drain has been identified on the southern portion of the subject site on both parcels. Additionally, approximately 5.48 acres of the subject property has been categorized as wetlands. These areas are specifically precluded from any development on, or disturbance of, or impacts to the Hurd-Marvin Drain, or the designated wetlands, unless they comply with the requirements of Executive Order 11990, the Fish and Wildlife Coordination Act, and the National Environmental Policy Act.

i. The MALSR approach light plane complex and line-of-sight must not be penetrated. In order to protect these surfaces, no objects shall penetrate 14 CFR

Sample Letter of Intent to Release Airport Property - Page 2

3

Part 77 50:1 approach slope for Runway End 24 on Parcels 15A and 62, as depicted on the attached Figure 2-0. This drawing shall be part of the release documents between you and the prospective buyer(s).

j. The Middle Marker for Runway End 24 is located approximately 3,275' from Runway End 24, on the extended runway centerline. FAA ingress/egress to this site shall be maintained.

k. The lease between the County of Jackson, Michigan, and the United States of America dated May 14, 1986 shall be maintained. The lease allows FAA personnel access to Runway 24 MALSR and Middle Marker sites to maintain these NAVAIDs. The ground easements described in the lease relating to Parcels 15A and 62 are shown on the attached Figure 1-0 and shall be maintained. A narrative description of the leased areas for the MALSR and Middle Marker is described in Attachment "A". These documents shall be part of the release documents between you and the prospective buyer(s).

l. The County will, by agreement with FAA, commit all proceeds from the sale or lease of the property to the development, maintenance and operations of the County airport system, in conformance with the FAA's revenue use policy. The revenue use policy may be accessed at the following web address:

http://www.faa.gov/airports_airtraffic/airports/resources/publications/federal_register_notices/media/obligation_final99.pdf.

Therefore, upon submission of and adherence to the above-mentioned conditions, FAA will approve the release of the property from the applicable terms, conditions, reservations, and restrictions recorded in the grant assurances.

If you need further assistance or have any questions, please contact me at (734) 229-2900.

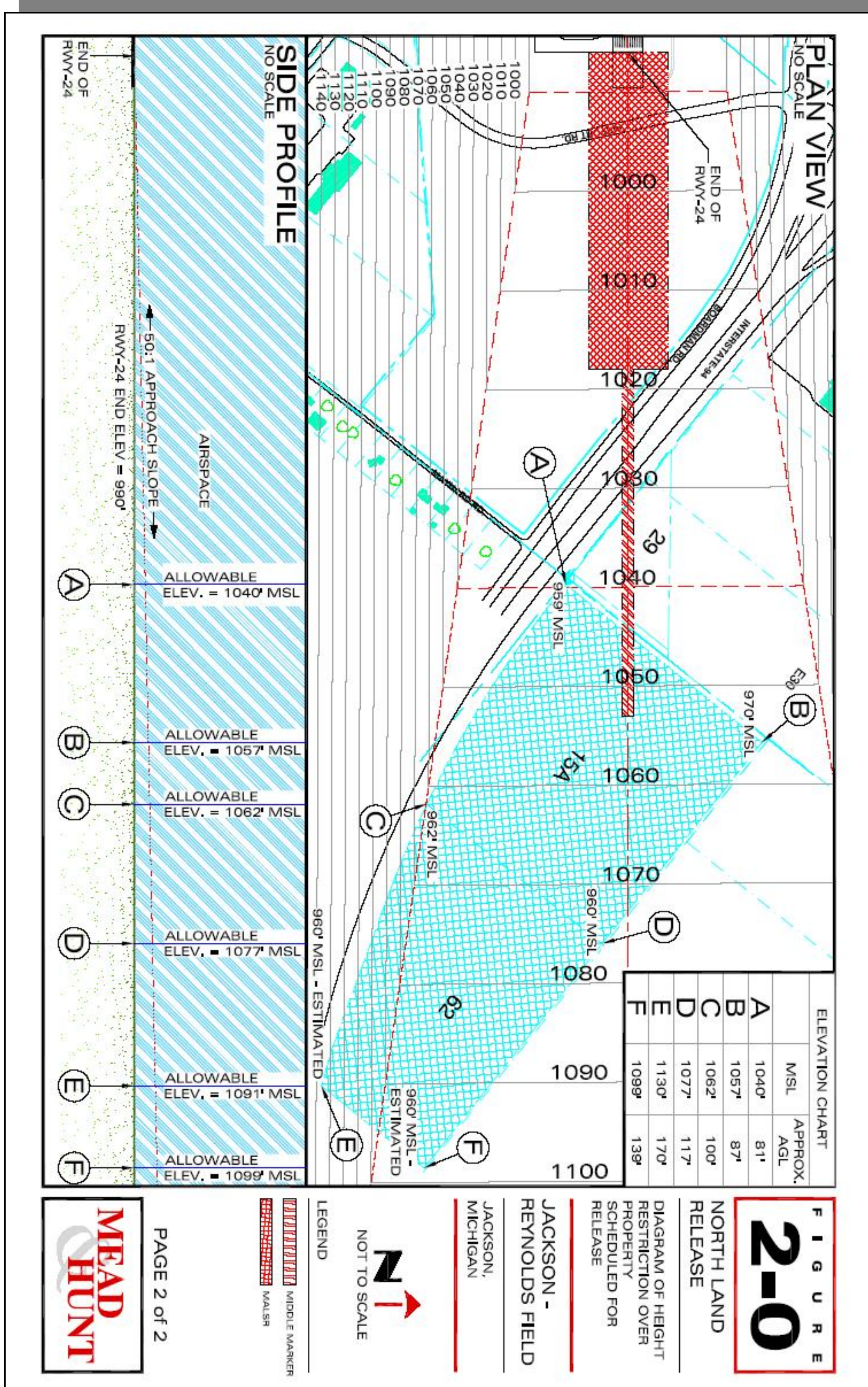
Sincerely,

Irene R. Porter
Manager, Detroit Airports District Office

Attachments

cc: AGL-620, AAS-400, F. Kraus, MMTSB

Sample Letter of Intent to Release Airport Property - Page 3



Sample Letter of Intent to Release Airport Property - Page 4

Attachment "A" to
Lease No. DTFA14-86-L-R955

Site Descriptions

MALSR, Runway 24:

An area 400 feet wide symmetrical about the runway centerline and beginning at the end of the runway extending 1,600 feet northeast followed by an area 60 feet wide, symmetrical about the runway centerline extending an additional 1,600 feet northeast. The Unit includes light stations at 200 feet intervals, access roads, underground cables, power and control stations, transformers, access off of Airport Road, conduit under I-94 and Airport Road. Area described includes R.O.W. along I-94. The underground cables are within the area described and extend beyond.

Middle Marker, Runway 24:

An area 60 feet wide and symmetrical about the runway centerline and extending 150 feet NE of the MALS/RAIL area. The unit includes a pole mounted marker, transformer, access road, and underground cables.

Sample Letter of Intent to Release Airport Property - Page 5

Table 22.1: Guide to Releases

Land Acquisition Circumstance	Title 49 U.S.C. Requirement to Notify Public ——— Release of Aero Land Use Obligation	Fed Register Notice Required	Surplus Property Deed of Release Required	Grant Assurance Letter of Release Required	Required to use proceeds for AIP Elig Dev Only (Highest Priority) or Opr & Maint.	Required to use proceeds for Noise mitigation
Surplus property transferred for aeronautical purposes	47151(d), 47153(c)	Yes	Yes	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Surplus property transferred for nonaeronautical revenue production *and* shown on the ALP & Exhibit "A"	N/A	No	Yes	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Surplus property transferred for nonaeronautical revenue production and *not* Shown on the ALP & Exhibit "A"	N/A	No	Yes	No	Opr & Maint of airport	No
Land acquired with AIP assistance	47107(h)	Yes	No	Yes	AIP Elig Only	No
Land acquired with FAAP or ADAP assistance *and* land assurances have expired	N/A	No	No	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Unobligated land acquired without federal assistance *and* on the ALP and Exhibit "A" as airport land *and* without federally financed airport improvements.	N/A	No	No	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Land acquired without federal assistance and *not* on the ALP or Exhibit "A" as airport land	N/A	No	No	No	No	No
Land acquired without federal assistance and airport facilities exist on the land that was developed or improved less than 20 years ago with federal assistance	N/A	Yes	No	Yes, if airport has current federal grant assurances	(1) Replace federally financed development (2) AIP Elig Dev	No
Land acquired without federal assistance and airport facilities exist on the land that was developed or improved more than 20 years ago with federal assistance	N/A	Yes	No	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Land acquired with noise funds	N/A	No	No	No	See ---------->	Yes
Federal government land conveyed to sponsor under U.S.C. § 47125 by a federal agency and the sponsor asks the FAA to waive the requirement that the land be used for airport purposes.	47125(a)	Yes	No	Yes, if airport has current federal grant assurances	A purpose approved by the Secretary.	No
AIP acquired development land (U.S.C. § 47107(c)(2)(B)), surplus property (U.S.C. § 47151), conveyed government land (U.S.C. § 47125), or land with federally financed improvements. Land use changed (not released) to nonaeronautical.	N/A	Yes	No	No	N/A	N/A

Sample Actual Deed of Release – Page 1

DEED OF RELEASE

WHEREAS, the United States of America, acting by and through the General Services Administrator, under and pursuant to the powers and authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), and the Surplus Property Act of 1944 (58 Stat. 765), as amended, by instrument entitled "Quitclaim Deed" dated January 29, 1959, did remise, release, and forever quitclaim to the City of Sebastian of the State of Florida, its successors and assigns, all rights, title and interest of the United States of America in and to certain property known as Sebastian Municipal Airport subject to certain conditions, reservations, exceptions and restrictions; and,

WHEREAS, the City of Sebastian has requested the United States of America to release the hereinafter described property from all of the conditions, reservations, exceptions and restrictions of said instrument; and,

WHEREAS, the Administrator of the Federal Aviation Agency, under and pursuant to the powers and authority contained in Public Law 311 (63 Stat. 700) is authorized to grant a release from any of the terms, conditions, reservations and restrictions contained in, and to convey, quitclaim or release any right or interest reserved to the United States of America by any instrument of disposal under which surplus airport property was conveyed to a non-Federal public agency pursuant to Section 13 of the Surplus Property Act of 1944 (58 Stat. 765); and,

WHEREAS, the said Administrator has determined that the land described hereinafter is no longer needed for the purpose for which it was made subject to the terms, conditions, reservations and restrictions of the said surplus airport property instrument of transfer and that said land can be released without adversely affecting the aeronautical use of the said airport; and,

NOW, THEREFORE, for the considerations above expressed, the United States of America, except as hereinafter provided, does hereby quitclaim, convey and release unto the City of Sebastian, Florida, its successors and assigns, all rights, title and interest reserved or granted to the United States of America by the said Quitclaim Deed dated January 29, 1959, insofar as same pertains to the following described land, to wit:

A strip of land 53 feet wide, over, through and across Lots 62, 52, 51, the Allen Tract, Lots 44, 43, 42, 41 and 40 in Section 28; Lots 17, 16, 15 and 14 in Section 29; Lots 82, 83, 76, 75, 74, 53, 54 and 55 in Section 22, of the Fleming Grant in Township 31 South, Range 38 East, Township 30 South, Range 38 East which lies within 53 feet Easterly of the Baseline of Survey and/or centerline of construction according to the Right of Way Map of Section 88602-2601, State Road S-505, Roseland Road, as filed in Map Book 1, Pages 83 and 84 in the office of the Clerk of the Circuit Court, Indian River County, Florida, a part of said Baseline and/or Centerline being more particularly described as follows:

BEGINNING at a point on the Southwesterly line of and 100.22 feet S 44"32'44" E of the Northwest corner of Lot 62, Section 28 of the Fleming Grant in Township 31 South, Range 38 East, run N 11°39'14" W a distance of 800.62 feet to the beginning of a curve to the right; thence Northerly on said curve having a central angle of 07°10'15" and a radius of 5729.65 feet a distance of 717.08 feet to the end of said curve; thence N 04°48'59" W a distance of 5528.83 feet to the beginning of a curve to the right; thence Northeasterly on said curve having a central angle of 50°08'30" and a radius of 1562.88 feet, a distance of 1367.50 feet to the end of said curve; thence N 45°19'31" E a distance of 1704.86 feet to a point on the Northeast line of and 2636.77 feet N 44°37'29" W of the Easterly corner of Section 22 of the Fleming Grant in Township 30 South, Range 38 East;

excepting therefrom the existing 33 foot Right of Way for Roseland Road and containing 3.22 acres, more or less, Indian River County, Florida.

The release of the above described land is subject to the following terms and conditions:

1. That, in any instrument conveying title to the land, or granting any easement therein, Indian River County, Florida, will reserve for itself,

-2-

its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the land conveyed, together with the right to cause in said airspace such noise, as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from, or operating on the Sebastian Municipal Airport.

2. That any instrument conveying title or granting an easement in the land shall contain a provision restricting and establishing the height of structures or objects of natural growth on the said land in accordance with the currently effective Federal Aviation Agency Technical Standard Order N18 as applied to Sebastian Municipal Airport.

3. That any instrument conveying title or granting an easement in the land shall contain a provision which will prohibit any use of the land that would interfere with the operation of aircraft or adversely affect the operation or maintenance of the Sebastian Municipal Airport.

IN WITNESS WHEREOF, the United States of America has caused these presents to be executed in its name and on its behalf by the Chief, Airports Division, Southern Region, Federal Aviation Agency, all as of the 10 day of January, 1963.

UNITED STATES OF AMERICA
The Administrator of the Federal Aviation Agency

BY /s/ C. E. Drysdale
Acting Chief, Airports Division, Southern Region

STATE OF GEORGIA }
} ss
COUNTY OF FULTON }

On this 10 day of January, 1963, before me, Mary H. Houston, a Notary Public in and for the County of Fulton, State of Georgia, personally appeared C. E. Drysdale, known to me to be the Acting Chief, Airports Division, Southern Region, Federal Aviation Agency, and known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same on behalf of the Administrator of the Federal Aviation Agency and the United States of America.

WITNESS my hand and official seal.

/s/ Mary H. Houston
Notary Public in and for said County & State

(SEAL)

My commission expires 9-4-66.

Sample Actual Deed of Release – Page 2

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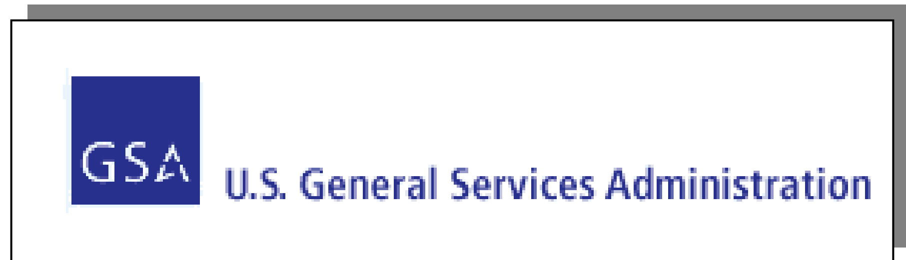
Chapter 23. Reversions of Airport Property



23.1. Introduction. This chapter discusses guidance on returning property originally conveyed from the U.S. Government. The "possibility of reverter" is a future ownership interest retained by the FAA after conveying property with conditions or limitations to an airport sponsor. The sponsor's interest will automatically end and the right to the property will "revert" to the FAA if the conditions or limitations specified in the conveyance document or agreement occur. The FAA has shortened the terminology for this process to "reverter."

FAA will use this process when the sponsor is in default of its federal obligations and all other remedies have failed. This process is ordinarily the last resort when a grantee of federal property for airport purposes continues in default. All other proper and available remedies to correct a default shall be explored prior to exercising the right to exercise the reversion of airport property to the federal government.

In some cases, FAA may seek the reversion of property interests on outstanding airport leases. When confronted with the possibility of a reversion affecting an airport lease, contact the FAA headquarters Airport Compliance Division (ACO-100) for assistance. This guidance pertains to reverting federal property interest and obtaining good title.

It is the responsibility of ACO-100 to ensure that the public interest is served when considering reversions and airport closures.

23.2. General. This chapter reflects information obtained from the four federal agencies that are major sources of federal property for public airport purposes: (a) General Services Administration (GSA), (b) Department of Agriculture (USDA), (c) Department of Interior's (DOI) Bureau of Land Management (BLM), and (d) Department of Defense (DoD).

23.3. Right of Reverter. The instrument of conveyance from the federal government must specify the right to have property interest revert to a federal agency and title revest in the United States. This right extends only to the title, right of possession, or other rights vested in the United States at the time the federal government transferred the property described in the instrument to the grantee. The right may be exercised only at the option of the United States – with or without the cooperation of a grantee – against all or part of the property in question.

23.4. Authority to Exercise Reverter. The Secretary has the authority to exercise the option of the United States for reverter of property interest conveyed by the federal government for public airport purposes. Each revestment of title to airport property is controlled by the instrument of conveyance, applicable laws, federal regulations, and FAA orders.

The Secretary may exercise the option of the United States to revert property interest conveyed by the federal government for public airport purposes. Each revestment of title to airport property is controlled by the instrument of conveyance, applicable laws, federal regulations, and FAA orders.

23.5. Instruments of Conveyance. The FAA issues instruments of conveyance that typically include a right of reverter of airport property interest and a right to revest title in the United States under authority of one or more of the following:

a. Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA), Public Law (P.L.) No. 97-248 (49 U.S.C. § 47125).

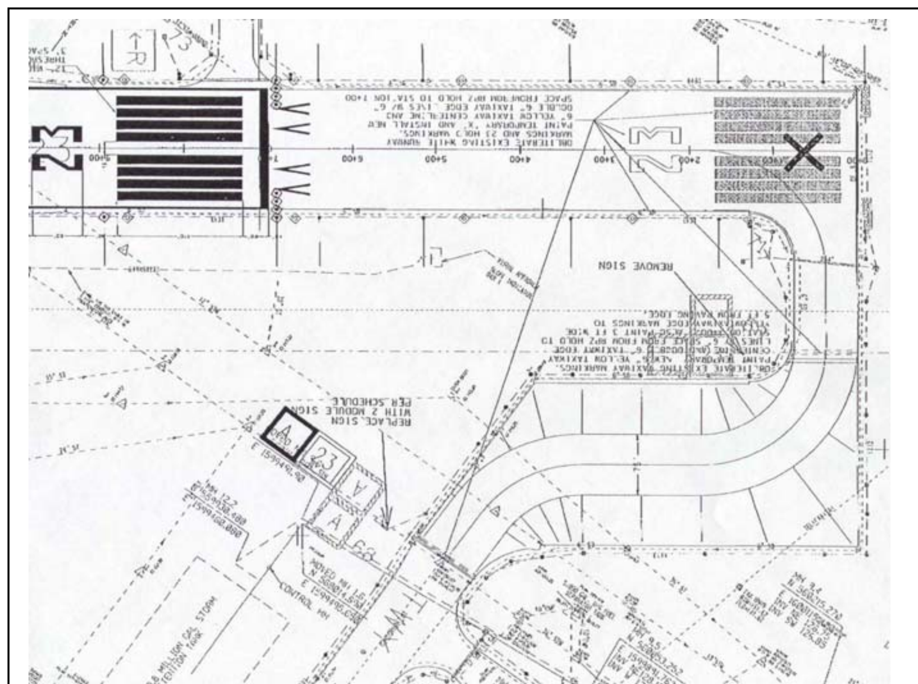
b. Section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act) (P.L. No. 91-258, May 21, 1970) (84 Stat. 219 and following).

c. Section 16 of the Federal Airport Act of 1946 (1946 Airport Act), as amended.

d. Section 13(g) of the Surplus Property Act of 1944, as amended (49 U.S.C. § 47151 et seq.).

e. Section 303(c) of the Federal Aviation Act of 1958 (FAA Act), as amended (49 U.S.C. § 1344(c)). Also the precedent Civil Aeronautics Act of 1938, as amended (49 U.S.C. §§ 40110 and 40112).

f. Special Congressional Legislation. Section 35 of the Alaska Omnibus Act (73 Stat 149) or other enabling Acts authorizing



There are circumstances when only part of airport land subject to reversion is not used in accordance with the statutes and deed. In this event, the FAA should consider reversion of title to only that property where misuse or nonuse comprises a default. However, the FAA should contact the FAA Office of Chief Counsel before proposing measures of this type. In circumstances in which the instigating status of noncompliance can be cured by reversion of some portion of property subject to reversion, the FAA should consider a voluntary reconveyance. The emphasis should be for runways, taxiways, and aprons. (Photo; FAA).

conveyances of federal property to nonfederal public agencies for public airport purposes.

23.6. Reconveyances. The FAA may be selective in exercising its right to the reversion of an airport property interest. The FAA uses its discretion to serve the public interest in aviation. For instance, the reversion of a parcel of property may serve the public interest better than reversion of the entire airport.

In such cases, the FAA will work to cooperate with the sponsor to achieve compliance with a selective reversion on a voluntary basis. (See paragraph 23.11 in this chapter, *Voluntary Reconveyance to Correct a Default*, for additional information on voluntary reversions.)

There are circumstances when only part of the airport land subject to reversion is not used in accordance with the statutes and the deed. In this event, the FAA should consider reversion of that part of the property where misuse or nonuse comprises a default. However, the FAA should contact the FAA Office of Chief Counsel before proposing measures of this type. In circumstances in which the instigating status of noncompliance can be cured by reversion of some portion of property subject to reversion, the FAA may also consider a voluntary reconveyance, as discussed below. In addition, a grantee may request the reversion of title to an airport property interest by a voluntary reconveyance. The FAA prefers this method since it is usually in the best interest of all parties. Once the FAA makes the determination to exercise the federal government's option for reversion of airport property, there is no alternative but to revest title in the United States. A grantee for good reasons may want the FAA to issue a notice of intent to exercise its right to reversion of the property before executing a voluntary quitclaim deed or instrument of reconveyance.

23.7. Involuntary Reversion. A sponsor's refusal to cooperate with the FAA could lead to legal proceedings to effect an involuntary reversion. This can affect some or all of the property subject to reversion.

Responsibility for any legal proceedings to effect involuntary reversion in the event of resistance on the part of a grantee generally lies with the Department of Justice (DOJ), as the representative of the U.S. Government, in conjunction with the FAA Office of Chief Counsel.

23.8. Reversioner Federal Agency. The federal agency that issued the original instrument of conveyance, or its successor, has a right to receive the federal government estate in reversion. If that federal agency is other than the GSA or FAA and declines to accept control and jurisdiction upon revestment of title, GSA will automatically become the reversioner agent for the federal government. In such cases, the FAA must advise GSA of the impending reversion to the United States and fully coordinate revestment of title procedures consistent with GSA supplementary guidance and procedures. Where the FAA is the reversioner agent, the regional Acquisitions and Logistics Division will handle such reversions and administer the procedures for the action in accordance with applicable regulations.

23.9. Determination of Default. To exercise reversion of a property interest conveyed for public airport purposes and revest that interest in the United States, the Associate Administrator for Airports must determine that a grantee is in default under the covenants of the instrument of conveyance or the terms and conditions of an agreement between the two (2) parties. FAA policy

requires FAA offices to cooperate with the grantee to the extent reasonable to resolve the matter expeditiously and in the interest of the United States in civil aviation. If the grantee fails to resolve the matter in a timely and efficient manner, the FAA Director of Airport Compliance and Field Operations (ACO-1) will pursue the reversion and revestment, including the issuance of a notice of reverter and revestment of title in the United States Government.

23.10. Notice of Intent to Exercise the Right of Reverter. This notice is a formal letter informing a grantee of FAA's declaration of default and decision to revest title to property in the United States Government under the conveyance instrument covenants. The FAA will send notice to the grantee (and an information copy to the grantor agency) by certified or registered mail, with return receipt requested. Prior to advising the grantee, the FAA must fully coordinate in writing with the appropriate federal agency (reversioner) and provide the agency with a copy of the notice. The notice shall include:

a. Prior notices of prior noncompliance.

b. A description of grantee's failure to correct the deficiencies listed in the notices of noncompliance.

c. A description of the resulting default based on grantee's noncompliance and default on the instrument of conveyance or agreement.

d. A visual and legal description of the property to be reverted.

e. FAA's description of the cure for the default and minimum requirements for curing the default to retain the property.

f. The time allowed to cure the default to permit grantee to retain the property. FAA usually allows a grantee 60 days to cure a default. Time may vary depending on the circumstances, but generally the period should not exceed 90 days.

g. FAA's requirement for the grantee to notify the FAA promptly (set a reasonable time period for response, i.e., 7, 10, 14 days) if it does not intend to act to cure the default and thereby waive the time allowed for the cure.

h. A description of any other relevant facts bearing on the default or potential remedies.

23.11. Voluntary Reconveyance to Correct a Default. The FAA must give grantees that are in default an opportunity to reconvey the property voluntarily to the United States. Where only part of the real property described in the instrument is involved, the FAA must coordinate with the reversioner federal agency in order to supplement the general guidance and procedures for the revestment of good title and property interest in the United States. It is an essential step in ensuring that the property in question will be used to serve the best public interests in aviation. In all cases, each voluntary reconveyance requires the following:

The FAA must give grantees in default an opportunity to reconvey the property voluntarily to the United States. Where only part of the real property described in the instrument is involved, the FAA must coordinate with the reversioner federal agency in order to supplement the general guidance and procedures for the revestment of good title in the United States.

a. Resolution from the Governing Body. A resolution of the grantee authorizing a reconveyance to the United States and designating an appropriate official to execute an instrument of reconveyance acceptable to the United States. The resolution shall also cite the reason for reconveyance (e.g., not developed, ceased to be used, not needed).

b. Instrument of Reconveyance. An instrument of reconveyance that substantially conforms to a format suggested by FAA counsel.

c. Grantee Legal Opinion. A legal opinion by the grantee's attorney. The legal opinion should recite:

(1). The grantee's legal authority to reconvey the property to the United States.

(2). The status and validity of title to the property interest reconveyed to the United States. The attorney must provide a history of the title and property interest that covers the period from the original conveyance to the present, which includes any outstanding encumbrances or interests, along with an outline of the procedures for returning the title to its original form.

d. Certificate of Inspection and Possession. Prepare a certificate of inspection and possession.

23.12. Voluntary Reconveyance Documentation. The FAA will submit the necessary documents to the appropriate official of the reversioner federal agency. If the reversioner federal agency requires a certified or conformed copy, the FAA will obtain it from the grantee.

23.13. Notice of Reverter of Property and Revestment of Title and Property Interest in the U.S. This notice is ordinarily prepared under the direction of FAA counsel. The basic elements of this notice include:

a. Identification of the instrument of conveyance from the United States to the grantee.

b. Citation of the statutory authority enabling the original conveyance of federal property.

c. Legal description of the property conveyed and that part which reverts to the United States.

d. Statement that the property was conveyed subject to an express provision authorizing its reversion under certain circumstances and as set forth in the reverter clause.

e. Statement that the FAA has determined that the property in question reverts to the United States for specific reasons consistent with the reverter clause.

f. Statement of the specifics which caused the default of the grantee as set forth in the clauses in the instrument of conveyance.

g. Statement that the property interest to which the United States has reverter rights is revested in the United States.

h. Statement identifying the reversioner federal agency.

i. Reference to the notice of intent for reversion of property.

23.14. Recording Notice of Reversion of Property and Revestment of Title in the United States. After execution by the authorized FAA official, the FAA airports district office (ADO) will record the original executed copy of the notice in the official records of the county in which the property is located. The ADO will obtain the required number of certified copies or certificates of recordation from the Clerk of the Court or other custodian of the official county records. The number of copies requested must satisfy the needs of the federal agencies involved. Concurrent with recording the original copy of the notice, the ADO will send or deliver an executed copy to the grantee. A cover letter shall affirm that pursuant to the execution of the notice, the property involved has reverted to, and title revested in, the United States. This letter shall specifically advise the grantee that the notice has been recorded in the official records of the county in which the property is located.

23.15. Certificate of Inspection and Possession. Once the FAA completes the reversion, the ADO will conduct an inspection and complete the certificate of inspection and possession.

23.16. Possession, Posting, or Marking of Property. Since a property reversion requires a process similar to a physical taking of property, the reversioner must post or mark the property to indicate that it is now the property of the United States. This action effects possession and a constructive occupancy. Consequently, concurrent with the physical inspection, the ADO will post or mark the property, as appropriate, thus indicating that the property belongs to the United States. Therefore, prior to the inspection, the ADO should request sufficient signs from the reversioner federal agency for this purpose.

23.17. Reversion Case Studies. Reversions of surplus federal property are not common, but they do occur.

a. McIntosh County Airport, Georgia. An example of such a situation was Harris Neck AFB in Georgia, 30 miles south of Savannah in McIntosh County.

In October 1946, the War Assets Administration (WAA) deeded the facility to McIntosh County for use as a civilian municipal airport. The facility was updated and one of its runways was extended to 5,400 feet. It served both civilian and military users well into the late 1950s. However, mismanagement by the sponsor – including illegal disposal of the airport's assets – and restricted access resulted in action by the federal government. The Federal Aviation Agency exercised the

reversion clause contained in the surplus property conveyance and the facility was taken over by GSA. In 1962, GSA conveyed the now closed airport to the U.S. Bureau of Sport Fisheries & Wildlife (today's U.S. Fish and Wildlife Service). Today the remains of the airport are part of a migratory bird refuge.

b. Half Moon Bay Airport, California. Half Moon Bay Airport was constructed in 1942 for the Army, and relinquished to the Navy at the end of World War II. In 1947, the WAA deeded the property to San Mateo County under the Surplus Property Act of 1944. The airport has continued in use as a county civil airport since that time.

For many years the local water district paid the county an extraction fee for water from wells located on the airport. The water district then decided to use its eminent domain powers to acquire the wells by condemning the airport property on which the wells were located. The FAA filed a notice of intent to exercise reversion rights to the property, and then intervened in the condemnation proceeding. In February 2009, the U.S. District Court for the Northern District of California found that the water district's action was sufficient to trigger the FAA's right of reverter in the airport deed. The court found that title to the wells had passed to the United States through the exercise of that reversion right, and that the wells therefore could not be condemned by a local or state government agency. (See *Montara Water and Sanitary District v. County of San Mateo*, 598 F.Supp. 2d 1070 (N.D.Cal. 2009).

23.18. through 23.21. reserved.

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Appendix A ► Airport Sponsors Assurances

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, United States Code (U.S.C.), subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public use airport; the term "private sponsor" means a private owner of a public use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.

3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability.

1. Airport Development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor. The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor. The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of federal aid for the project.

3. Airport Planning Undertaken by a Sponsor. Unless otherwise specified in the grant agreement, only Grant Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements. It will comply with all applicable federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of federal funds for this project including but not limited to the following:

Federal Legislation

a. Title 49, U.S.C., subtitle VII, as amended.

b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.1.

c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq. Airport Assurances (9/99).

d. Hatch Act - 5 U.S.C. 1501, et seq.2.

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.1 2

f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).1.

g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.1.

h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.

i. Clean Air Act, P.L. No. 90-148, as amended.

j. Coastal Zone Management Act, P.L. No. 93-205, as amended.

k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. § 4012a.1.

l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f) of the Department of Transportation Act of 1966.)

m. Rehabilitation Act of 1973 - 29 U.S.C. 794.

n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.

o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.

p. American Indian Religious Freedom Act, P.L. No. 95-341, as amended.

q Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.1.

r. Powerplant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. § 8373.1.

s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.1.

t. Copeland Anti-Kickback Act - 18 U.S.C. 874.1.

u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.1.

v. Wild and Scenic Rivers Act, P.L. No. 90-542, as amended.

w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.2.

x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

Executive Order 11246 - Equal Employment Opportunity.

Executive Order 11990 - Protection of Wetlands.

Executive Order 11998 – Flood Plain Management.

Executive Order 12372 - Intergovernmental Review of Federal Programs.

Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction.

Executive Order 12898 - Environmental Justice.

Federal Regulations

a. 14 CFR Part 13 - Investigative and Enforcement Procedures.

b. 14 CFR Part 16 - Rules of Practice for Federally Assisted Airport Enforcement Proceedings.

c. 14 CFR Part 150 - Airport noise compatibility planning.

d. 29 CFR Part 1 - Procedures for predetermination of wage rates.

e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.

f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to nonconstruction contracts subject to the Contract Work Hours and Safety Standards Act).

g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (federal and federally assisted contracting requirements).

h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.

i. 49 CFR Part 20 - New restrictions on lobbying.

j. 49 CFR Part 21 - Nondiscrimination in federally assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.

k. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for federal and federally assisted programs.

m. 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.

n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance.

o. 49 CFR Part 29 – Government-wide debarment and suspension (nonprocurement) and government-wide requirements for drug-free workplace (grants).

p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.

q. 49 CFR Part 41 - Seismic safety of federal and federally assisted or regulated new building construction.

Office of Management and Budget Circulars

a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.

b. A-133 - Audits of States, Local Governments, and Nonprofit Organizations.

2. Responsibilities and Authority of the Sponsor.

a. Public Agency Sponsor: It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor: It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability. It has sufficient funds available for that portion of the project costs, which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. Good Title.

a. It, a public agency or the federal government, holds good title, satisfactory to the Secretary, to the airfield or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit "A" to this application or, for a noise compatibility program project, that portion of the property upon which federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the federal obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such federal obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise compatibility program projects that are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall federally obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to

undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial noncompliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial noncompliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.

6. Consistency with Local Plans. The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the state in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest. It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users. In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings. In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Air and Water Quality Standards. In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency,

certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

11. Pavement Preventive Maintenance. With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites. For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under Section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates. It shall include, in all contracts in excess of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference. It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications. It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

17. Construction Inspection and Approval. It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects. In carrying out planning projects:

a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.

b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a federal airport grant.

19. Operation and Maintenance.

a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition 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. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for nonaeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:

(1) Operating the airport's aeronautical facilities whenever required;

(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which federal funds have been expended.

20. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the

airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which federal funds have been expended.

22. Economic Nondiscrimination.

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:

(1) Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

(2) Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-base operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and using the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-base operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and use similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory air carriers and nonsignatory air carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights. It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-base operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide such services, and

b. If allowing more than one fixed-base operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-base operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure. It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982 (AAIA), the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

a. All revenue generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections. It will:

a. Submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

(i) All amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(ii) All services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Federal Government Aircraft. It will make available all of the facilities of the airport developed with federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by federal government aircraft in common with other aircraft at all times without charge, except, if the use by federal government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by federal government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the airfield by other authorized aircraft, or during any calendar month that:

a. Five (5) or more federal government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of federal government aircraft is 300 or more, or the gross accumulative weight of federal government aircraft using the airport (the total movement of federal government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities. It will furnish without cost to the federal government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

a. It will keep up to date at all times an Airport Layout Plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such Airport Layout Plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly

authorized representative of the Secretary on the face of the Airport Layout Plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the Airport Layout Plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the Airport Layout Plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

30. Civil Rights. It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which federal financial assistance is extended to the program, except where federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

31. Disposal of Land.

a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national

airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services. It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions. It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications. It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the current FAA advisory circulars for AIP projects, dated _____ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition. (1) It will be guided in acquiring real property, to the greatest extent practicable under state law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access by Intercity Buses. The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no federal obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises. The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal federal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

38. Hangar Construction. If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-

(1) Describes the requests;

(2) Provides an explanation as to why the requests could not be accommodated; and

(3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.

b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

Appendix B ► Reserved

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Appendix C ► Advisory Circulars on Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities

U.S. Department of Transportation Federal Aviation Administration

Advisory Circular

Subject: EXCLUSIVE RIGHTS AT FEDERALLY OBLIGATED AIRPORTS	**Date:** January 3, 2006 **Initiated by:** AAS-400 (currently ACO-100)	**AC No:** 150/5190-6 **Change:** N/A

1. PURPOSE. This advisory circular (AC) provides basic information pertaining to the Federal Aviation Administration's (FAA's) prohibition on the granting of exclusive rights at federally obligated airports. The prohibition on the granting of exclusive rights is one of the obligations assumed by the airport sponsors of public airports that have accepted federal assistance, either in the form of grants or property conveyances. This AC provides guidance on how an airport sponsor can comply with the statutory prohibition on the granting of exclusive rights. Section 1 explains FAA's policy on exclusive rights, the statutory basis for the policy, and exceptions to the policy. Section 2 provides an overview of how the FAA ensures compliance with applicable federal obligations.

2. CANCELLATION.

3. DEFINITIONS. Definitions for some of the terms used in this AC are found in Appendix 1.

4. BACKGROUND. In accordance with the Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47101, et seq., and the Airport Improvement Program (AIP) grant assurances, the owner or operator of any airport that has been developed or improved with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity and without granting an exclusive right.[53] The Surplus Property Act of 1944 (as amended by 49 U.S.C., §§ 47151-47153) contains parallel obligations under its terms for the conveyance of federal property for airport purposes.

Similar obligations exist for airports that have received nonsurplus government property under 49 U.S.C. § 47125 and previous corresponding statutes. Airports that have received real

[53] The legislative background for the exclusive rights provisions discussed in this AC began as early as 1938 and evolved under the Federal Aid to Airports Program (FAAP), Airport Development Aid Program (ADAP), and Airport Improvement Program (AIP) and was also adopted in land conveyances.

property under AP-4 agreements remain obligated by the exclusive rights prohibition even though all other obligations are considered expired by the FAA.

It is FAA policy that the sponsor of a federally obligated airport will not grant an exclusive right for the use of the airport to any person providing, or intending to provide, aeronautical services or commodities to the public and will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct aeronautical activities. The exclusive rights prohibition applies to both commercial entities engaging in providing aeronautical services and individual aeronautical users of the airport. The intent of the prohibition on exclusive rights is to promote fair competition at federally obligated, public use airports for the benefit of aeronautical users. The exclusive rights prohibition remains in effect as long as the airport is operated as an airport, even if the original period for which an airport sponsor was obligated has expired.

The granting of an exclusive right for the conduct of any aeronautical activity on a federally obligated airport is generally regarded as contrary to the requirements of the applicable federal obligations, whether such exclusive right results from an express agreement, from the imposition of unreasonable standards or requirements, or by any other means. Existence of an exclusive right at an airport limits the usefulness of the airport and deprives the public of the benefits that flow from competition.

5. RELATED READING MATERIALS.

Federal Aviation Agency Policy Statement, Exclusive Rights at Airports, Order 5190.1A, as published in the Federal Register (30 Fed. Reg. 13661), October 27, l965.

Rules of Practice for Federally Assisted Airport Enforcement Proceedings, as published in the Federal Register (61 Fed. Reg. 53998), October 16, l996.

FAA Airport Compliance Requirements, Order 5190.6A, 10/1/89.

Further information can be obtained at the airports district office (ADO) in your area. A listing of ADOs can be found online.

DAVID L. BENNETT
Director, Office of Airport Safety
and Standards

SECTION 1 - EXCLUSIVE RIGHTS

1.1. OBLIGATION AGAINST GRANTING EXCLUSIVE RIGHTS. Most exclusive rights agreements violate the grant assurances contained in FAA grant agreements or similar obligations in surplus property conveyances. With few exceptions, an airport sponsor is prohibited from granting an exclusive right to a single operator for the provision of an aeronautical activity to the exclusion of others. See definition of exclusive right in Appendix 1. Accordingly, FAA policy prohibits the creation or continuance of exclusive rights agreements at obligated airports where the airport sponsor has received federal airport development assistance for the airport's improvement or development. This prohibition applies regardless of how the exclusive right was created, whether by express agreement or the imposition of unreasonable minimum standards and/or requirements (inadvertent or otherwise).

1.2. AGENCY POLICY. The existence of an exclusive right to conduct any aeronautical activity at an airport limits the usefulness of the airport and deprives the public of the benefits that flow from a competitive enterprise. The purpose of the exclusive rights provision as applied to civil aeronautics is to prevent monopolies and combinations in restraint of trade and to promote competition at federally obligated airports. In effect, the FAA considers it inappropriate to grant federal funds or convey real property to airports where the benefits will not be fully realized due to the inherent restrictions of a local monopoly on aeronautical activities at the airport. An exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity. A prohibited exclusive right can be manifested by an express agreement, unreasonable minimum standards, or by any other means. Significant to an understanding of the exclusive rights policy, is the recognition that it is the impact of the activity, and not the airport sponsor's intent, that constitutes an exclusive rights violation.

1.3. EXCLUSIVE RIGHT VIOLATIONS AND EXCEPTIONS TO THE GENERAL RULE. The following paragraphs address exclusive rights violations and certain exceptions to the exclusive rights policy due to circumstances that make such an exception necessary.

a. Aeronautical Activities Provided by the Airport Sponsor (Proprietary Exclusive Right). The owner of a public-use airport (public or private owner) may elect to provide any or all of the aeronautical services needed by the public at the airport. The airport sponsor may exercise, but not grant, an exclusive right to provide aeronautical services to the public. If the airport sponsor opts to provide an aeronautical service exclusively, it must use its own employees and resources. Thus, an airport owner or sponsor cannot exercise a proprietary exclusive right if it does not itself provide the aeronautical services.

As a practical matter, most airport sponsors recognize that aeronautical services are best provided by profit-motivated, private enterprises. However, it is recognized that there may be situations, valid reasons that would support the airport providing aeronautical services. Examples include situations where the revenue potential is insufficient to attract private enterprises and it is necessary for the airport sponsor to provide the aeronautical service or situations where the revenue potential is so significant that the airport sponsor chooses to perform the aeronautical activity itself in order to become more financially self-sustaining. An example of an airport

sponsor choosing to provide an aeronautical service would be aircraft fueling. While the airport sponsor may exercise its proprietary exclusive to provide fueling services, aircraft owners may assert the right to obtain their own fuel and bring it onto the airport to service their own aircraft, but only with their own employees and equipment and in conformance with reasonable airport rules, regulations and standards.

b. Single Activity. The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation. What is an exclusive rights violation is the denial by the airport sponsor to afford other qualified parties an opportunity to be an on-airport aeronautical service provider. The airport sponsor may issue a competitive offering for all qualified parties to compete for the right to be an on-airport service provider. The airport sponsor is not required to accept all qualified service providers without limitation. The fact that only one qualified party pursued an opportunity in a competitive offering would not subject the airport sponsor to an exclusive rights violation.

(1) Statutory Requirement Relating to Single Activities. Since 1938, there has been a statutory prohibition on exclusive rights, 49 U.S.C. § 40103(e), independent of the parallel grant assurance requirement at 49 U.S.C. § 47107(a)(4). This statutory prohibition currently states, "A person does not have an exclusive right to use an air navigation facility on which government money has been expended." (An "air navigation facility" includes, among other things, an airport. See "Definitions" at 49 U.S.C. § 40102.) The statutory prohibition, however, contains an exception relating to single activities. Specifically, providing services at an airport by only one fixed-base operator (FBO) is not an exclusive right if it is unreasonably costly, burdensome, or impractical for more than one FBO to provide the services, and allowing more than one FBO to provide the services requires a reduction in space leased under an existing agreement between one FBO and the airport sponsor. Both conditions must be met.

(2) The grant assurance relating to exclusive rights contains similar language.

c. Space Limitation. A single enterprise may expand as needed, even if its growth ultimately results in the occupancy of all available space. However, an exclusive rights violation occurs when an airport sponsor unreasonably excludes a qualified applicant from engaging in an on-airport aeronautical activity without just cause or fails to provide an opportunity for qualified applicants to be an aeronautical service provider. An exclusive rights violation can occur through the use of leases where, for example, all the available airport land or facilities suitable for aeronautical activities are leased to a single aeronautical service provider who cannot put it into productive use within a reasonable period of time, thereby denying other qualified parties the opportunity to compete to be an aeronautical service provider at the airport. An airport sponsor's refusal to permit a single FBO to expand based on the sponsor's desire to open the airport to competition is not an exclusive rights violation. Additionally, an airport sponsor may exclude an incumbent FBO from participating under a competitive solicitation in order to bring a second FBO onto the airport to create a more competitive environment.

A lease that confers an exclusive right will be construed as having the intent to do so and, therefore, be an exclusive rights violation. Airport sponsors are better served by requiring that leases to a single aeronautical service provider be limited to the amount of land the service

provider can demonstrate it actually needs and can be put to immediate productive use. In the event that additional space is required later, the airport sponsor may require the incumbent service provider to compete along with all other qualified service providers for the available airport land. The grant of options or preferences on future airport lease sites to a single service provider is likely to be construed as intent to grant an exclusive right. The use of leases with options or future preferences, such as rights-of-first refusal, is highly discouraged.

d. Restrictions Based on Safety and Efficiency.[54] An airport sponsor can deny a prospective aeronautical service provider the right to engage in an on-airport aeronautical activity for reasons of safety and efficiency. A denial based on safety must be based on firm evidence demonstrating that airport safety will be compromised if the applicant is allowed to engage in the proposed aeronautical activity. Airport sponsors should carefully scrutinize the safety reasons for denying an aeronautical service provider the opportunity to engage in an aeronautical activity if the denial has the possible effect of limiting competition.

The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. As such, an airport sponsor that is contemplating the denial of a proposed on-airport aeronautical activity is encouraged to contact the local airports district office (ADO) or the regional airports division. Those offices will then seek assistance from FAA Flight Standards (FS) and Air Traffic (AT) to assess the reasonableness and the unjustly discriminatory aspects of proposed restrictions on aeronautical activities because of safety and efficiency.

e. Restrictions on Self-Service. An aircraft owner or operator,[55] who is entitled to use the landing area of an airport, may tie down, adjust, repair, refuel, clean, and otherwise service his/her own aircraft, provided the service is performed by the aircraft owner/operator or his/her employees with resources supplied by the aircraft owner or operator. Moreover, the service must be conducted in accordance with reasonable rules, regulations or standards established by the airport sponsor. Any unreasonable restriction imposed on the owners or operators of aircraft regarding the servicing of their own aircraft may be construed as an exclusive rights violation. In accordance with the FAA grant assurances:

> **(1)** An airport sponsor may not prevent an owner or operator of an aircraft from performing services on his/her own aircraft with his/her own employees and equipment. Restrictions imposed by an airport sponsor that have the effect of channeling self-service activities to a commercial aeronautical service provider may be an exclusive rights violation.

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[54] The word efficiency refers to the efficient use of navigable airspace, an inherent FAA Air Traffic Control function. It is not meant to be an interpretation that could be construed as protecting the "efficient'' operation of an existing aeronautical service provider for example.

[55] The FAA has for a long time and under certain circumstances, interpreted an aircraft owner's right to self-service to include operators. For example, a significant number of aircraft operated by airlines are not owned but leased under terms that give the operator airline owner-like powers. This includes operational control, exclusive use and long-term lease terms. The same is true for other aeronautical operators such as charter companies, flight schools and flying clubs, all of which may very well lease aircraft under terms that result in owner-like powers. If on a particular case, a doubt exists on whether a particular "operator" can be considered as the owner for the purpose of this guidance, please contact the Airports District Office (ADO) in your area. A listing of ADOs can be found online.

(2) An airport sponsor must reasonably provide for self-servicing activity but is not obligated to lease airport facilities and land for such activity. That is, the airport sponsor is not required to encumber the airport with leases and facilities for self-servicing activity, and

(3) An airport sponsor is under no obligation to permit aircraft owners or operators to introduce equipment, personnel, or practices on the airport that would be unsafe, unsightly, or detrimental to the public welfare or that would affect the efficient use of airport facilities by the public.

NOTE: Fueling from a pull up commercial fuel pump is not considered self-fueling under the FAA grant assurances since it involves fueling from a self-service pump made available by the airport or a commercial aeronautical service provider. See definition of commercial self-fueling in Appendix 1.

Safety concerns are not limited to aeronautical activities but may include Occupational Safety and Health Administration (OSHA) standards, fire safety standards, building codes, or sanitation considerations. Restrictions by airport sponsors for safety must be reasonable. Examples of reasonable restrictions include restrictions placed on the handling of aviation fuel and other flammable products, including aircraft paint and thinners; requirements to keep fire lanes open; weight limitations placed on vehicles and aircraft to protect pavement from damage; and other similar safety based restrictions.

f. Monopolies Beyond the Airport Sponsor's Control. Certain exclusive franchises exist on public airports that are sanctioned by local or federal law and do not contravene the FAA's policy against exclusive rights agreements. One such franchise that exists at most public airports is UNICOM, which provides frequencies for air-to-ground communications at airports. The Federal Communications Commission (FCC), which regulates and authorizes the use of UNICOM frequencies, will not issue more than one ground station license at the same airport. Thus, an exclusive franchise is created. A legally supported franchise, such as UNICOM, grants the recipient licensee an advantage over competitors, but does not result in a violation of the agency's prohibition against exclusive rights. In cases such as this, the FAA recommends that the airport sponsor obtain the subject license in its own name. Using droplines, the airport sponsor can then make the facility available to all fixed-base operations on an as needed basis. Regardless of which method the airport sponsor uses, control over the facility must be held by the individual or entity that holds the license.

1.5. THROUGH 1.8. RESERVED.

SECTION 2. THE ENFORCEMENT PROCESS

2.1. AIRPORT COMPLIANCE PROGRAM. The FAA ensures airport sponsor compliance with federal grant obligations through its Airport Compliance Program. The Airport Compliance Program arises from requirements in the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq*., and the airport sponsor's agreement to comply with the assurances contained in the grant agreement in exchange for federal airport development assistance. The Airport Compliance Program is designed to maintain a system of safe and

properly maintained airports that are operated in a manner that protects the public's interest and investment in a national airport system.

a. Under the Airport Compliance Program, any person who believes that an airport sponsor may be in noncompliance with a grant assurance may register their concerns with the local FAA Airport District Office (ADO). ADO personnel may investigate the allegations of noncompliance and, in the event that the allegations are confirmed, attempt to persuade the airport sponsor to come back into compliance. Should this measure prove unsatisfactory, the concerned party may file a formal complaint under 14 CFR Part 16, Rules of Practice for Federally Assisted Airport Enforcement Proceedings. In addition, described in §16.29(b), the FAA may initiate its own investigation.

b. Complaints filed with the FAA under 14 CFR Part 16 are subject to an administrative review, which entails consideration of the complainant's allegations and the airport sponsor's response to the allegations. The FAA will make a formal written determination on the complaint. A determination against the airport sponsor can result in an FAA action to withhold current and future grant funding for the airport. The FAA's final determination under 14 CFR Part 16 may be appealed to the U.S. Court of Appeals.

2.2. THROUGH 2.5. RESERVED.

APPENDIX 1. DEFINITIONS

1.1. The following are definitions for the specific purpose of this AC.

a. Aeronautical Activity. Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations. Activities within this definition, commonly conducted on airports, include, but are not limited to, the following: general and corporate aviation, air taxi and charter operations, scheduled and nonscheduled air carrier operations, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute or ultralight activities, and any other activities that, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities. Other activities, such as model aircraft or model rocket operations, are not aeronautical activities.

b. Airport District Office (ADO). These FAA offices are outlying units or extensions of regional airport divisions. They advise and assist airport sponsors with funding requests to improve and develop public airports. They also provide advisory services to the owners and operators of both public and private airports in the operation and maintenance of airports. See the FAA Web site for a complete listing of all ADO offices.

c. Airport Sponsor. The airport sponsor is the entity that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other obligations required of sponsors, which are contained in the AIP grant agreement and property conveyances.

d. Commercial Self-Service Fueling. A fueling concept that enables a pilot to fuel an aircraft from a commercial fuel pump installed for that purpose by an FBO or the airport sponsor. The fueling facility may or may not be attended.

e. Exclusive Right. A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

f. Federal Airport Obligations. All references to a federal grant program, federal airport development assistance, or federal aid contained in this AC are intended to address obligations arising from the conveyance of land or from grant agreements entered under one of the following acts:

(1) Surplus Property Act of l944 (SPA), as amended, 49 U.S.C. §§ 47151-47153. Surplus property instruments of transfer were issued by the War Assets Administration (WAA) and are now issued by its successor, the General Services Administration (GSA). However, Public Law 81-311 specifically imposes upon the FAA the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is or has been conveyed to non-federal public agencies pursuant to the SPA. Under 50 U.S.C § 4715, *et seq*., property can be conferred for airport purposes if the FAA determines that the property is essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport. Recipients of surplus property grants are subject to the FAA prohibition against the granting of exclusive rights.

(2) Federal Aid to Airports Program (FAAP). This grant-in-aid program administered by the agency under the authority of the Federal Airport Act of 1946, as amended, assisted public agencies in the development of a nationwide system of public airports. The Federal Airport Act of 1946 was repealed and superseded by the Airport Development Aid Program (ADAP) of 1970.

(3) Airport Development Aid Program (ADAP). This grant-in-aid program administered by the FAA under the authority of the Airport and Airway Development Act of 1970, as amended, assisted public agencies in the expansion and substantial improvement of the Nation's airport system. The l970 act was repealed and superseded by the Airport and Airway Improvement Act of l982 (AAIA).

(4) Airport Improvement Program (AIP). This grant-in-aid program administered by the FAA under the authority of the Airport and Airway Improvement Act of l982, 49 U.S.C. § 47101, *et seq*., assists in maintaining a safe and efficient nationwide system of public-use airports that meet the present and future needs of civil aeronautics.

g. Federal Grant Assurance. A federal grant assurance is a provision within a federal grant agreement to which the recipient of federal airport development assistance has agreed to comply in consideration of the assistance provided.

h. Fixed-Base Operator (FBO). A business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.

i. Grant Agreement. A federal grant agreement represents any agreement made between the FAA (on behalf of the United States) and an airport sponsor, whether it be for the grant of federal funding or a conveyance of land, each of which the airport sponsor agrees to use for aeronautical purposes.

j. Proprietary Exclusive. The owner of a public-use airport (public or private owner) may elect to provide any or all of the aeronautical services needed by the public at the airport. In fact, the statutory prohibition against exclusive rights does not apply to these owners. However, while they may exercise the exclusive right to provide aeronautical services, they may not grant or convey this exclusive right to another party. The airport sponsor that elects to engage in a proprietary exclusive must use its own employees and resources to carry out its venture. An independent commercial enterprise that has been designated as an agent of the airport sponsor may not exercise nor be granted such an exclusive right.

k. Public Airport. Means an airport open for public use and that is publicly owned and controlled by a public agency.

l. Public-Use Airport. Means either a public airport or a privately owned airport opened for public use.

n. Specialized Aviation Service Operations (**SASO).** SASOs are sometimes known as single-service providers or special FBOs. These types of companies differ from a full service FBO in that they typically offer only a specialized aeronautical service such as aircraft sales, flight training, aircraft maintenance and avionics services for example.

o. Self-Fueling and Self-Service. Self-fueling means the fueling or servicing of an aircraft by the owner of the aircraft with his or her own employees and using his or her own equipment. Self-fueling cannot be contracted out to another party. Self-fueling implies using fuel obtained by the aircraft owner from the source of his/her preference. Self-fueling is differs from using a self-service fueling pump made available by the airport, an FBO or an aeronautical service provider. The use of a self-service fueling pump is a commercial activity and is not considered self-fueling as defined herein. Self-service includes activities such as adjusting, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources supplied by the aircraft owner. Title 14 CFR Part 43 of the Federal Aviation Regulations permits the holder of a pilot certificate to perform specific types of preventative maintenance on any aircraft owned or operated by the pilot.

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U.S. Department of Transportation
Federal Aviation Administration

Advisory Circular

Subject: MINIMUM STANDARDS FOR COMMERCIAL AERONAUTICAL ACTIVITIES

Date: January 3, 2006

Initiated by: AAS-400 (currently ACO-100)

AC No: 150/5190-7

1. PURPOSE. This advisory circular (AC) provides basic information pertaining to the Federal Aviation Administration's (FAA's) recommendations on commercial minimum standards and related policies. Although minimum standards are optional, the FAA highly recommends their use and implementation as a means to minimize the potential for violations of federal obligations at federally obligated airports.

2. CANCELLATION. AC 150/5190-5, *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities* (Change 1), dated June 10, 2002, AC 150/5190-2, *Exclusive Rights at Airports*, dated April 4, 1972, and AC 150/5190-1A, *Minimum Standards for Commercial Aeronautical Activities on Public Airports*, dated December 16, 1985, are cancelled.

3. BACKGROUND. In accordance with the Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47101, *et seq.,* and the Airport Improvement Program Sponsor Assurances, the owner or operator of any airport (airport sponsor) that has been developed or improved with federal grant assistance or conveyances of federal property assistance is required to operate the airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity.[56] The Surplus Property Act of 1944 (as amended by 49 U.S.C., §§ 47151-47153) contains a parallel obligation under its terms for the conveyance of federal property for airport purposes. Similar obligations exist for airports that have received nonsurplus government property under 49 U.S.C. § 47125 and previous corresponding statutes.

These federal obligations involve several distinct requirements. Most important is that the airport and its facilities must be available for public use as an airport. The terms imposed on those who use the airport and its services must be reasonable and applied without unjust discrimination, whether by the airport sponsor or by a contractor or licensee who has been

[56] The legislative background for the provisions discussed in this AC began as early as 1938 and evolved under the Federal Aid to Airports Program (FAAP), Airport Development Aid Program (ADAP), and Airport Improvement Program (AIP).

granted a right by the airport sponsor to offer services or commodities normally required to serve aeronautical users of the airport.

Federal law requires that recipients of federal grants (administered by the FAA) sign a grant agreement or covenant in a conveyance of property that sets out the obligations that an airport sponsor assumes in exchange for federal assistance and that establishes the FAA's enforcement authority. The FAA's policy of recommending the development of minimum standards stem from the airport sponsor's grant assurances and similar property conveyance obligations to make the airport available for public use on reasonable conditions and without unjust discrimination.

4. USE OF THIS AC. This AC addresses FAA's policy on minimum standards and provides guidance on developing effective minimum standards. This AC describes the sponsor's prerogative to establish minimum standards for commercial aeronautical service providers at federally obligated airports. Additionally, this AC provides guidelines for self-service operations and self-service rules and regulation of other aeronautical activities. It does not address requirements imposed on nonaeronautical entities, which are usually addressed as part of the airport's contracts, leases, rules and regulations, and/or local laws. While the FAA does not approve minimum standards, it is the responsibility of the airports district and regional offices, if requested by an airport sponsor, to review proposed minimum standards. The FAA regional and district offices may advise airport sponsors on the appropriateness of proposed standards to ensure that the standards do not place the airport in a position inconsistent with its federal obligations.

5. RELATED READING MATERIALS.

FAA Airport Compliance Requirements, Order 5190.6A, dated October 16, l989.

Further information can be obtained at the airports district office (ADO) in your area. A listing of ADOs can be found online.

DAVID L. BENNETT
Director, Office of Airport
Safety and Standards

SECTION 1. MINIMUM STANDARDS

1.1. POLICY. The airport sponsor of a federally obligated airport agrees to make available the opportunity to engage in commercial aeronautical activities by persons, firms, or corporations that meet reasonable minimum standards established by the airport sponsor. The airport sponsor's purpose in imposing standards is to ensure a safe, efficient and adequate level of operation and services is offered to the public. Such standards must be reasonable and not unjustly discriminatory. In exchange for the opportunity to engage in a commercial aeronautical activity, an aeronautical service provider engaged in an aeronautical activity agrees to comply with the minimum standards developed by the airport sponsor. Compliance with the airport's minimum standards should be made part of an aeronautical service provider's lease agreement with the airport sponsor.

The FAA suggests that airport sponsors establish reasonable minimum standards that are relevant to the proposed aeronautical activity with the goal of protecting the level and quality of services offered to the public. Once the airport sponsor has established minimum standards, it should apply them objectively and uniformly to all similarly situated on-airport aeronautical service providers. The failure to do so may result in a violation of the prohibition against exclusive right and/or a finding of unjust economic discrimination or imposing unreasonable terms and conditions for airport use.

1.2. DEVELOPING MINIMUM STANDARDS.

a. Objective. The FAA objective in recommending the development of minimum standards serves to promote safety in all airport activities, protect airport users from unlicensed and unauthorized products and services, maintain and enhance the availability of adequate services for all airport users, promote the orderly development of airport land, and efficiency of operations. Therefore, airport sponsors should strive to develop minimum standards that are fair and reasonable to all on-airport aeronautical service providers and relevant to the aeronautical activity to which it is applied. Any use of minimum standards to protect the interests of an exclusive business operation may be interpreted as the grant of an exclusive right and a potential violation of the airport sponsor's grant assurances and the FAA's policy on exclusive rights.

b. Authority Vested in Airport Sponsors. Grant Assurance 22, *Economic Nondiscrimination*, Sections (h) and (i) (see 49 U.S.C. § 47107) provides that the sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

Under certain circumstances, an airport sponsor could deny airport users from conducting aeronautical activities at the airport for reasons of safety and efficiency.[57] A denial based on safety must be based on firm evidence demonstrating that safety will be compromised if the applicant is allowed to engage in the proposed aeronautical activity. Airport sponsors should carefully scrutinize the safety reasons for denying an aeronautical service provider the opportunity to engage in an aeronautical activity if the denial has the possible effect of limiting competition.

The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. As such, an airport sponsor that is contemplating the denial of a proposed on-airport aeronautical activity is encouraged to contact the local airports district office (ADO) or the regional airports division. Those offices will then seek assistance from FAA Flight Standards (FS) and Air Traffic (AT) to assess the reasonableness and the unjustly discriminatory aspects of proposed restrictions on aeronautical activities because of safety and efficiency. When dealing with proposed restrictions, assistance can be obtained from FAA personnel in either the local ADO or the regional airports division in determining the reasonableness of proposed restrictions.

c. Developing Minimum Standards. When developing minimum standards, the most critical consideration is the particular nature of the aeronautical activity and operating environment at the airport. Minimum standards should be tailored to the specific aeronautical activity and the airport to which they are to be applied. For example, it would be unreasonable to apply the minimum standards for an FBO at a medium or large hub airport to a general aviation airport serving primarily piston-powered aircraft. The imposition of unreasonable requirements illustrates why "fill-in-the-blank" minimum standards and the blanket adoption of standards of other airports may not be effective. Instead, the FAA has provided guidance in the form of questions and examples to illustrate an approach to the development and implementation of minimum standards. It is important that the reader understand that what follows does not constitute a complete model for minimum standards, but rather a source of ideas to which the airport sponsor can turn when developing minimum standards.

d. Sponsor Prerogative to Establish Minimum Standards. When the airport sponsor imposes reasonable and not unjustly discriminatory minimum standards for airport operations, and the airport sponsor restricts access or services based on those standards, the FAA will not find the airport sponsor in violation of the federal obligations provided the minimum standards:

(1) Apply to all providers of aeronautical services, from full service FBOs to single service providers.

[57] The word efficiency refers to the efficient use of navigable airspace, an Air Traffic Control function. It is not meant to be an interpretation that could be construed as protecting the "efficient'' operation of an existing aeronautical service provider for example.

(2) Impose conditions that ensure safe and efficient operation of the airport in accordance with FAA rules, regulations and guidance.

(3) Are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect the investment by providers of aeronautical services to meet minimum standards from competition not making a similar investment.

(4) Are relevant to the activity to which they apply.

(5) Provide the opportunity for newcomers who meet the minimum standards to offer their aeronautical services within the market demand for such services.

Note: There is no requirement for inclusion of nonaeronautical activities in minimum standards since those activities, such as a restaurant, parking or car rental concession are not covered under the grant assurances or covenants in conveyance of federal property.

e. Practical Considerations. Many airport sponsors include minimum standards in their lease agreements with aeronautical service providers. While minimum standards implemented in this manner can be effective, they also render the airport sponsor vulnerable to the challenges of prospective aeronautical service providers on the grounds that the minimum standards are not objective. The FAA encourages airport sponsors to periodically publish their minimum standards. Minimum standards can be amended periodically over time, however, a constant juggling of minimum standards is not encouraged. Demonstrating to aeronautical service providers that the changes to minimum standards are to improve the quality of the aeronautical service offered to the public can most easily facilitate acceptance of changes. An airport sponsor can provide for periodic reviews of the minimum standards to ensure that the standards continue to be reasonable.

f. Factors to Consider. Numerous factors can and should be considered when developing minimum standards. Airport sponsors may avoid unreasonable standards by selecting factors that accurately reflect the nature of the aeronautical activity under consideration. It is impossible for the FAA to present every possible factor necessary for a task, mostly because of the vast differences that exist between individual airports. Obvious factors one should consider are:

(1) What type of airport is at issue? Is it a large airport or a small rural airport? Will the airport provide service to only small general aviation aircraft or will it serve high performance aircraft and air taxi operators as well?

(2) What types of aeronautical activities will be conducted on the airport?

(3) How much space will be required for each type of aeronautical activity that may prospectively operate at the airport?

(4) What type of documentation will business applicants be required to present as evidence of financial stability and good credit?

(5) To what extent will each type of aeronautical activity be required to demonstrate compliance with sanitation, health, and safety codes?

(6) What requirements will be imposed regarding minimum insurance coverage and indemnity provisions?

(7) Is each minimum standard relevant to the aeronautical activity for which it is to be applied?

g. New Versus Existing Aeronautical Service Providers. Airport sponsors are encouraged to develop minimum standards for new aeronautical business ventures it desires to attract to the airport. Minimum standards may be part of a competitive solicitation to encourage prospective service providers to be more responsive in their proposals. Minimum standards can be modified to reflect the airport's experience and to be watchful for new opportunities (i.e., SASOs). Minimum standards should be updated so as to reflect current conditions that exist at the airport and not those that existed in the past. In any case, once an airport sponsor receives a proposal for a new aeronautical business, it must ascertain whether the existing minimum standards can be used for the new business or new minimum standards developed to better fit the new business venture. However, in all cases, the airport sponsor must ensure that in changing minimum standards for whatever reason, it is not applying unreasonable standards or creating a situation that will unjustly discriminate against other similarly situated aeronautical service providers. The FAA stands by the principle that once minimum standards have been established, airport sponsors must uniformly apply them to all similarly situated aeronautical service providers. Some points of consideration are as follows:

(1) Can new minimum standards be designed to address the needs of both existing and future aeronautical business? If not, can a tiered set of minimum standards be developed to address the same type of aeronautical activity but differ significantly in scale and investment (i.e., an FBO building large hangars and serving high performance aircraft and a second FBO building and only T-hangars, and serving only smaller general aviation aircraft)?

(2) Was the minimum standard created under a lease agreement (with a specific aeronautical service provider) so the subject standard may not be reasonable if applied to other aeronautical service providers?

(3) Has conformance to the minimum standards been made a part of the contract between the aeronautical service provider and the airport sponsor?

(4) Has the financial performance of the airport improved or declined since the time the minimum standards were implemented?

1.3. MINIMUM STANDARDS APPLY BY ACTIVITY.

Difficulties can arise if the airport sponsor requires that all business comply with all provisions of the published minimum standards. An airport sponsor should develop reasonable, relevant, and applicable standards for each type and class of service.

a. Specialized Aviation Service Operations. When specialized aviation service operations (SASOs), sometimes known as single-service providers or special FBOs, apply to do business on an airport, "all" provisions of the published minimum standards may not apply. This is not to say that all SASOs providing the same or similar services should not equally comply with all applicable minimum standards. However, an airport should not, without adequate justification, require that a service provider desiring to provide a single service also meet the criteria for a full-service FBO. Examples of these specialized services may include aircraft flying clubs, flight training, aircraft airframe and powerplant repair/maintenance, aircraft charter, air taxi or air ambulance, aircraft sales, avionics, instrument or propeller services, or other specialized commercial flight support businesses.

b. Independent Operators. If individual operators are to be allowed to perform a single-service aeronautical activity on the airport (aircraft washing, maintenance, etc.), the airport sponsor should have a licensing or permitting process in place that provides a level of regulation and compensation satisfactory to the airport. Frequently, a yearly fee or percentage of the gross receipts fee is a satisfactory way of monitoring this type of operation.

c. Self-Fueling and Other Self-Service Activities. Minimum standards do not apply to self-service operations. Self-fueling means the fueling or servicing of an aircraft by the owner of the aircraft with his or her own employees and using his or her own equipment. Self-fueling cannot be contracted out to another party. Self-fueling implies using fuel obtained by the aircraft owner from the source of his/her preference. Self-fueling differs from using a self-service fueling pump made available by the airport, an FBO or an aeronautical service provider. The use of a self-service fueling pump is a commercial activity and is not considered self-fueling as defined herein.

In addition to self-fueling, other self-service activities that can be performed by the aircraft owner with his or her own employees includes activities such as maintaining, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources supplied by the aircraft owner. Title 14 CFR Part 43 permits the holder of a pilot certificate to perform specific types of preventative maintenance on any aircraft owned or operated by the pilot.

1.4. "THROUGH-THE-FENCE" OPERATOR. The owner of an airport may, at times, enter into an agreement (i.e., access agreement or lease agreement) that permits access to the public landing area to independent operators offering an aeronautical activity or to owners of aircraft based on land adjacent to, but not a part of the airport property**.**

a. No Obligation to Permit Through-the-Fence. The obligation to make an airport available for the use and benefit of the public does not impose any requirement for the airport sponsor to permit access by aircraft from adjacent property. The existence of such an arrangement could place an encumbrance upon the airport property unless the airport sponsor retains the legal right to, and in fact does, require the off-site property owner or party granted access to the airport to conform in all respects to the requirements of any existing or proposed grant agreement or federal property conveyance obligation.

As a general principal, the FAA recommends that airport sponsors refrain from entering into any agreement that grants access to the public landing area by aircraft stored and serviced off-site on adjacent property. Exceptions can be granted on a case-by-case basis where operating restrictions ensure safety and equitable compensation for use of the airport. The existence of agreements granting access to a public landing area from off-site locations may complicate the control of vehicular and aircraft traffic and security of the airfield operations area.

Special safety and operational requirements may need to be incorporated into any access agreement. The existence of agreements granting access to a public landing area from off-site locations shall be reported to regional airports divisions with a full statement of the circumstances. If the regional airports division determines that the access granted to an off-site party is in violation of an airport sponsor's grant assurance and/or federal property conveyance obligation, it will pursue necessary corrective action to return the airport sponsor to compliance.

b. Access Agreement. Any through-the-fence access should be subject to a written agreement between the airport sponsor and the party granted access. The access agreement should specify what specific rights of access are granted; payment provisions that provide, at minimum, parity with similarly situated on-airport tenants and equitable compensation for the use of the airport; expiration date; default and termination provisions; insurance and indemnity provisions; and a clear statement that the access agreement is subordinate to the grant assurances and/or federal property conveyance obligations and that the sponsor shall have the express right to amend or terminate the access agreement to ensure continued compliance with all grant assurances and federal property conveyance obligations.

The access agreement should have a fixed contract period and the airport sponsor is under no obligation to accept a proposed assignment or sale of the access agreement by one party to another. It is encouraged that airport sponsors expressly prohibit the sale or assignment of its access agreement.

1.4. THROUGH 1.5. RESERVED.

SECTION 2. GUIDANCE ON DEVELOPING MINIMUM STANDARDS

2.1. SAMPLE QUESTIONS. As a guide for the airport sponsor, the following series of questions are provided to address some of the various types of specific services or activities frequently offered to the public:

a. Fuel Sales. The on-airport sale of fuel and oil requires numerous considerations that include, but are not limited to, the physical requirements for a safe and environmentally sound operation. Some recommended considerations are listed below:

(1) Where on the airport will the fuel tanks be installed? Who will control access to the fueling site? What parties will be granted access to the site to receive fueling services?

(2) Will fuel tanks be installed above or below ground? Will fuel trucks be utilized to fuel remotely parked aircraft?

(3) Will the fueling operator have sufficient fuel capacity and types of fuel to accommodate the mix of aircraft using the airport?

(4) How many days supply of fuel will be available on airport and are provisions to resupply the on-airport fuel tanks sufficient to ensure a continuous fuel supply?

(5) Will the fueling operator have suitable liability insurance and indemnify the airport sponsor for liability for its fueling operation, including fuel spills and environmental contamination?

b. Personnel Requirements. An aeronautical service provider's need for personnel will be dictated by the size of the airport and the public demand for aeronautical services. In all instances, an airport sponsor will be well advised to ensure that aeronautical service providers have sufficient personnel to run their operation safely and meet aeronautical demand for the services in question. Naturally, the personnel requirements will vary with the specific aeronautical service being offered.

(1) How many fully trained and qualified personnel will be available each day and over what hours to provide aeronautical services? Will this reasonably meet the demand by aeronautical users?

(2) Describe the training and qualifications of personnel engaged in the services provided to aeronautical users.

c. Airport and Passenger Services. This is a necessary consideration in those instances where the airport has aeronautical service providers engaged in handling services for air carrier and/or cargo carriers that do not provide their own support personnel on-site:

(1) Provide a list of the equipment and services (both above and below wing) that will be provided by the aeronautical service provider, including ground power units**,** over night parking areas, towing equipment, starters, remote tie-down areas, jacks, oxygen, compressed air, tire repair, sanitary lavatory service, ticketing and passenger check-in services, office and baggage handling services and storage space.

(2) What provisions have been made regarding passenger conveniences and services?

(a) Access to passenger loading bridges/steps, sanitary rest rooms, boarding hold rooms, telephones, food and beverage service, and other passenger concessions.

(b) Access to concession and ground transportation services for the benefit of passengers and/or crewmembers.

d. Flight Training Activities. On-airport flight training can be provided by the airport sponsor/owner or by a service provider. The minimum standards imposed on flight instruction operations should take the following information into consideration:

(1) What type of flight training will the service provider offer?

(2) What arrangements have been made for the office space the school is required to maintain under 14 CFR 141.25? What is the minimum amount of classroom space that the service provider must obtain?

(3) Will flight training be provided on a full-time or part-time basis?

(4) What type of aircraft and how many will be available for training at the on-airport location?

(5) What provisions have been made for the storage and maintenance of the aircraft?

(6) What provisions will be made for rest rooms, briefing rooms, and food service?

(7) What coordination and contacts exist with the local Flight Standards District Office?

e. Aircraft Engine/Accessory Repair and Maintenance. The applicant for an on-airport repair station is subject to several regulatory requirements under 14 CFR Part 145

Repair Stations. Depending on the type and size of the proposed repair station, the following questions may provide helpful guidelines:

(1) What qualifications will be required of the repair station employees? Typically, the holder of a domestic repair station certificate must provide adequate personnel who can perform, supervise, and inspect the work for which the station is rated.

(2) What repair station ratings does the applicant hold?

(3) What types of services will the repair station offer to the public? These services can vary from repair to maintenance of aircraft and include painting, upholstery, etc.

(4) Can the applicant secure sufficient airport space to provide facilities so work being done is protected from weather elements, dust, and heat? The amount of space required will be directly related to the largest item or aircraft to be serviced under the operator's rating.

(5) Will suitable shop space exist to provide a place for machine tools and equipment in sufficient proximity to where the work is performed?

(6) What amount of space will be necessary for the storage of standard parts, spare parts, raw materials, etc.?

(7) What type of lighting and ventilation will the work areas have? Will the ventilation be adequate to protect the health and efficiency of the workers?

(8) If spray painting, cleaning, or machining is performed, has sufficient distance between the operations performed and the testing operations been provided so as to prevent adverse affects on testing equipment?

f. Skydiving. Skydiving is an aeronautical activity. Any restriction, limitation, or ban on skydiving on the airport must be based on the grant assurance that provides that the airport sponsor may prohibit or limit aeronautical use for the safe operation of the airport (subject to FAA approval). The following questions present reasonable factors the sponsor might contemplate when developing minimum standards that apply to skydiving:

(1) Will this activity present or create a safety hazard to the normal operations of aircraft arriving or departing from the airport? If so, has the local airports district office (ADO) or the regional airports division been contacted and have those FAA offices sought the assistance from FAA Flight Standards (FS) and Air Traffic (AT) to assess allegations that safe airport operations would be jeopardized?

(2) Can skydiving operations be safely accommodated at the airport? Can a drop zone be safely established within the boundaries of the airport? Is guidance in FAA AC-90-66A *Recommended Standards Traffic Patterns and Practices for*

Aeronautical Operations at Airports Without Operating Control Towers, 14 CFR Part 105 and United States Parachute Association's (USPA) *Basic Safety Requirements* being followed?

(3) What reasonable time periods can be designated for jumping in a manner consistent with Part 105? What experience requirements are needed for an on-airport drop zone?

(4) What is a reasonable fee that the jumpers and/or their organizations can pay for the privilege of using airport property?

(**5**) Has the relevant air traffic control facility been advised of the proposed parachute operation? Does air traffic have concerns about the efficiency and utility of the airport and its related instrument procedures?

(6) Will an FAA airspace study be necessary to determine the impact of the proposed activity on the efficiency and utility of the airport, related instrument approaches or nearby Instrument Flight Rules (IFR)? If so, has FAA Air Traffic reviewed the matter and issued a finding?

g. Ultralight Vehicles and Light Sport Aviation. The operation of ultralights and light sport aircraft are aeronautical activities and must, therefore, be generally accommodated on airports that have been developed with federal airport development assistance. Airport sponsors are encouraged to consider some of the following questions:

(1) Can ultralight aircraft be safely accommodated at the airport? Is guidance in FAA AC-90-66A *Recommended Standards Traffic Patterns and Practices for Aeronautical Operations at Airports Without Operating Control Towers* and 14 CFR Part 103 being followed?

(2) Can all types of Light Sport aircraft be safely accommodated at the airport?

(3) Will this activity present or create a safety hazard to the normal operations of aircraft arriving or departing from the airport? If so, has FAA Flight Standards reviewed the matter and issued a finding?

(4) Will an FAA airspace study be necessary to determine the efficiency and utility of the airport when considering the proposed activity? If so, has FAA Air Traffic reviewed the matter and issued a finding?

h. Fractional Aircraft Ownership. Fractional ownership programs are subject to an FAA oversight program similar to that provided to air carriers, with the exception of en route inspections. The FAA has for a long time and under certain circumstances, interpreted an aircraft owner's right to self-service to include operators. For example, a significant number of aircraft operated by airlines are not owned but leased under terms that give the operator airline owner-like powers. The same is true for other aeronautical operators such as charter companies, flight schools, and flying clubs, which may not hold

title to the aircraft, but through leasing arrangements for example, retain full and exclusive control of the aircraft for long periods of time. The same is true of Part 91K fractional ownership companies, which are subject to operational control responsibilities, maintenance and safety requirements not unlike Part 135 operators. Therefore, the FAA considers companies engaged in operations under 14 CFR Part 91K to be aircraft operators and therefore covered by the FAA's self-service provisions.[58]

i. Other Requirements. When drafting minimum standards documents, airport sponsors may have to take into account other federal, state and local requirements. This include federal requirements and guidance by the Transportation Safety Administration (TSA) and the Environmental Protection Agency (EPA), state requirements such as aircraft registration (in some states) and local fire regulations. For guidance on matters such as these, please contact the FAA's airports district office (ADO) in your area and/or state aviation agency. A listing of ADOs can be found online. Information and contacts regarding state aviation agencies is also available online.

2.2. THROUGH 2.5. RESERVED.

[58] However, this interpretation does not mean that a fractional owner of numerous aircraft would be recognized as the "owner" entitled to self-service all of the aircraft under a particular Part 91K fractional ownership or that a fractional owner can self-service all his or hers aircraft regardless of who is operating the aircraft. In other words, a fractional owner may not self-service aircraft being used on behalf of another fractional owner. If on a particular case, a doubt exists on whether a particular "operator" can be considered as the owner for the purpose of this guidance, please contact the Airports District Office (ADO) in your area. A listing of ADOs can be found online.

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APPENDIX 1. DEFINITIONS

1.1. The following are definitions for the specific purpose of this AC.

a. Aeronautical Activity. Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations. Activities within this definition, commonly conducted on airports, include, but are not limited to, the following: general and corporate aviation, air taxi and charter operations, scheduled and nonscheduled air carrier operations, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute or ultralight activities, and any other activities that, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities. Other activities, such as model aircraft or model rocket operations, are not aeronautical activities.

b. Airport District Office (ADO). These FAA offices are outlying units or extensions of regional airport divisions. They advise and assist airport sponsors with funding requests to improve and develop public airports. They also provide advisory services to the owners and operators of both public and private airports in the operation and maintenance of airports.

c. Airport Sponsor. The airport sponsor is the entity that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other obligations required of sponsors, which are contained in the AIP grant agreement and property conveyances.

d. Commercial Self-Service Fueling. A fueling concept that enables a pilot to fuel an aircraft from a commercial fuel pump installed for that purpose by an FBO or the airport sponsor. The fueling facility may or may not be attended.

e. Exclusive Right. A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement (i.e., lease agreement), by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

f. Federal Airport Obligations. All references to a federal grant program, federal airport development assistance, or federal aid contained in this AC are intended to address obligations arising from the conveyance of land or from grant agreements entered under one of the following acts:

(1) Surplus Property Act of l944 (SPA), as amended, 49 U.S.C. §§ 47151-47153. Surplus property instruments of transfer were issued by the War Assets Administration (WAA) and are now issued by its successor, the General Services Administration (GSA). However, Public Law 81-311 specifically imposes upon the FAA the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is or has been conveyed to non-federal public agencies pursuant to the SPA. Under 50 U.S.C § 4715,

et seq., property can be conferred for airport purposes if the FAA determines that the property is essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport. Recipients of surplus property grants are subject to the FAA prohibition against the granting of exclusive rights.

(2) Federal Aid to Airports Program (FAAP). This grant-in-aid program administered by the agency under the authority of the Federal Airport Act of 1946, as amended, assisted public agencies in the development of a nationwide system of public airports. The Federal Airport Act of 1946 was repealed and superseded by the Airport Development Aid Program (ADAP) of 1970.

(3) Airport Development Aid Program (ADAP). This grant-in-aid program administered by the FAA under the authority of the Airport and Airway Development Act of 1970, as amended, assisted public agencies in the expansion and substantial improvement of the Nation's airport system. The l970 act was repealed and superseded by the Airport and Airway Improvement Act of l982 (AAIA).

(4) Airport Improvement Program (AIP). This grant-in-aid program administered by the FAA under the authority of the Airport and Airway Improvement Act of l982, 49 U.S.C. § 47101, *et seq*., assists in maintaining a safe and efficient nationwide system of public-use airports that meet the present and future needs of civil aeronautics.

g. Federal Grant Assurance. A federal grant assurance is a provision within a federal grant agreement to which the recipient of federal airport development assistance has agreed to comply in consideration of the assistance provided.

h. Fixed-base Operator (FBO). A business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.

i. Fractional Ownership. Fractional ownership operations are aircraft operations that take place under the auspices of 14 CFR Part 91 Subpart K. This type of operations offers aircraft owners increased flexibility in the ownership and operation of aircraft including shared or joint aircraft ownership. They provides for the management of the aircraft by an aircraft management company. The aircraft owners participating in the program agreed not only to share their own aircraft with others having a shared interest in that aircraft, but also to lease their aircraft to other owners in the program (dry lease exchange program). The aircraft owners used the common management company to provide aviation management services including maintenance of the aircraft, pilot training and assignment, and administration of the leasing of the aircraft among the owners. Additional information is available online.

j. Grant Agreement. A federal grant agreement represents any agreement made between the FAA (on behalf of the United States) and an airport sponsor, whether it be for the grant of federal funding or a conveyance of land, each of which the airport sponsor agrees to use for aeronautical purposes.

l. Public Airport. Means an airport open for public use and that is publicly owned and controlled by a public agency.

m. Public-Use Airport. Means either a public airport or a privately owned airport opened for public use.

n. Specialized Aviation Service Operations (SASO). SASOs are sometimes known as single-service providers or special FBOs. These types of companies differ from a full service FBO in that they typically offer a specialized aeronautical service, aircraft sales, such as flight training, aircraft maintenance and avionics services.

o. Self-Fueling and Self-Service. Self-fueling means the fueling or servicing of an aircraft by the owner of the aircraft with his or her own employees and using his or her own equipment. Self-fueling cannot be contracted out to another party. Self-fueling implies using fuel obtained by the aircraft owner from the source of his/her preference. Self-fueling differs from using a self-service fueling pump made available by the airport, an FBO or an aeronautical service provider. The use of a self-service fueling pump is a commercial activity and is not considered self-fueling as defined herein. Self-service includes activities such as adjusting, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources supplied by the aircraft owner. Title 14 CFR Part 43 of the Federal Aviation Regulations permits the holder of a pilot certificate to perform specific types of preventative maintenance on any aircraft owned or operated by the pilot.

p. Through-the-Fence Operations. Through-the-fence operations are those activities permitted by an airport sponsor through an agreement that permits access to the public landing area to independent entities or operators offering an aeronautical activity or to owners of aircraft based on land adjacent to, but not a part of the airport property**.** The obligation to make an airport available for the use and benefit of the public does not impose any requirement for the airport sponsor to permit access by aircraft from adjacent property.

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Appendix D ► Policy Regarding Airport Rates and Charges

Introduction

It is the fundamental position of the Department that the issue of rates and charges is best addressed at the local level by agreement between users and airports. The Department is adopting this Policy Statement on the standards applicable to airport fees imposed for aeronautical use of the airport to provide guidance to airport proprietors and aeronautical users, to encourage direct negotiation between these parties, to minimize the need for direct federal intervention to resolve differences over airport fees and to establish the standards which the Department will apply in addressing airport fee disputes under 49 U.S.C. § 47129 and in addressing questions of airport proprietors' compliance with federal requirements governing airport fees.

Applicability of the Policy

A. Scope of Policy

Under the terms of grant agreements administered by the Federal Aviation Administration (FAA) for airport improvement, all aeronautical users are entitled to airport access on fair and reasonable terms without unjust discrimination. Therefore, the Department considers that the principles and guidance set forth in this policy statement apply to all aeronautical uses of the airport**.** The Department recognizes, however, that airport proprietors may use different mechanisms and methodologies to establish fees for different facilities, e.g., for the airfield and terminal area, and for different aeronautical users, e.g., air carriers and fixed-base operators. Various elements of the policy reflect these differences. In addition, the Department will take these differences into account if we are called upon to resolve a dispute over aeronautical fees or otherwise consider whether an airport sponsor is in compliance with its obligation to provide access on fair and reasonable terms without unjust discrimination.

B. Aeronautical Use and Users

The Department considers the aeronautical use of an airport to be any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on the airport**.** Persons, whether individuals or businesses, engaged in aeronautical uses involving the operation of aircraft, or providing flight support directly related to the operation of aircraft, are considered to be aeronautical users. Conversely, the Department considers that the operation by U.S. or foreign air carriers of facilities such as a reservations center, headquarters office, or flight kitchen on an airport does not constitute an aeronautical use subject to the principles and guidance contained in this policy statement with respect to reasonableness and unjust discrimination. Such facilities need not be located on an airport**.** An air carrier's decision to locate such facilities is based on the negotiation of a lease or sale of property. Accordingly, the Department relies on the normal forces of competition for nonaeronautical commercial or industrial property to assure that fees for such property are not excessive.

C. Applicability of Sec. 113 of the FAA Authorization Act of 1994.

Section 113 of the Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. § 47129, directs the Secretary of Transportation to issue a determination on the reasonableness of certain fees imposed on air carriers in response to air carrier complaints or a request for determination by an airport proprietor. Section 47129 further directs the Secretary to publish final regulations, policy statements, or guidelines establishing procedures for deciding cases under Sec. 47129 and the standards to be used by the Secretary in determining whether a fee is reasonable. Section 47129 also provides for the issuance of credits or refunds in the event that the Secretary determines a fee is unreasonable after a complaint is filed. Section 47129(e) excludes from the applicability of Sec. 47129 a fee imposed pursuant to a written agreement with air carriers, a fee imposed pursuant to a financing agreement or covenant entered into before the date of enactment of the statute (August 23, 1994), and an existing fee not in dispute on August 23, 1994. Section 47129(f) further provides that Sec. 47129 shall not adversely affect the rights of any party under existing air carrier/airport agreements or the ability of an airport to meet its obligations under a financing agreement or

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covenant that is in effect on August 23, 1994. The Department interprets Sec. 47129 to apply to fees imposed on foreign as well as U.S. air carriers. In addition, the Department does not interpret Sec. 47129 to repeal or narrow the scope of the basic requirement that fees imposed on all aeronautical users be reasonable and not unjustly discriminatory or to narrow the obligation on the Secretary to receive satisfactory assurances that, *inter alia*, airport sponsors will provide access on reasonable terms before approving Airport Improvement Program (“AIP”') grants. Moreover, the Department does not interpret sections 47129(e) and (f) to preclude the Department from adopting policy guidance to carry out the Department's statutory obligation to assure that aeronautical fees are being imposed at AIP-funded airports in a manner that is consistent with the obligation to provide airport access on reasonable terms.

Therefore, the Department will apply the policy guidance in all cases in which we are called upon to determine if an airport sponsor is carrying out its obligation to make the airport available on reasonable terms. However, a dispute that is not subject to processing under the expedited procedures mandated by Sec. 47129, including a dispute over matters described by Secs. 47129 (e) and (f), will be processed by the FAA under procedures applicable to airport compliance matters in general. In considering such a dispute, the FAA's role is to determine whether the airport proprietor is in compliance with its grant obligations and statutory obligations relating to airport fees.

The FAA proceeding is not intended to provide a mechanism for adjudicating the respective rights of the parties to a fee dispute. In addition, the Department will not entertain a complaint about the reasonableness of a fee set by agreement filed by a party to the agreement setting the disputed fee. In the case of a complaint about the reasonableness of a fee set by agreement filed by an aeronautical user who is not a party to the agreement, the Department may take into account the existence of an agreement between air carriers and the airport proprietor, in making a determination on the complaint. Further, the FAA will not ordinarily investigate the

reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

D. Components of Airfield

The Department considers the airfield assets to consist of ramps or aprons not subject to preferential or exclusive lease or use agreements, runways, taxiways, and land associated with these facilities. The Department also considers the airfield to include land acquired for the purpose of assuring land use compatibility with the airfield, if the land is included in the rate base associated with the airfield under the provisions of this policy.

Principles Applicable to Airport Rates and Charges

1. In general, the Department relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct federal intervention will be available, however, where needed.

2. Rates, fees, rentals, landing fees, and other service charges (“fees”') imposed on aeronautical users for aeronautical use of airport facilities (“aeronautical fees”) must be fair and reasonable.

3. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

5. In accordance with relevant federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

Local Negotiation and Resolution

1. In general, the Department relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct federal intervention will be available, however, where needed.

1.1. The Department encourages direct resolution of differences at the local level between aeronautical users and the airport proprietor. Such resolution is best achieved through adequate and timely consultation between the airport proprietor and the aeronautical users about airport fees.

1.1.1 Airport proprietors should consult with aeronautical users well in advance, if practical, of introducing significant changes in charging systems and procedures or in the level of charges. The proprietor should provide adequate information to permit aeronautical users to evaluate the airport proprietor's justification for the change and to assess the reasonableness of the proposal. For consultations to be effective, airport proprietors should give due regard to the views of aeronautical users and to the effect upon them of changes in fees. Likewise, aeronautical users

should give due regard to the views of the airport proprietor and the financial needs of the airport**.**

1.1.2. To further the goal of effective consultation, Appendix 1 of this policy statement contains a description of information that the Department considers would be useful to the U.S. and foreign air carriers and other aeronautical users to permit meaningful consultation and evaluation of a proposal to modify fees.

1.1.3. Airport proprietors should consider the public interest in establishing airport fees, and aeronautical users should consider the public interest in consulting with airports on setting such fees.

1.1.4 Airport proprietors and aeronautical users should consult and make a good-faith effort to reach agreement. Absent agreement, airport proprietors are free to act in accordance with their proposals, subject to review by the Secretary or the Administrator on complaint by the user or, in the case of fees subject to 49 U.S.C. § 47129, upon request by the airport operator, or, in unusual circumstances, on the Department's initiative.

1.1.5. To facilitate local resolution and reduce the need for direct federal intervention to resolve differences over aeronautical fees, the Department encourages airport proprietors and aeronautical users to include alternative dispute resolution procedures in their lease and use agreements.

1.1.6. Any newly established fee or fee increase that is the subject of a complaint under 49 U.S.C. § 47129 that is not dismissed by the Secretary must be paid to the airport proprietor under protest by the complainant. Unless the airport proprietor and complainant agree otherwise, the airport proprietor will obtain a letter of credit, or surety bond, or other suitable credit instrument in accordance with the provisions of 49 U.S.C. § 47129(d). Pending issuance of a final order determining reasonableness, an airport proprietor may not deny a complainant currently providing air service at the airport reasonable access to airport facilities or services, or otherwise interfere with that complainant's prices, routes, or services, as a means of enforcing the fee, if the complainant has complied with the requirements for payment under protest.

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1.2. Where airport proprietors and aeronautical users have been unable, despite all reasonable efforts, to resolve disputes between them, the Department will act to resolve the issues raised in the dispute.

1.2.1. In the case of a fee imposed on one or more U.S. air carriers or foreign air carriers, the Department will issue a determination on the reasonableness of the fee upon the filing of a written request for a determination by the airport proprietor or, if the Department determines that a significant dispute exists, upon the filing of a complaint by one or more U.S. air carriers or foreign air carriers, in accordance with 49 U.S.C. § 47129 and implementing regulations. Pursuant to the provisions of 49 U.S.C. § 47129, the Department may only determine whether a fee is reasonable or unreasonable, and may not set the level of the fee.

1.2.2 The Department will first offer its good offices to help parties reach a mutually satisfactory outcome in a timely manner. Prompt resolution of these disputes is always desirable since extensive delay can lead to uncertainty for the public and a hardening of the parties' positions. U.S. air carriers and foreign air carriers may request the assistance of the Department in advance of or in lieu of the formal complaint procedure described in 1.2.1.; however, the 60-day period for filing a complaint under Sec. 47129 shall not be extended or
tolled by such a request.

1.2.3. In the case of fees imposed on other aeronautical users, where negotiations between the parties are unsuccessful and a complaint is filed alleging that airport fees violate an airport proprietor's federal grant obligations, the Department will, where warranted, exercise the agency's broad statutory authority to review the legality of those fees and to issue such determinations and take such actions as are appropriate based on that review. Other aeronautical users may also request the assistance of the Department in advance of, or in lieu of, the filing of a formal complaint with the FAA.

1.3. Airport proprietors must retain the ability to respond to local conditions with flexibility and innovation. An airport proprietor is encouraged to achieve consensus and agreement with its aeronautical users before implementing a practice that would represent a major departure from this guidance. However, the requirements of any law, including the requirements for the use of airport revenue, may not be waived, even by agreement with the aeronautical users.

Fair and Reasonable Fees

2. Rates, fees, rentals, landing fees, and other service charges (“fees”) imposed on aeronautical users for the aeronautical use of the airport (“aeronautical fees”') must be fair and reasonable.

2.1 Federal law does not require a single approach to airport rate-setting. Fees may be set according to a “residual" or “compensatory”' rate-setting methodology, or any combination of the two, or according to another rate-setting methodology, as long as the methodology used is applied consistently to similarly situated aeronautical users and conforms with the requirements of this policy. Airport proprietors may set fees for aeronautical use of airport facilities by ordinance, statute or resolution, regulation, or agreement.

2.1.1. Aeronautical users may receive a cross-credit of nonaeronautical revenues only if the airport proprietor agrees. Agreements providing for such cross-crediting are commonly referred to as “residual agreements” and generally provide a sharing of nonaeronautical revenues with aeronautical users. The aeronautical users may in turn agree to assume part or all of the liability for nonaeronautical costs. An airport proprietor may cross-credit nonaeronautical revenues to aeronautical users even in the absence of such an agreement, but an airport proprietor may not require aeronautical users to cover losses generated by nonaeronautical facilities except by agreement.

2.1.2. In other situations, an airport proprietor assumes all liability for airport costs and retains all airport revenue for its own use in accordance with federal requirements. This approach to airport rate-setting is generally referred to as the compensatory approach.

2.1.3. Airports frequently adopt rate-setting systems that employ elements of both approaches.

2.2. Revenues from fees imposed for use of the airfield ("airfield revenues") may not exceed the costs to the airport proprietor of providing airfield services and airfield assets currently in aeronautical use unless otherwise agreed to by the affected aeronautical users.

2.3. The "rate base" is the total of all costs of providing airfield facilities and services to aeronautical users (which may include a share of public use roadway costs allocated to the airfield in accordance with this policy) that may be recovered from aeronautical users through fees charged for providing airfield aeronautical services and facilities ("airfield fees"). Airport proprietors must employ a reasonable, consistent, and "transparent"' (i.e., clear and fully justified) method of establishing the rate base and adjusting the rate base on a timely and predictable schedule.

2.4. Except as provided in paragraph 2.5.3(a) below or by agreement with aeronautical users, costs properly included in the rate base are limited to all operating and maintenance expenses directly and indirectly associated with the provision of airfield aeronautical facilities and services, including environmental costs, as set forth below, (and may include a share of public use roadway costs allocated to the airfield in accordance with this policy); all capital costs associated with the provision of airfield aeronautical facilities and services currently in use, as set forth below; and current costs of planning future aeronautical airfield facilities and services. In addition, a private equity owner of an airport can include a reasonable return on investment in the airfield.

2.4.1 The airport proprietor may include in the rate base, at a reasonable rate, imputed interest on funds used to finance airfield capital investments for aeronautical use or lands acquired for airfield use, as provided below, except to the extent that the funds are generated by airfield fees. However, the airport proprietor may not include in the rate base imputed interest on funds obtained by debt-financing if the debt-service costs of those funds are also included in the rate base.

(a) A private equity owner of an airport who has included a reasonable rate of return element in the rate base may not include an imputed interest charge as well.

2.4.2. Airport proprietors may include reasonable environmental costs in the rate base to the extent that the airport proprietor incurs a corresponding actual expense. All revenues received based on the inclusion of these costs in the rate base are subject to federal requirements on the use of airport revenue. Reasonable environmental costs include, but are not necessarily limited to, the following:

a) The costs of investigating and remediating environmental contamination caused by airfield operations at the airport at least to the extent that such investigation or remediation is required by or consistent with local, state or federal environmental law, and to the extent such requirements are applied to other similarly situated enterprises.

(b) the cost of mitigating the environmental impact of an airport development project (if the development project is one for which

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costs may be included in the rate base), at least to the extent that these costs are incurred in order to secure necessary approvals for such projects, including but not limited to approvals under the National Environmental Policy Act and similar state statutes;

(c) the costs of aircraft noise abatement and mitigation measures, both on and off the airport, including but not limited to land acquisition and acoustical insulation expenses, to the extent that such measures are undertaken as part of a comprehensive and publicly disclosed airport noise compatibility program; and

(d) the costs of insuring against future liability for environmental contamination caused by current airfield activities. Under this provision, the costs of self-insurance may be included in the rate base only to the extent that they are incurred pursuant to a self-insurance program that conforms to applicable standards for self-insurance practices.

2.4.3 Airport proprietors are encouraged to establish fees with due regard for economy and efficiency.

2.4.4 The airport proprietor may include in the rate base amounts needed to fund debt service and other reserves and to meet cash flow requirements as specified in financing agreements or covenants (for facilities in use), including, but not limited to, reasonable amounts to meet debt-service coverage requirements; to fund cash reserves to protect against the risks of cash-flow fluctuations associated with normal airfield operations; and to fund reasonable cash reserves to protect against other contingencies.

2.4.5 Unless otherwise agreed by aeronautical users, the airport proprietor must allocate capital and operating costs among cost centers in accordance with the following guidance, which is based on the principle of cost causation:

(a) Costs of airfield facilities and services directly used by the aeronautical users may be fully included in the rate base, in a manner consistent with this policy. For example, the capital cost of a runway may be included in the rate base used to establish landing fees.

(b) Costs of airport facilities and services used for both aeronautical and nonaeronautical uses (shared costs) may be included in the rate base if the facility or service in question supports the airfield activity reflected in that rate base. The portion of shared costs allocated to aeronautical users and among aeronautical uses should not exceed an amount that reflects the respective aeronautical purposes and proportionate aeronautical uses of the facility in relation to each other and in relation to the nonaeronautical use of the facility, and must be allocated by a reasonable, “transparent” and not unjustly discriminatory methodology. Aeronautical users may not be allocated all costs of facilities or services that are used by both aeronautical and nonaeronautical users unless they agree to that allocation. Likewise, the airfield may not be allocated all of the aeronautical share of commonly used facilities or services, unless the airfield is the only aeronautical use the facility or service supports.

2.5 Airport proprietors must comply with the following practices in establishing the rate base, provided, however, that one or more aeronautical users may agree to a rate base that deviates from these practices in the establishment of those users' fees.

2.5.1 In determining the total costs that may be recovered from fees for the use of airfield assets and public use roadways in the rate base, the airport proprietor must value them according to their historic cost to the original airport proprietor (HCA). Subsequent airport proprietors generally shall acquire the cost basis of such assets at the original airport proprietor's historic cost, adjusted for subsequent improvements.

(a) Where the land associated with airfield facilities and public use roadways was acquired with debt-financing, the airport proprietor may include such land in the rate base by charging all debt service expenditures incurred by the airport proprietor, including principal, interest and reasonable amounts to meet debt-service coverage requirements.
(b) If such land was acquired with internally generated funds or donated by the airport sponsor (the entity that executes grant agreements with the FAA for airport improvements), the airport proprietor may elect to either include a reasonable amortization charge in the rate base or to retain the full value of the land in the rate base and charge imputed interest in accordance with this policy. The Department considers it unreasonable to alternate between methodologies to obtain undue compensation.

(c) In determining whether an amortization charge is reasonable under paragraph (b), the Department will consider, among other factors, whether the airport proprietor selected an amortization period that gives appropriate recognition to the nonwasting nature of land.

(d) Upon retirement of the debt or completion of the amortization (when the airport proprietor has elected amortization), the land may no longer be included in the rate base.

(e) The airport proprietor may use a reasonable and not unjustly discriminatory methodology to allocate the total airfield costs among individual components of the airfield to enhance the efficient use of the airfield, even if that methodology results in fees charged for a particular segment that exceed that segment's pro rata share of costs based on HCA valuation.

2.5.2 When assets in the rate-base have different costs, the airport proprietor may combine the costs of comparable assets to develop a single cost basis for those assets.

2.5.3 Except as provided below or as otherwise agreed by airfield users, the costs of facilities not yet built and operating may not be included in the rate base. However, the debt-service and other carrying costs incurred by the airport proprietor during construction may be capitalized and amortized once the facility is put in service. The airport proprietor may include in the rate base the cost of land that facilitates the current operations of the airfield.

(a) The Department will consider an airport proprietor's claim that inclusion of the costs of land acquired for future airport development is reasonable if (i) costs of land surrounding the airport are rising; (ii) incompatible uses and development are encroaching on available land; (iii) land probably will not be available for airport use in the future; and (iv) the development for which

the land is being acquired is contained in the airport proprietor's currently effective five-year capital improvement plan for the airport.

2.5.4 The rate base of an airport may include costs associated with another airport currently in use only if: (1) The proprietor of the first airport is also the proprietor of the other airport; (2) the other airport is currently in use; and (3) the costs of the other airport to be included in the first airport's rate base are reasonably related to the aviation benefits that the other airport provides or is expected to provide to the aeronautical users of the first airport.

(a) Element no. 3 above will be presumed to be satisfied if the other airport is designated as a reliever airport for the first airport in the FAA's National Plan of Integrated Airport Systems (NPIAS).

(b) In the case of a methodology of charging for a system of airports that is in place on the effective date of this policy, the Department will consider an airport proprietor's claim that the methodology is reasonable, even if all three elements are not satisfied.

(c) If an airport proprietor closes an operating airport as part of an approved plan for the construction and opening of a new airport, reasonable costs of disposition of the closed airport facility may be included in the rate base of the new airport, to the extent that such costs exceed the proceeds from the disposition. The Department would not ordinarily consider redevelopment costs to be a reasonable cost of disposition.

(d) Pending reasonable disposition of the closed airport, the airport proprietor may charge airfield users at the new airport for reasonable maintenance costs of the old airport**,** provided that those costs are refunded or credited-back to those users upon the receipt of the proceeds from a whole or partial disposition.

2.6 For other facilities and land not covered by Paragraph 2.2, the airport proprietor may use any reasonable methodology to determine fees, so long as the methodology is justified and

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applied on a consistent basis to comparable facilities, subject to the provisions of paragraphs 2.7 and 4.2.1 below.

2.6.1 Reasonable methodologies may include, but are not limited to, historic cost valuation, direct negotiation with aeronautical users, or objective determinations of fair market value.

2.6.2 If an airport proprietor determines fees for such other facilities on the basis of HCA costs, the airport proprietor must follow the guidance set forth in paragraph 2.4.5 for the allocation of shared costs.

2.7 At all times, airport proprietors must comply with the following practices:

2.7.1 Indirect costs may not be included in the fees charged for aeronautical use of the airport unless they are based on a reasonable, "transparent"' cost allocation formula calculated consistently for other units or cost centers within the control of the airport sponsor.

2.7.2 The costs of airport development or planning projects paid for with federal government grants and contributions or passenger facility charges (PFCs) may not be included in the fees charged for aeronautical use of the airport**.**

(a) In the case of a PFC-funded project for terminal development, for gates and related areas, or for a facility that is occupied by one or more air carriers on an exclusive or preferential use basis, the fees paid to use those facilities shall be no less than the fees charged for similar facilities that were not financed with PFC revenue.

Prohibition on Unjust Discrimination

3. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

3.1 The airport proprietor must apply a consistent methodology in establishing fees for comparable aeronautical users of the airport. When the airport proprietor uses a cost-based methodology, aeronautical fees imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group under a cost allocation methodology adopted by the airport proprietor that is consistent with this guidance, unless aeronautical users otherwise agree.

3.1.1 The prohibition on unjust discrimination does not prevent an airport proprietor from making reasonable distinctions among aeronautical users (such as signatory and nonsignatory air carriers) and assessing higher fees on certain categories of aeronautical users based on those distinctions (such as higher fees for nonsignatory air carriers, as compared to signatory air carriers).

3.2 A properly structured peak pricing system that allocates limited resources using price during periods of congestion will not be considered to be unjustly discriminatory. An airport proprietor may, consistent with the policies expressed in this policy statement, establish fees that enhance the efficient use of the airport**.**

3.3 Relevant provisions of the Convention on International Civil Aviation (Chicago Convention) and many bilateral aviation agreements specify, inter alia, that charges imposed on foreign airlines must not be unjustly discriminatory, must not be higher than those imposed on domestic airlines engaged in similar international air services and must be equitably apportioned among categories of users. Charges to foreign air carriers for aeronautical use that are inconsistent with these principles will be considered unjustly discriminatory or unfair and unreasonable.

3.4 Allowable costs--costs properly included in the rate base--must be allocated to aeronautical users by a transparent, reasonable, and not unjustly discriminatory rate-setting methodology. The methodology must be applied consistently and cost differences must be determined quantitatively, when practical.

3.4.1 Common costs (costs not directly attributable to a specific user group or cost center) must be allocated according to a reasonable, transparent and not unjustly discriminatory cost allocation methodology that is applied consistently, and does not require any aeronautical user or user group to pay costs properly allocable to other users or user groups.

Requirement To Be Financially Self-sustaining

4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

4.1 If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

4.1.1 Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self sustaining as possible in the circumstances existing at such airports.

(a) Absent agreement with aeronautical users, the obligation to make the airport as self-sustaining as possible does not permit the airport proprietor to establish fees for the use of the airfield that exceed the airport proprietor's airfield costs.

(b) For those facilities for which this policy permits the use of fair market value, the Department does not construe the obligation on self-sustainability to compel the use of fair market value to establish fees.

4.1.2 At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.

4.2 In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenue may be spent under 49 U.S.C. § 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies.

While fees charged to nonaeronautical users may exceed the costs of service to those users, the surplus funds accumulated from those fees must be used in accordance with Sec. 47107(b).

4.2.1 The Department assumes that the limitation on the use of airport revenue and effective market discipline for aeronautical services and facilities other than the airfield will be effective in holding aeronautical revenues, over time, to the airport proprietor's costs of providing aeronautical services and facilities, including reasonable capital costs.

However, the progressive accumulation of substantial amounts of surplus aeronautical revenue may warrant an FAA inquiry into whether aeronautical fees are consistent with the airport proprietor's obligations to make the airport available on fair and reasonable terms.

Requirements Governing Revenue Application and Use

5. In accordance with relevant federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

5.1 Additional information on the statutorily allowed uses of airport revenue is contained in separate

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guidance published by the FAA pursuant to Sec. 112 of the FAA Authorization Act of 1994, which is codified at 49 U.S.C. § 47107(l).

5.2. The progressive accumulation of substantial amounts of airport revenue may warrant an FAA inquiry into the airport proprietor's application of revenues to the local airport system.

Issued in Washington, DC, on June 14, 1996.
Federico Pena, Secretary of Transportation.

David R. Hinson,
Administrator, Federal Aviation Administration.

Appendix 1--Information for Aeronautical User Charges Consultations

The Department of Transportation ordinarily expects the following information to be available to aeronautical users in connection with consultations over changes in airport rates and charges:

1. Historic Financial Information covering two fiscal years prior to the current year including, at minimum, a profit and loss statement, balance sheet and cash flow statement for the airport implementing the charges, and any financial reports prepared by the airport proprietor to satisfy the provisions of 49 U.S.C. §§ 47107(a)(19) and 47107(k).

2. Justification. Economic, financial and/or legal justification for changes in the charging methodology or in the level of aeronautical rates and charges at the airport. Airports should provide information on the aeronautical costs they are including in the rate base.

3. Traffic Information. Annual numbers of terminal passengers and aircraft movements for each of the two preceding years.

4. Planning and Forecasting Information.

(a) To the extent applicable to current or proposed fees, the long-term airport strategy setting out long-term financial and traffic forecasts, major capital projects and capital expenditure, and particular areas requiring strategic action. This material should include any material provided for public or government reviews of major airport developments, including analyses of demand and capacity and expenditure estimates.

(b) Accurate, complete information specific to the airport for the current and the forecast year, including the current and proposed budgets, forecasts of airport charges revenue, the projected number of landings and passengers, expected operating and capital expenditures, debt service payments, contributions to restricted funds, or other required accounts or reserves.

(c) To the extent the airport uses a residual or hybrid charging methodology, a description of key factors expected to affect commercial or other nonaeronautical revenues and operating costs in the current and following years.

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Section I Introduction

The Federal Aviation Administration (FAA) issues this document to fulfill the statutory provisions in Section 112 of the Federal Aviation Administration Authorization Act of 1994, P.L. No. 103-305, 108 Stat. 1569 (August 23, 1994), 49 U.S.C. § 47107(l), and Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264, 110 Stat. 3213 (October 9, 1996), to establish policies and procedures on the generation and use of airport revenue. The sponsor assurance prohibiting the unlawful diversion of airport revenue, also known as the revenue-use requirement, was first mandated by Congress in 1982. Simply stated, the purpose of that assurance, now codified at 49 U.S.C. §§ 47107(b) and 47133, is to provide that an airport owner or operator receiving federal financial assistance will use airport revenue only for purposes related to the airport. The *Revenue Use Policy* statement implements requirements adopted by Congress in the FAA Authorization Act of 1994 and the FAA Reauthorization Act of 1996, and takes into consideration comments received on the interim policy statements issued on February 26, 1996, and December 18, 1996.

Section II Definitions

A. Federal Financial Assistance

Title 49 U.S.C. § 47133, which took effect on October 1, 1996, applies the airport revenue-use requirements of Sec. 47107(b) to any airport that has received ``federal assistance.'' The FAA considers the term ``federal assistance'' in Sec. 47133 to apply to the following federal actions:

1. Airport development grants issued under the Airport Improvement Program and predecessor federal grant programs;
2. Airport planning grants that relate to a specific airport;

3. Airport noise mitigation grants received by an airport operator;

4. The transfer of federal property under the Surplus Property Act, now codified at 49 U.S.C. § 47151 et seq.; and

5. Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Development Act of 1970, or under Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA).

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B. Airport Revenue

1. All fees, charges, rents, or other payments received by or accruing to the sponsor for any one of the following reasons are considered to be airport revenue:

a. Revenue from air carriers, tenants, lessees, purchasers of airport properties, airport permittees making use of airport property and services, and other parties. Airport revenue includes all

revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

(i). For the right to conduct an activity on the airport or to use or occupy airport property;

(ii). For the sale, transfer, or disposition of airport real property (as specified in the applicability section of this policy statement) not acquired with federal assistance or personal airport property not acquired with federal assistance, or any interest in that property, including transfer through a condemnation proceeding;

(iii). For the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

(iv). For the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport (e.g., a downtown duty-free shop).

b. Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

(i). From any activity conducted by the sponsor on airport property acquired with federal assistance;

(ii). From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C.§§ 47107(b) or 47133; or

(iii). From any nonaeronautical activity conducted by the sponsor on airport property not acquired with federal assistance, but only to the extent of the fair market value rent of the airport property. The fair market value rent will be based on the fair market value.

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.

3. While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with federal grants must be used in accordance with the agreement between the FAA and the sponsor. Where such an agreement gives the FAA discretion, FAA may consider this policy as a relevant factor in specifying the permissible use or uses of the proceeds.

C. Unlawful Revenue Diversion

Unlawful revenue diversion is the use of airport revenue for purposes other than 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, when the use is not "grandfathered"' under 49 U.S.C. § 47107(b)(2). When a use would be diversion of revenue but is grandfathered, the use is considered lawful revenue diversion. See Section VI, Prohibited Uses of Airport Revenue.

D. Airport Sponsor

The airport sponsor is the owner or operator of the airport that accepts federal assistance and executes grant agreements or other documents required for the receipt of federal assistance.

Section III Applicability of the Policy

A. Policy and Procedures on the Use of Airport Revenue and State or Local Taxes on Aviation Fuel

1. With respect to the use of airport revenue, the policies and procedures in the Policy Statement are applicable to all public agencies that have received a grant for airport development since September 3, 1982, under the Airport and Airway Improvement Act of 1982 (AAIA)), as amended, recodified without substantive change by Public Law 103-272 (July 5, 1994) at 49 Sec. U.S.C. 47101, et seq., and which had grant obligations regarding the use of airport revenue in effect on October 1, 1996 (the effective date of the FAA Reauthorization Act of 1996). Grants issued under that statutory authority are commonly referred to as Airport Improvement Program (AIP) grants. The Policy Statement applies to revenue uses at such airports even if the sponsor has not received an AIP grant since October 1, 1996.

2. With respect to the use of state and local taxes on aviation fuel, this Policy Statement is applicable to all public agencies that have received an AIP development grant since December 30, 1987, and which had grant obligations regarding the use of state and local taxes on aviation fuel in effect of October 1, 1996.

3. Pursuant to 49 U.S.C. § 47133, this Policy Statement applies to any airport for which federal assistance has been received after October 1, 1996, whether or not the airport owner is subject to the airport revenue-use grant assurance, and applies to any airport for which the airport revenue-use grant obligation is in effect on or after October 1, 1996. Section 47133 does not apply to an airport that has received federal assistance prior to October 1, 1996, and does not have AIP airport development grant assurances in effect on that date.

4. Requirements regarding the use of airport revenue applicable to a particular airport or airport operator on or after October 1, 1996, as a result of the provisions of 49 U.S.C. § 47133, do not expire.

5. The FAA will not reconsider agency determinations and adjudications dated prior to the date of this Policy Statement, based on the issuance of this Policy Statement.

B. Policies and Procedures on the Requirement for a Self-sustaining Airport Rate Structure

1. These policies and procedures apply to the operators of publicly owned airports that have received an AIP development grant and that have grant obligations in effect on or after the effective date of this policy.

2. Grant assurance obligations regarding maintenance of a self-sustaining airport rate structure in effect on or after the effective date of this policy apply until the end of the useful life of each airport development project or 20 years, whichever is less, except obligations under a grant for land acquisition, which do not expire.

C. Application of the Policy to Airport Privatization

1. The airport privatization pilot program, codified at 49 U.S.C. § 47134, provides for the sale or lease of general aviation airports and the lease of air carrier airports. Under the program, the FAA is authorized to exempt up to five airports from federal statutory and regulatory requirements governing the use of airport revenue. The FAA can exempt an airport sponsor from its obligations to repay federal grants, in the event of a sale, to return property acquired with federal assistance, and to use the proceeds of the sale or lease exclusively for airport purposes. The exemptions are subject to a number of conditions.

2. Except as specifically provided by the terms of an exemption granted under the airport privatization pilot program.

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Program, this policy statement applies to privatization of airport property and/or operations.

3. For airport privatization transactions not subject to an exemption under the privatization pilot program: FAA approval of the sale or other transfer of ownership or control, of a publicly owned airport is required in accordance with the AIP sponsor assurances and general government contract law principles. The proceeds of a sale of airport property are considered airport revenue (except in the case of property acquired with federal assistance, the sale of which is subject to other restrictions under the relevant grant contract or deed). When the sale proposed is the sale of an entire airport as an operating entity, the request may present the FAA with a complex transaction in which the disposition of the proceeds of the transfer is only one of many considerations.

In its review of such a proposal, the FAA would condition its approval of the transfer on the parties' assurances that the proceeds of sale will be used for the purposes permitted by the revenue-use requirements of 49 U.S.C. §§ 47107(b) and 47133. Because of the complexity of an airport sale or privatization, the provisions for ensuring that the proceeds are used for the purposes permitted by the revenue-use requirements may need to be adapted to the special circumstances of the transaction. Accordingly, the disposition of the proceeds would need to be structured to meet the revenue-use requirements, given the special conditions and constraints imposed by the fact of a change in airport ownership. In considering and approving such requests, the FAA will remain open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the objectives and obligations of revenue-use

requirements, without unnecessarily interfering with the appropriate privatization of airport infrastructure.

4. It is not the intention of the FAA to effectively bar airport privatization initiatives outside of the pilot program through application of the statutory requirements for use of airport revenue. Proponents of a proposed privatization or other sale or lease of airport property clearly will need to consider the effects of federal statutory requirements on the use of airport revenue, reasonable fees for airport users, disposition of airport property, and other policies incorporated in federal grant agreements. The FAA assumes that the proposals will be structured from the outset to comply with all such requirements, and this proposed policy is not intended to add to the considerations already involved in a transfer of airport property.

Section IV Statutory Requirements for the Use of Airport Revenue

A. General Requirements, 49 U.S.C. §§ 47107(b) and 47133

1. The current provisions restricting the use of airport revenue are found at 49 U.S.C. §§ 47107(b), and 47133. Section 47107(b) requires the Secretary, prior to approving a project grant application for airport development, to obtain written assurances regarding the use of airport revenue and state and local taxes on aviation fuel. Section 47107(b)(1) requires the airport owner or operator to provide assurances 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--

a. The airport;

b. The local airport system; or

c. 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.

B. Exception for Certain Preexisting Arrangements (Grandfather Provisions)

Section 47107(b)(2) provides an exception to the requirements of Section 47107(b)(1) for airport owners or operators having certain financial arrangements in effect prior to the enactment of the AAIA. This provision is commonly referred to as the "grandfather" provision. It states:

> Paragraph (1) of this subsection 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.

C. Application of 49 U.S.C. § 47133

1. Section 47133 imposes the same requirements on all airports, privately owned or publicly owned, that are the subject of federal assistance. Subsection 47133(a) states that: Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of federal assistance may not be expended for any purpose other than the capital or operating costs of--

(a) the airport;

(b) The local airport system; or

(c) Other local facilities owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of persons or property.

2. Section 47133(b) contains the same grandfather provisions as Section 47107(b).

3. Enactment of Section 47133 resulted in three fundamental changes to the revenue-use obligation, as reflected in the applicability section of this policy statement.

a. Privately owned airports receiving federal assistance (as defined in this policy statement) after October 1, 1996, are subject to the revenue-use requirement.

b. In addition to airports receiving AIP grants, airports receiving federal assistance in the form of gifts of property after October 1, 1996, are subject to the revenue-use requirement.

c. For any airport or airport operator that is subject to the revenue-use requirement on or after October 1, 1996, the revenue-use requirement applies indefinitely.

4. This section of the policy refers to the date of October 1, 1996, because the FAA Reauthorization Act of 1996 is by its terms effective on that date.

D. Specific Statutory Requirements for the Use of Airport Revenue

1. In Section 112 of the FAA Authorization Act of 1994, 49 U.S.C. § 47107(l)(2) (A-D), Congress expressly prohibited the diversion of airport revenues through:

a. Direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

b. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

c. Payments in lieu of taxes or other assessments that exceed the value of services provided; or

d. Payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

2. Section 47107(l)(5), enacted as part of the FAA Reauthorization Act of 1996, provides that:

Any request by a sponsor to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and
Any amount of airport funds that are used to make a payment or

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reimbursement as described in subparagraph (a) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

3. 49 U.S.C. § 40116(d)(2)(A) provides, among other things, that a state, political subdivision of a state or authority acting for a state or a political subdivision may not: "(iv) levy or collect a tax, fee or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly used for airport or aeronautical purposes."

E. Passenger Facility Charges and Revenue Diversion

The Aviation Safety and Capacity Expansion Act of 1990 authorized the imposition of a passenger facility charge (PFC) with the approval of the Secretary.

1. While PFC revenue is not characterized as "airport revenue" for purposes of this Policy Statement, specific statutory and regulatory guidelines govern the use of PFC revenue, as set forth at 49 U.S.C. § 40117, "Passenger Facility Fees,"' and 14 CFR Part 158, "Passenger Facility Charges." (For purposes of this policy, the terms "passenger facility fees"' and "passenger facility charges" are synonymous.) These provisions are more restrictive than the requirements for the use of airport revenue in 49 U.S.C. § 47107(b), in that the PFC requirements provide that PFC collections may only be used to finance the allowable costs of approved projects. The PFC regulation specifies the kinds of projects that can be funded by PFC revenue and the objectives these projects must achieve to receive FAA approval for use of PFC revenue.

2. The statute and regulations prohibit expenditure of PFC revenue for other than approved projects, or collection of PFC revenue in excess of approved amounts.

3. As explained more fully below under enforcement policies and procedures in Section IX, "Monitoring and Compliance," a final FAA determination that a public agency has violated the revenue-use provision prevents the FAA from approving new authority to impose a PFC until corrective action is taken.

Section V Permitted Uses of Airport Revenue

A. Permitted Uses of Airport Revenue

Airport revenue may be used for:

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. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

2. The full costs of activities directed toward promoting competition at an airport, public and industry awareness of airport facilities and services, new air service and competition at the airport (other than direct subsidy of air carrier operations prohibited by paragraph VI.B.12 of this policy), and salary and expenses of employees engaged in efforts to promote air service at the airport, subject to the terms of this policy statement. Other permissible expenditures include cooperative advertising, where the airport advertises new services with or without matching funds, and advertising of general or specific airline services to the airport. Examples of permitted expenditures in this category include: (a) a Super bowl hospitality tent for corporate aircraft crews at a sponsor-owned general aviation terminal intended to promote the use of that airport by corporate aircraft; and (b) the cost of promotional items bearing airport logos distributed at various aviation industry events.

3. A share of promotional expenses, which may include marketing efforts, advertising, and related activities designed to increase travel using the airport, to the extent the airport share of the promotional materials or efforts meets the requirements of V.A.2. above and includes specific information about the airport.

4. The repayment of the airport owner or sponsor of funds contributed by such owner or sponsor for capital and operating costs of the airport and not heretofore reimbursed. An airport owner or operator can seek reimbursement of contributed funds only if the request is made within 6 years of the date the contribution took place. 49 U.S.C. § 47107(l).

a. If the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made, the sponsor may repay the loan principal and interest from airport funds. Interest should not exceed a rate which the sponsor received for other investments for that period of time.

b. For other contributions to the airport, the airport owner or operator may seek reimbursement of interest only if the FAA determines that the airport owes the sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport. Interest shall be determined in the manner provided in 49 U.S.C. § 47107(o), but may be assessed only from the date of the FAA's determination.

5. Lobbying fees and attorney fees to the extent these fees are for services in support of any activity or project for which airport revenues may be used under this Policy Statement. See Section VI: Prohibited Uses of Airport Revenue.

6. Costs incurred by government officials, such as city council members, to the extent that such costs are for services to the airport actually received and documented. An example of such costs would be the costs of travel for city council members to meet with FAA officials regarding AIP funding for an airport project.

7. A portion of the general costs of government, including executive offices and the legislative branches, may be allocated to the airport indirectly under a cost allocation plan in accordance with V.B.3. of this Policy Statement.

8. Expenditure of airport funds for support of community activities, participation in community events, or support of community-purpose uses of airport property if such expenditures are directly and substantially related to the operation of the airport. Examples of permitted expenditures in this category include: (a) the purchase of tickets for an annual community luncheon at which the Airport director delivers a speech reviewing the state of the airport; and (b) contribution to a golf tournament sponsored by a "friends of the airport" committee. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that a benefit of that nature is intangible and not quantifiable. Where the amount of contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and the benefit of local community acceptance for the airport. An example of a permitted expenditure in this category was participation in a local school fair with a booth focusing on operation of the airport and career opportunities in aviation. The expenditure in this example was $250.

9. Airport revenue may be used for the capital or operating costs of those

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portions of an airport ground access project that can be considered an airport capital project, or of that part of a local facility that is owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. The FAA has approved the use of airport revenue for the actual costs incurred for structures and equipment associated with an airport terminal building station and a rail connector between the airport station and the nearest mass transit rail line, where the structures and equipment were (1) located entirely on airport property, and (2) designed and intended exclusively for the use of airport passengers.

B. Allocation of Indirect Costs

1. Indirect costs of sponsor services may be allocated to the airport in accordance with this policy, but the allocation must result in an allocation to the airport only of those costs that would otherwise be allowable under 49 U.S.C. § 47107(b). In addition, the documentation for the costs must meet the standards of documentation stated in this policy.

2. The costs must be allocated under a cost allocation plan that meets the following requirements:

a. The cost is allocated under a cost allocation plan that is consistent with Attachment A to OMB Circular A-87, except that the phrase "airport revenue" should be substituted for the phrase "grant award," wherever the latter phrase occurs in Attachment A;

b. The allocation method does not result in a disproportionate allocation of general government costs to the airport in consideration of the benefits received by the airport;

c. Costs allocated indirectly under the cost allocation plan are not billed directly to the airport; and

d. Costs billed to the airport under the cost allocation plan must be similarly billed to other comparable units of the airport owner or operator.

3. A portion of the general costs of government, such as the costs of the legislative branch and executive offices, may be allocated to the airport as an indirect cost under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

4. Central service costs, such as accounting, budgeting, data processing, procurement, legal services, disbursing and payroll services, may also be allocated to the airport as indirect costs under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these
costs.

C. Standard of Documentation for the Reimbursement to Government Entities of Costs of Services and Contributions Provided to Airports

1. Reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, must be supported by adequate documentary evidence. Documentary evidence includes, but is not limited to:

a. Underlying accounting data such as general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses; and corroborating evidence such as invoices, vouchers and indirect cost allocation plans, or

b. Audited financial statements, which show the specific expenditures to be reimbursed by the airport. Such expenditures should be clearly identifiable on the audited financial statements as being consistent with Section VIII of this policy statement.

2. Documentary evidence to support direct and indirect charges to the airport must show that the amounts claimed were actually expended. Budget estimates are not sufficient to establish a claim for reimbursement. Indirect cost allocation plans, however, may use budget estimates to establish predetermined indirect cost allocation rates. Such estimated rates should, however, be adjusted to actual expenses in the subsequent accounting period.

D. Expenditures of Airport Revenue by Grandfathered Airports

1. Airport revenue may be used for purposes other than capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the sponsor and directly and substantially related to the air transportation of passengers or property, if the "grandfather" provisions of 49 U.S.C. § 47107(b)(2) are applicable to the sponsor and the particular use. Based on previous DOT interpretations, examples of grandfathered airport sponsors may include, but are not limited to the following:

a. A port authority or state department of transportation which owns or operates other transportation facilities in addition to airports, and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for nonairport purposes. Such sponsors may have obtained legal opinions from their counsel to support a claim of grandfathering. Previous DOT interpretations have found the following examples of pre-AAIA legislation to provide for the grandfather exception:

b. Bond obligations and city ordinances requiring a five percent "gross receipts"' fee from airport revenues. The payments were instituted in 1954 and continued in 1968.

c. A 1955 state statute for the assessing of a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

d. City legislation authorizing the transfer of a percentage of airport revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.

e. A 1957 state statutory transportation program governing the financing and operations of a multi-modal transportation authority, including airport, highway, port, rail and transit facilities, wherein state revenues, including airport revenues, support the state's transportation-related, and other, facilities. The funds flow from the airports to a state transportation trust fund, composed of all "taxes, fees, charges, and revenues" collected or received by the state department of transportation.

f. A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes but requires annual payments in lieu of taxes to several local governments and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, facilities of the authority, its expenses, reserves, and the payment in lieu of taxes fund.

2. Under the authority of 49 U.S.C. § 47115(f), the FAA considers as a factor militating against the approval of an application for AIP discretionary funds, the fact that a sponsor has exercised its rights to use airport revenue for nonairport purposes under the grandfather clause, when in the airport's fiscal year preceding the date of application for discretionary funds, the FAA finds that the amount of airport revenues used for nonairport purposes exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban

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Consumers published by the Bureau of Labor Statistics of the Department of Labor.

Section VI Prohibited Uses of Airport Revenue

A. Lawful and Unlawful Revenue Diversion

Revenue diversion is the use of airport revenue for purposes other than 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, unless that use is grandfathered under 49 U.S.C. § 47107(b)(2) and the use does not exceed the limits of the `grandfather' clause. When such use is so grandfathered, it is known as lawful revenue diversion. Unless the revenue diversion is grandfathered, the diversion is unlawful and prohibited by the revenue-use restrictions.

B. Prohibited Uses of Airport Revenue

Prohibited uses of airport revenue include but are not limited to:

1. Direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value.

2. Direct or indirect payments that are based on a cost allocation formula that is not consistent with this policy statement or that is not calculated consistently for the airport and other comparable units or cost centers of government.

3. Use of airport revenues for general economic development.

4. Marketing and promotional activities unrelated to airports or airport systems. Examples of prohibited expenses in this category include participation in program to provide hospitality training to taxi drivers and funding an airport operator's float containing no reference to the airport, in a New Years Day parade.

5. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government;

6. Payments to compensate nonsponsoring governmental bodies for lost tax revenues to the extent the payments exceed the stated tax rates applicable to the airport;

7. Loans to or investment of airport funds in a state or local agency at less than the prevailing rate of interest.

8. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than fair market value rent, except to the extent permitted by Section VII.D of this policy.

9. Use of land by the sponsor for aeronautical purposes rent-free or for nominal rental rates, except to the extent permitted by Section VII.E of this policy.

10. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport. However, airport revenue may be used where airport development requires a sponsoring agency to take an action, such as undertaking environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project, or constructing a ground access facility that would otherwise be eligible for the use of airport revenue. Payments of impact fees must meet the general requirement that airport revenue be expended only for actual documented costs of items eligible for use of airport revenue under this Policy Statement. In determining appropriate corrective action for an impact fee payment that is not consistent with this policy, the FAA will consider whether the impact fee was imposed by a nonsponsoring governmental entity and the sponsor's ability under local law to avoid paying the fee.

11. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses of airport property except to the extent permitted by this policy. See Section V, Uses of Airport Revenue. Examples of prohibited expenditures in this category include expenditure of $50,000 to sponsor a local film society's annual film festival; and contribution of $6,000 to a community cultural heritage festival.

12. Direct subsidy of air carrier operations. Direct subsidies are considered to be payments of airport funds to air carriers for air service. Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. Any fee waiver or discount must be offered to all users of the airport, and provided to all users that are willing to provide the same type and level of new services consistent with the promotional offering. Likewise prohibited direct subsidies do not include support for airline advertising or marketing of new services to the extent permitted by Section V of this Policy Statement.

Section VII Policies Regarding Requirement for a Self-sustaining Airport Rate Structure

A. Statutory Requirements

49 U.S.C. § 47107(a)(13) requires airport operators to maintain a schedule of charges for use of the airport: “(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection.” The requirement is generally referred to as the “self-sustaining assurance.”

B. General Policies Governing the Self-sustaining Rate Structure Assurance

1. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. In considering whether a particular contract or lease is consistent with this requirement, the FAA and the Office of the Inspector General (OIG) generally evaluate the individual contract or lease to determine whether

the fee or rate charged generates sufficient income for the airport property or service provided, rather than looking at the financial status of the entire airport.

2. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

3. At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve a self-sustaining income in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.

4. Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self sustaining as possible in the circumstances existing at such airports.

5. Under 49 U.S.C. § 47107(a)(1) and the implementing grant assurance, charges to aeronautical users must be reasonable and not unjustly discriminatory. Because of the limiting effect of the reasonableness requirement, the FAA does not consider the self-sustaining requirement to require airport sponsors

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to charge fair market value rates to aeronautical users. Rather, for charges to aeronautical users, the FAA considers the self-sustaining assurance to be satisfied by airport charges that reflect the cost to the sponsor of providing aeronautical services and facilities to users. A fee for aeronautical users set pursuant to a residual costing methodology satisfies the requirement for a self-sustaining airport rate structure.

6. In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C. § 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users are not subject to the reasonableness requirement or the Department of Transportation Policy on airport rates and charges, the surplus funds accumulated from those fees must be used in accordance with 49 U.S.C. § 47107(b).

C. Policy on Charges for Nonaeronautical Facilities and Services

Subject to the general guidance set forth above and the specific exceptions noted below, the FAA interprets the self-sustaining assurance to require that the airport receive fair market value for the provision of nonaeronautical facilities and services, to the extent practicable considering the circumstances at the airport.

D. Providing Property for Public Community Purposes

Making airport property available at less than fair market value rent for public recreational and other community uses, for the purpose of maintaining positive airport-community relations, can be a legitimate function of an airport proprietor in operating the airport. Accordingly, in certain circumstances, providing airport land for such purposes will not be considered a violation of the self-sustaining requirement. Generally, the circumstances in which below-market use of airport land for community purposes will be considered consistent with the grant assurances are:

1. The contribution of the airport property enhances public acceptance of the airport in a community in the immediate area of the airport; the property is put to a general public use desired by the local community; and the public use does not adversely affect the capacity, security, safety or operations of the airport. Examples of acceptable uses include public parks, recreation facilities, and bike or jogging paths. Examples of uses that would not be eligible are road maintenance equipment storage; and police, fire department, and other government facilities if they do not directly support the operation of the airport.

2. The property involved would not reasonably be expected to produce more than *de minimis* revenue at the time the community use is contemplated, and the property is not reasonably expected to be used by an aeronautical tenant or otherwise be needed for airport operations in the foreseeable future. When airport property reasonably may be expected to earn more than minimal revenue, it still may be used for community purposes at less than FMV if the revenue earned from the community use approximates the revenue that could otherwise be generated, provided that the other provisions of VII. D. are met.

3. The community use does not preclude reuse of the property for airport purposes if, in the opinion of the airport sponsor, such reuse will provide greater benefits to the airport than continuation of the community use.

4. Airport revenue is not to be used to support the capital or operating costs associated with the community use.

E. Use of Property by Not-for-Profit Aviation Organizations

1. An airport operator may charge reduced rental rates and fees to the following not-for-profit aviation organizations, to the extent that the reduction is reasonably justified by the tangible or intangible benefits to the airport or to civil aviation:

a. Aviation museums;

b. Aeronautical secondary and post-secondary education programs conducted by accredited educational institutions; or

c. Civil Air Patrol units operating aircraft at the airport;

2. Police or fire-fighting units operating aircraft at the airport generally will be expected to pay a reasonable rate for aeronautical use of airport property, but the value of any services provided by the unit to the airport may be offset against the applicable reasonable rate.

F. Use of Property by Military Units

The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, U.S. Air Force Reserve, and Naval Reserve air units operating aircraft at the airport. Reserve and Guard units typically have an historical presence at the airport that precedes the Airport and Airway Improvement Act of 1982 (AAIA), and provide services that directly benefit airport operations and safety, such as snow removal and supplementary aircraft rescue and fire fighting (ARFF) capability.

G. Use of Property for Transit Projects

Making airport property available at less than fair market value rent for public transit terminals, right-of-way, and related facilities will not be considered a violation of 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13) if the transit system is publicly owned and operated (or operated by contract on behalf of the public owner), and the facilities are directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. A lease of nominal value in the circumstances described in this section would be considered consistent with the self-sustaining requirement.

H. Private Transit Systems

Generally, private ground transportation services are charged as a nonaeronautical use of the airport. In cases where publicly owned transit services are extremely limited and where a private transit service (i.e., bus, rail, or ferry) provides the primary source of public transportation, making property available at less than fair market value rent to this private service would not be considered inconsistent with 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13).

Section VIII Reporting and Audit Requirements

The Federal Aviation Administration Authorization Act of 1994 established a new requirement for airports to submit annual financial reports to the Secretary, and the Act required the Secretary to compile the reports and to submit a summary report to Congress. The Federal Aviation Administration Reauthorization Act of 1996 established a new requirement for airports to include, as part of their audits under the Single Audit Act, a review and opinion on the use of airport revenue.

A. Annual Financial Reports

Section 111(a)(4) of the FAA Authorization Act of 1994, 49 U.S.C. § 47107(a)(19), requires airport owners or operators to submit to the Secretary

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and to make available to the public an annual financial report listing in detail (1) all amounts the airport paid to other government units and the purposes for which each payment was made, (2) all services and property the airport provided to other government units and compensation received for each service or unit of property provided. Additionally, Section 111(b) of the FAA Authorization Act of 1994 requires a report, for each fiscal year, in a uniform simplified format, of the airport's sources and uses of funds, net surplus/loss and other information which the Secretary may require. FAA Forms 5100-125 and 126 have been developed to satisfy the above reporting requirements. The forms must be filed with the FAA 120 days after the end of the sponsor's fiscal year. Extensions of the filing date may be granted if audited financial information is not available within 120 days of the end of the local fiscal year. Requests for extension should be filed in writing with the FAA headquarters Airport Compliance Division, ACO-100.

B. Single Audit Review and Opinion

1. General requirement and applicability. The Federal Aviation Administration Reauthorization Act of 1996, Section 805; 49 U.S.C. § 47107(m) requires public agencies that are subject to the Single Audit Act, 31 U.S.C. Sec. 7501-7505, and that have received federal financial assistance for airports to include, as part of their single audit, a review and opinion of the public agency's funding activities with respect to their airport or local airport system.

2. Federal Financial Assistance. For the purpose of complying with 49 U.S.C. § 47107(m), federal financial assistance for airports includes any interest in property received, by a public agency since October 1, 1996, for the purpose of developing, improving, operating, or maintaining a public airport, or an AIP grant which was in force and effect on or after October 1, 1996, either directly or through a state block grant program.

3. Frequency. The opinion will be required whenever the auditor under OMB Circular A-133 selects an airport improvement program grant as a major program. In those cases where the airport improvement program grant is selected as a major program the requirements of 49 U.S.C. § 47107(m) will apply.

4. Major Program. For the purposes of complying with 49 U.S.C. § 47107(m), major program means an airport improvement program grant determined to be a major program in accordance with OMB Circular A-133, Sec. 520 or an airport improvement program grant identified by FAA as a major program in accordance with OMB A-133 Sec. 215(c); except additional audit costs resulting from FAA designating an airport improvement program grant as a major program are discussed at paragraph 9 below.

5. FAA Notification. When FAA designates an airport improvement program grant as a major program, FAA will generally notify the sponsor in writing at least 180 days prior to the end of the sponsor's fiscal year to have the grant included as a major program in its next Single Audit.

6. Audit Findings. The auditor will report audit findings in accordance with OMB Circular A-133.

7. Opinion. The statutory requirement for an opinion will be considered to be satisfied by the auditor's reporting under OMB Circular A-133. Consequently when an airport improvement program grant is designated as a major program, and the audit is conducted in accordance with OMB Circular A-133, FAA will accept the audit to meet the requirements of 49 U.S.C. § 47107(m) and this policy.

8. Reporting Package. The Single Audit reporting package will be distributed in accordance with the requirements of OMB Circular A-133. In addition when an airport improvement program grant is a major program, the sponsor will supply, within 30 days after receipt by the sponsor, a copy of the reporting package directly to the FAA, Airport Compliance Division (ACO-100), 800 Independence Ave. SW 20591. The FAA regional offices may continue to request the sponsor to provide separate copies of the reporting package to support their administration of airport improvement program grants.

9. Audit Cost. When an opinion is issued in accordance with 47107(m) and this policy, the costs associated with the opinion will be allocated in accordance with the sponsor's established practice for allocating the cost of its Single Audit, regardless of how the airport improvement program grant is selected as a major program.

10. Compliance Supplement. Additional information about this requirement is contained in OMB Circular A-133 Compliance Supplement for DOT programs.

11. Applicability. This requirement is not applicable to (a) privately owned, public use airports, including airports accepted into the airport privatization pilot program (the Single Audit Act governs only states, local governments and nonprofit organizations receiving federal assistance); (b) public agencies that do not have a requirement for the single audit; (c) public agencies that do not satisfy the criteria of paragraph B.1 and 2; above; and Public Agencies that did not execute an AIP grant agreement on or after June 2, 1997.

Section IX Monitoring and Compliance

A. Detection of Airport Revenue Diversion

To detect whether airport revenue has been diverted from an airport, the FAA will depend primarily upon four sources of information:

1. Annual report on revenue use submitted by the sponsor under the provisions of 49 U.S.C. § 47107(a)(19), as amended.

2. Single audit reports submitted, pursuant to 49 U.S.C. § 47107(m), with annual single audits conducted under 31 U.S.C. Secs. 7501-7505. The requirement for these reports is discussed in Part IX of this policy.

3. Investigation following a third party complaint filed under 14 CFR. Part 16, FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings.

4. DOT Office of Inspector General audits.

B. Investigation of Revenue Diversion Initiated Without Formal Complaint

1. When no formal complaint has been filed, but the FAA has an indication from one or more sources that airport revenue has been or is being diverted unlawfully, the FAA will notify the sponsor of the possible diversion and request that it respond to the FAA's concerns. If, after information and arguments submitted by the sponsor, the FAA determines that there is no unlawful diversion of revenue, the FAA will notify the sponsor and take no further action. If the FAA makes a preliminary finding that there has been unlawful diversion of airport revenue, and the sponsor has not taken corrective action (or agreed to take corrective action), the FAA may issue a notice of investigation under 14 CFR Sec. 16.103. If, after further investigation, the FAA finds that there is reason to believe that there is or has been unlawful diversion of airport revenue that the sponsor refuses to terminate or correct, the FAA will issue an appropriate order under 14 CFR Sec. 16.109 proposing enforcement actions. However, such action will cease if the airport sponsor agrees to return the diverted amount plus interest.

2. Audit or investigation by the Office of the Inspector General. An indication of revenue diversion brought to the attention of the FAA in a report of audit or investigation issued by the DOT Office of the Inspector General (OIG)

[[Page 7723]]

will be handled in accordance with paragraph B.1 above.

C. Investigation of Revenue Diversion Precipitated by Formal Complaint

When a formal complaint is filed against a sponsor for revenue diversion, the FAA will follow the procedures in 14 CFR Part 16 for notice to the sponsor and investigation of the complaint. After review of submissions by the parties, investigation of the complaint, and any additional process provided in a particular case, the FAA will either dismiss the complaint or issue an appropriate order proposing enforcement action. If the airport sponsor takes the corrective action specified in the order, the complaint will be dismissed.

D. The Administrative Enforcement Process

1. Enforcement of the requirements imposed on sponsors as a condition of the acceptance of federal grant funds or property is accomplished through the administrative procedures set forth in 14 CFR Part 16. Under Part 16, the FAA has the authority to receive complaints, conduct

informal and formal investigations, compel production of evidence, and adjudicate matters of compliance within the jurisdiction of the Administrator.

2. If, as a result of the investigative processes described in paragraphs B and C above, the FAA finds that there is reason to proceed with enforcement action against a sponsor for unlawful revenue diversion, an order proposing enforcement action is issued by the FAA and under 14 CFR 16.109. That section provides for the opportunity for a hearing on the order.

E. Sanctions for Noncompliance

1. As explained above, if the FAA makes a preliminary finding that airport revenue has been unlawfully diverted and the sponsor declines to take the corrective action, the FAA will propose enforcement action. A decision whether to issue a final order making the action effective is made after a hearing, if a hearing is elected by the respondent. The actions required by or available to the agency for enforcement of the prohibitions against unlawful revenue diversion are:

a. Withhold future grants. The Secretary may withhold approval of an application in accordance with 49 U.S.C. § 47106(d) if the Secretary provides the sponsor with an opportunity for a hearing and, not later than 180 days after the later of the date of the grant application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

b. Withhold approval of the modification of existing grant agreements that would increase the amount of funds available. A supplementary provision in Section 112 of the FAA Authorization Act of 1994, 49 U.S.C. § 47111(e), makes mandatory not only the withholding of new grants but also withholding of a modification to an existing grant that would increase the amount of funds made available, if the Secretary finds a violation after hearing and opportunity to cure.

c. Withhold payments under existing grants. The Secretary may withhold a payment under a grant agreement for 180 days or less after the payment is due without providing for a hearing. However, in accordance with 49 U.S.C. § 47111(d), the Secretary may withhold a payment for more than 180 days only if he or she notifies the sponsor and provides an opportunity for a hearing and finds that the sponsor has violated the agreement. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

d. Withhold approval of an application to impose a passenger facility charge. Section 112 also makes mandatory the withholding of approval of any new application to impose a passenger facility charge under 49 U.S.C. § 40117. Subsequent to withholding, applications could be approved only upon a finding by the Secretary that corrective action has been taken and that the violation no longer exists.

e. File suit in United States district court. Section 112(b) provides express authority for the agency to seek enforcement of an order in federal court.

f. Withhold, under 49 U.S.C. § 47107(n)(3), any amount from funds that would otherwise be available to a sponsor, including funds that would otherwise be made available to a state, municipality, or political subdivision thereof (including any multi-modal transportation agency or transit agency of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor has failed to reimburse the airport after receiving notification of the requirement to do so.

g. Assess civil penalties.

(1) Under Section 112(c) of Public Law 103-305, codified at 49 U.S.C. § 46301(a) and (d), the Secretary has statutory authority to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the AIP sponsor assurance on revenue diversion. Any civil penalty action under this section would be adjudicated under 14 CFR Part 13, Subpart G.

(2) Under Section 804 of Public Law 104-264, codified at 49 U.S.C. § 46301((a)(5), the Secretary has statutory authority to obtain civil penalties of up to three times the amount of airport revenues that are used in violation of 49 U.S.C. §§ 47107(b) and 47133. An action for civil penalties in excess of $50,000 must be brought in a United States District Court.

(3) The Secretary may, under 49 U.S.C. § 47107(n)(4), initiate a civil action for civil penalties in the amount equal to the illegal diversion in question plus interest calculated in accordance with 49 U.S.C. § 47107(o), if the airport sponsor has failed to take corrective action specified by the Secretary and the Secretary is unable to withhold sufficient grant funds, as set forth above.

(4) An action for civil penalties under this provision must be brought in a United States District Court. The Secretary intends to use this authority only after the airport sponsor has been given a reasonable period of time, after a violation has been clearly identified to the airport sponsor, to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, and only after other enforcement actions, such as withholding of grants and payments, have failed to achieve compliance.

F. Compliance With Reporting and Audit Requirements

The FAA will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements described in this Policy Statement. The failure to comply with these requirements can result in the withholding of future AIP grant awards and further payments under existing AIP grants.

Issued in Washington, DC on February 8, 1999.
Susan L. Kurland,
Associate Administrator for Airports.
[FR Doc. 99-3529 Filed 2-11-99; 8:45 am]
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Appendix E-1 ► Factors Affecting Award of Airport Improvement Program (AIP) Discretionary Grants

Federal Register / Vol. 64, No. 110 / Wednesday, June 9, 1999 / Notices 31031

Environmental Impact Statement (FEIS) as the preferred alternative. The FAA issued the FEIS on April 19, 1999. The FEIS analyzed two alternatives in detail. The first or No Action alternative would require physical replacement of the Baltimore and Dulles TRACONs, but would not consolidate the four facilities. The second or preferred alternative would provide full consolidation at one of two possible locations. The FEIS identified the preferred location as Vint Hill Farms.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE RECORD OF DECISION CONTACT: Mr. Joseph Champley, Project Support Specialist, Federal Aviation Administration, (800) 762–9531, Email: joe.champley@faa.gov.

The Record of Decision can be viewed on the Internet at http://www.faa.gov/ats/potomac.

Dated: June 3, 1999 in Washington, DC.

John Mayrhofer,

Director, TRACON Development Program.

[FR Doc. 99–14616 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Factors Affecting Award of Airport Improvement Program (AIP) Discretionary Funding

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) reiterates four factors that may militate against a decision by the FAA to award AIP discretionary funding to an airport sponsor. These factors are: revenue diversion; delinquent submissions of financial reports; unsatisfactory progress on existing grant agreements; and use of AIP entitlements funds on low priority development as calculated under the FAA's National Priority System (NPS) equation.

FOR FURTHER INFORMATION CONTACT: Mr. Barry L. Molar, Manager, Airports Financial Assistance Division, APP–500, on (202) 267–3831.

SUPPLEMENTARY INFORMATION: The FAA manages the AIP in accordance with statutory direction and agency policies and criteria. Decisions to award discretionary grants are made on the basis of a number of factors, including project evaluation under the NPS. The Congress has directed that FAA take certain additional factors into consideration. The FAA hereby provides notice and explanation of those factors, and the manner in which the FAA will consider them in making decisions on discretionary grants.

1. Improper Diversion of Airport Revenue

Airport sponsors receiving federal grants under the Airport Improvement Program (AIP) are subject to a number of statutory conditions, one of which restricts the use of airport revenue. The FAA published a notice of final policy and procedures concerning the use of airport revenues (64 FR 7696). The Notice defines proper and improper uses of airport revenue and describes actions the FAA may take to address improper revenue use.

It is the intent of the FAA to generally withhold AIP discretionary funding to those airports requesting such funding that are being investigated by the FAA for misuse of airport generated revenue. Airports qualifying under Title 49 U.S.C. 47107(b)(2) are exempted from this policy. This provision recognizes the rights of "grandfathered" airport sponsors to use airport revenues for other purposes. However, as discussed below, payments permitted under the "grandfather" provision may be considered a militating factor against the award of discretionary grants in certain circumstances.

General Rule

Title 49 U.S.C., Sections 47107(b) and 47133; generally requires airport revenues to be used for the capital or operating costs of the airport, the local airport system, or other facilities owned or operated by the airport sponsor and directly and substantially related to the actual air transportation of persons or property. If the FAA finds that an airport is not complying with this statute, after providing notice and an opportunity for hearing, and the sponsor does not take satisfactory corrective action, various enforcement actions are mandated or authorized. The enforcement actions affecting AIP funding that the FAA is authorized or required to take include any of the following, or combination thereof: withholding of future AIP entitlement and discretionary grants (49 U.S.C. 47106(d), 47111(e)); withholding approval of the modification of existing grant agreements that would increase the amount of AIP funds available (section 47111(e)); and withholding payments under existing grants (section 47111(d)).

Grandfather Provision

Under the "grandfather provision" of the revenue use requirement, sections 47107(b) and 47133(b), an airport operator may use airport revenues for local purposes other than those proscribed in sections 47107 and 47133 if a provision of law controlling the airport operator's financing enacted on or before September 2, 1982 or a covenant or assurance in an airport operator's debt obligation issued on or before September 2, 1982 provides for the use of airport revenues from any facility of the airport operator to support general debt obligations or other facilities of the airport operator. The statutory revenue-use provisions also permit local taxes on aviation fuel in effect on December 30, 1997 to be used for any local purpose.

Thus, the use of airport revenue for local purposes under these exceptions does not preclude the award of AIP grants to an airport operator. However, under 49 U.S.C. §47115(f), the FAA must, in certain circumstances, consider as a factor militating against the distribution of discretionary AIP funding, the use of airport revenue for local purposes under the "grandfather provision." This militating factor applies only if the airport revenue so used in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of revenues used in the airport's first fiscal year ending after August 23, 1994, and adjusted for changes in the Consumer Price Index. In addition, the airport's failure to provide information needed by the FAA to determine whether Section 47115(f) applied to a specific grant application would prevent the FAA from making an evaluation required by Section 47115(f), and thus, would prevent the FAA from considering an application for discretionary funds.

2. Annual Financial Reports

Section 111(c) of the Federal Aviation Administration Authorization Act of 1994 (the 1994 Act) requires the Secretary of Transportation to submit to the Congress, and to make available to the public, in annual report listing in detail certain financial information requiring individual airport revenues and expenditures. The data is derived from reports by airport owners or operators, also required by Section 111(a)(19) of the 1994 Act. Under the authority of Assurance 26 of the Airport Sponsor Assurances, airport sponsors are required to submit annual reports. The FAA's September 10, 1998, Advisory Circular (AC) titled *Guide for Airport Financial Reports Filed by Airport Sponsors* specifies the report format and due dates.

Failure of an airport sponsor to file airport financial reports by the due date will cause FAA to withhold award of AIP discretionary funds. The sponsor will not be considered for discretionary funds until it provides acceptable corrective action and is determined by the FAA to be in compliance with the reporting requirements. If the FAA makes a determination that the sponsor is in noncompliance with Assurance 26, it may withhold all sources of AIP funding (both discretionary and entitlement). The FAA will suspend processing of discretionary grants (grants for funds not apportioned under Section 47111(e)) immediately upon determining that a sponsor's airport financial reports are overdue.

3. Progress on Existing Grant Agreements

As a general policy, the FAA encourages sponsors to take construction bids prior to submitting an application of AIP grants. Bid-based grants more accurately reflect actual project costs, allow for more efficient management of AIP obligations, and help to ensure sponsors proceed timely with projects. When AIP funds are obligated by a grant, airport sponsors are encouraged, to the extent practicable, to make timely AIP draw downs as they incur costs leading to completion of their projects. FAA financially closes AIP projects as soon as possible following physical completion of the project. Close adherence to this policy helps to ensure that AIP funds do not remain idle after they are obligated in a grant, that a sponsor complete projects in a timely manner, and that the need to amend grants to accommodate higher costs is minimized. This policy has been developed and applied by the FAA, prior to the advent of the AIP, to foster effective financial management of federal grant funds.

The airport sponsor's management of past AIP grants can influence FAA's consideration of AIP discretionary funds for proposed projects. Efficient and expeditious implementation by airport sponsors of past grant is encouraged. Factors which may militate against the distribution of discretionary funds include: failure to financially close a physically completed project in a timely manner; inability to commence or complete work under an approved grant in a timely manner; and, having an excessive number of open, uncompleted grants.

The FAA understands that there may be compelling that justify relaxation of the general policy in light of specific local factors. FAA will take these factors into consideration when evaluating requests that contemplate the use of discretionary funds, and in accordance with FAA policy, thoroughly document exceptions to this general rule.

4. Sponsor Use of Entitlement Funds

The FAA encourages airport sponsors to use entitlement funds on the "highest priority" work at the airport as calculated under the FAA's National Priority System (NPS) equation. A detailed discussion of the NPS was published in the **Federal Register** Notice dated August 25, 1997, entitled *Revisions to the Airport Capital Improvement Plan (ACIP) National Priority System.* For purposes of determining whether sponsor entitlements are being used on high priority projects, the FAA will calculate the priorities of sponsor work items from the NPS equation. This policy helps ensure that AIP funds in the aggregate are used for projects that contribute most to the safety, security, capacity, and efficiency of the Nation's system of airports. Conversely, if sponsors use entitlement funds for lower priority projects and FAA agrees to use discretionary funds for the highest priority projects, the aggregate result of AIP investments is likely to provide less benefits to the national system than under FAA's policy.

Therefore, if the FAA determines that an airport sponsor is using its entitlement funds on low priority rated projects while requesting discretionary funds for higher priority rated work, the FAA may withhold discretionary funds requested by the sponsor.

As with a sponsor's rate of progress on existing grants, the FAA understands that there may be legitimate circumstances for a sponsor to use its entitlement funds for lower priority work. In addition, the FAA is fully cognizant that the NPS equation cannot always demonstrate the total benefit of a project to the airport or the national system. Consequently, the FAA will thoroughly evaluate a sponsor's justification prior to denying a request for discretionary funding on the basis of the sponsor's use of entitlements for lower priority projects. In accordance with FAA policy, such exceptions must be documented by the airport sponsor and submitted to FAA. Issued in Washington, DC on May 25, 1999.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 99–14481 Filed 6–8–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Submission of Application Under the Airport Improvement Program (AIP) for Fiscal Year 1999 for Sponsor Entitlement and Cargo Funds

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces July 12, 1999, as the deadline for each airport sponsor to have on file with the FAA an acceptable fiscal year 1999 grant application for funds apportioned to it under the AIP.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: Section 47105(f) of title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). Notification of the sponsor's intent to apply during fiscal year 1999 for any of its available entitlement funds including those unused from prior years, shall be in the form of a project application submitted to the cognizant FAA Airports office no later than July 12, 1999.

This notice is promulgated to expedite and prioritize grants prior to the August 6, 1999, AIP expiration date as established by Public Law 106–31 (1999 Emergency Supplemental Appropriations Act). Absent an acceptable application by July 12, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(g), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds.

In prior fiscal years, FAA has had sufficient program flexibility to permit sponsors to provide notice later than the deadline date, or to use entitlement funds later in a fiscal year in spite of filing no notice to that effect. In FY 1999, however, FAA must make all discretionary grant awards prior to August 7, 1999, including discretionary grants of entitlement funds that are available to, but will not be used by, the airport sponsors to which they have been apportioned. Airport sponsors that

Appendix F ► CFR Parts 13 and 16

federal register

Wednesday
October 16, 1996

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 13 and 16
Rules of Practice for Federally-Assisted Airport Proceedings; Final Rule

53997

53998 Federal Register / Vol. 61, No. 201, Wednesday, October 16, 1996 / Rules and Regulations

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13 and 16

[Docket No. 27783; Amendment No. 13–27, 16]

RIN 2120–AF43

Rules of Practice for Federally-Assisted Airport Proceedings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rulemaking establishes rules of practice for filing complaints and adjudicating compliance matters involving Federally-assisted airports. The rule addresses exclusively airport compliance matters arising under the Airport and Airway Improvement Act (AAIA) of 1982, as amended; certain airport-related provisions of the Federal Aviation Act of 1994, as amended; the Surplus Property Act, as amended; predecessors to those acts; and regulations, grant agreements, and documents of conveyance issued or made under those acts. The rule is intended to expedite substantially the handling and disposition of airport-related complaints.

EFFECTIVE DATE: This rule is effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Barry Molar or Frank J. San Martin, Airports Law Branch (AGC–610), Office of the Chief Counsel, (202) 267–3473, Federal Aviation Administration, (FAA), 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking (NPRM) for this rulemaking was issued on June 9, 1994 (59 FR 29880). The NPRM proposed to amend the FAA's existing complaint and adjudication procedures, 14 CFR Part 13, "Investigative and Enforcement Procedures," to remove from the coverage of part 13 the airport-related matters that will be handled under the new part 16. Certain disputes between U.S. and foreign air carriers and airport proprietors concerning the reasonableness of fees imposed by airport proprietors are not covered by the rule, but by 14 CFR part 302, subpart F, pursuant to section 113 of the Federal Aviation Act of 1994 (FAAct), Public Law No. 103–305 (August 23, 1994), 49 United States Code (U.S.C.) 47129.

On September 16, 1994, the FAA published a notice to withdraw subpart J of the proposed rule, subpart J contained special procedures for handling airport fee complaints by air carriers [59 FR 47568]. The withdrawal became necessary with the passage of section 113 of the FAA Act, which contained specific provisions for airport fee complaints by air carriers that differed from, and were inconsistent with, subpart J. The withdrawal notice also extended the comment period for the remainder of the NPRM, subparts A through I, to December 1, 1994 [59 FR 47568]

Discussion of Comments

Sixteen commenters responded to the NPRM. Commenters included the Air Freight Association; Air Line Pilots Association (ALPA); Air Ottawa Flying Service, Inc.; Aircraft Owners and Pilots Association (AOPA); Airports Council International-North America (ACI–NA); American Car Rental Association (ACRA); Hawkins, Delafield & Wood; Hogan & Harston; Maryland Aviation Administration; Melbourne Airport Authority; National Association of State Aviation Officials (NASAO); National Business Aircraft Association, Inc. (NBAA); National Air Transportation Association (NATA); Newton & Associates, Inc. (NAI); Regional Airline Association (RAA); and the United States Parachute Association (USPA).

Seven commenters generally support the promulgation of the proposed rule with some reservations. The remaining commenters address specific sections of the proposed rule.

A discussion of the issues most widely addressed in the comments and an analysis of the final rule follows. All comments received were considered by the agency. The summary of comments is intended to represent the general divergence or correspondence in industry views on various issues, and is not intended to be an exhaustive restatement of the comments received. Comments pertaining to withdrawn subpart J will not be addressed.

Standing

A number of commenters address issues concerning who should be able to file a complaint under new part 16. ACI–NA strongly supports limiting a complainant to a person "directly and substantially affected by any alleged non-compliance," under proposed § 16.23. Otherwise, ACI–NA argues, proceedings could be initiated by persons making only minimal use of an airport, burdening both the respondent and the FAA with the time and expense of administrative proceedings. AOPA states it is concerned that, under proposed § 16.23, an association would not have standing to file a complaint on behalf of its individual members. ACRA requests clarification that a nonaeronautical user of an airport, such as a car rental company, could file a complaint under part 16.

The final rule adopts the "directly and substantially affected" standard of the NPRM, with a special applicability provision for cases where review diversion is alleged. Under § 16.23(a) of the final rule, a person directly and substantially affected by any alleged noncompliance may file a complaint with the Administrator. Under § 16.3 of the final rule, a "complaint" is defined as "a written document * * * filed with the FAA by a person directly and substantially affected by anything allegedly done or omitted to be done * * * in contravention of any provision of any Act, as defined in this section." Complaints by persons not "directly and substantially affected" by respondent's alleged noncompliance will be subject to dismissal with prejudice under part 16.

Persons alleging revenue diversion by an airport, as defined in 49 U.S.C. 47107(b), that do business with, and pay fees or rents to, the airport, are considered in the final rule to be directly and substantially affected by the alleged revenue diversion for the sole purpose of having and standing to file a revenue diversion complaint under Part 16. This special applicability provision for complaints of revenue diversion is necessary because revenue diversion principally affects the United States as the grantor of the federal airport funds allegedly diverted. However, entities that do business on the airport and pay fees to the airport have some interest in alleging revenue diversion because their payments constitute airport revenue.

An association will have to meet the same "directly and substantially affected" standing requirement individually, but will be able to file a part 16 complaint as a representative of its members who are "directly and substantially affected" by an act or omission of respondent.

The standing requirement is necessary to assure that scarce agency resources are devoted to matters in which the complainant's interest is sufficient to justify the burden of processing a complaint under part 16. Parties who meet part 16 standing requirements may be represented by duly authorized representatives.

Nonaeronautical users of airports are subject to the same "directly and substantially affected" standard as aeronautical users, and could forseeably have standing to file a complaint under

part 16. For example, an airport duty-free shop could have standing to file a part 16 complaint alleging revenue diversion, and an airport concession that is a disadvantaged business enterprise (DBE) could have standing to file a part 16 complaint alleging non-compliance with the applicable DBE regulation. However, most of an airport's obligations are intended for the benefit of aeronautical users. A complaint alleging that an airport operator's treatment of a nonaeronautical user violates such obligation would be dismissed even though the nonaeronautical user was directly and substantially affected by the alleged practice. For example, the assurance against unjust discrimination by an airport operator only applies to aeronautical users, so a complaint by a nonaeronautical user alleging unjust discrimination by an airport operator would be dismissed.

Notwithstanding, the standing requirement, complaints that are dismissed because complainant lacks standing under Part 16 may be referred by the FAA to the appropriate FAA region for consideration under Subpart D, Special Rules Applicable to Proceedings Initiated by the FAA.

Pre-complaint Resolution

Most commenters approve of the proposed requirement in § 16.21, that a person engage in good faith efforts to informally resolve a disputed matter, directly with the person or entity in alleged noncompliance, before filing a complaint. ACI–NA supports the proposed rule but is concerned that the mention of ''mediation, arbitration, or use of a dispute resolution board'' in § 16.21 will be interpreted to mean that such alternative dispute resolution (ADR) methods are mandatory. AOPA suggests that the requirement to undertake informal resolution before filing a complaint would be inappropriate to complaints filed by general aviation and add to the costs and time to arrive at resolution. USPA states that part 16 would not permit contact with the FAA at the local level for assistance.

Under § 16.21 as adopted, it will be necessary for a potential complainant to certify that good faith efforts have been made to achieve informal resolution. However, the final rule does not require any particular informal resolution method, and mentions mediation, arbitration, and dispute resolution board as examples only. The final rule has been changed to add that the local FAA Airport District Office (ADO), or FAA Regional Airports Division, may be asked by the parties to assist them in resolving the dispute informally. That change is intended to make the local airports office available to mediate a dispute, and reflects the FAA's experience. In many cases, the involvement of the FAA ADO or regional airports division can facilitate informal resolution. Allegations of revenue diversion, however, may not lend themselves to full resolution in the pre-complaint process unless the proposed resolution addresses the total amounts allegedly diverted by the airport. Nevertheless, a complainant must show that informal resolution was attempted.

Hearing

Section 16.31(d) provides the respondent with the opportunity for a hearing if the initial determination finds the respondent in noncompliance and proposes the issuance of a compliance order and an opportunity for a hearing required by statute. In all other cases no opportunity for a hearing is provided, except at the discretion of the agency.

The law firm of Hogan & Hartson proposes a fact-finding hearing before the initial determination is issued in order to develop the factual record. This recommendation is not adopted in the final rule.

Before issuing the initial determination, the FAA engages in the process of investigating a complain. While complainants are entitled to having their complaints investigated, they do not have a property interest sufficient to require an oral evidentiary hearing as part of that investigation, even when the investigation leads to a dismissal of a complaint.

A respondent may be entitled to a hearing in some cases before the FAA takes adverse action. However, § 16.31(d) provides an opportunity for a hearing in those cases after the initial determination is made and before any final agency action is taken. There is no need to provide a respondent with an additional oral evidentiary hearing during the investigatory stage. Furthermore, the factual record will be developed by the supporting documents that are required to be submitted with each pleading under § 16.23, an by any additional information submitted by the parties or developed through informal investigation under § 16.29.

Several commenters argue that, contrary to § 16.203(b)(1), which provides in the NPRM that the respondent and the agency are the only parties to the post-initial determination hearing, the complainant should also be a party to the hearing. The NBAA argues that a complainant should be a party to the hearing because the complainant's participation will help develop the record of the case. NATA and Air Ottawa Flying Service, Inc., argue that nonhearing party status for a complainant deprives the complainant of due process of law because the complainant may have property interests at stake.

The final rule revised § 16.203(b)(1) to allow complainant to be a party to a hearing along with the respondent and the agency. Under § 16.31(d), a case proceeds to a hearing only after the FAA has found against the respondent in an initial determination that proposes the issuance of a compliance order. Thus, at the hearing the FAA has the burden of proof to establish the validity of its initial determination, including the proposed order of compliance under § 16.109. The respondent is a party to the hearing who seeks reversal of the FAA's initial determination. Although, a complainant's status as an airport user alone does not give rise to a sufficient property interests to justify party status as a matter of right, party status for the complainant will permit it to have an opportunity to assist in the development of the factual record as pointed out by NBAA. In addition, providing automatic party status will avoid burdening the hearing officer and parties with routine requests for intervention by complainant. The rule provides the hearing officer with ample powers to control the conduct of the hearing and to assure that complainant's participation does not unduly delay the proceedings.

As noted in the NPRM, in the case in which an adjudicatory hearing would be held (under § 519 of the AAIA or § 1002 of the FAA Act), the hearing procedures are intended to permit the FAA to complete compliance hearings within 180 days, while assuring that a respondent receives a fair hearing and an opportunity to present evidence and argument to support its position. Section 519 specifies that the FAA may temporarily withhold new grants.

Several commenters object to proposed § 16.3 which provides that the part 16 hearing officer is an attorney designated by the FAA. They state that the proposed provision gives the appearance and possibility of nonobjectivity. NBAA suggests that hearing officers be administrative law judges.

The commenters' concerns about the independence and objectivity of an FAA designated hearing officer are misplaced. Under the terms of § 16.3, no FAA attorney in the region where the noncompliance allegedly occurred, or in the Airports and Environmental Law

Division, may be a hearing officer. This excludes all FAA attorneys who could have access to factual knowledge of a part 16 complaint obtained by means other than the administrative record, insures that the hearing officer is independent of the offices that conduct investigations and prosecutions, and insures that the hearing officer is objective and independent.

Further, section 519 by its terms requires the FAA to provide notice and ''an opportunity for hearing'' before imposing certain sanctions. The simple requirement for a hearing, without more, has been held not to constitute ''an adjudication required by statute to be determined on the record after opportunity for an agency hearing,'' within the meaning of section 554 of the Administrative Procedure Act (APA). *See, e.g., Friends of the Earth* v. *EPA*, 966 F.2d 690, 693 (D.C. Cir. 1992); *St. Louis Fuel and Supply Co., Inc.* v. *FERC*, 890 F.2d 446, 448 (D.C. Cir. 1989). Accordingly, part 16 is not required by the APA to include all of the provisions of sections 554, 556 and 557 of the APA. In particular, the requirement that administrative law judges serve as hearing officers does not apply.

In the interests of assuring a fair hearing, however, part 16 includes many of the elements required by sections 554, 556 and 557 of the APA. For example, the hearing officer is required to issue an initial decision; *ex parte communications* are prohibited; separation of the prosecutorial and decision-making functions are required; and the hearing officer has virtually all of the authority specified in section 556(c).

Intervention

AOPA and NBAA comment that the intervention provisions of § 16.207 are too restrictive and give the hearing officer too much discretion in admitting a new party to a hearing. As explained earlier, a part 16 hearing is to a large extent a proceeding in which the FAA acts as a prosecutor seeking an order of compliance under § 16.109 against respondent within the statutory time limits for issuing such actions. Furthermore, complainant will under the final rule be a party to the hearing. For these reasons, intervention in such a proceeding should only be allowed if it will not unnecessarily broaden the issues, or cause delay, and, if the person requesting intervention has interests that need to be protected.

Analysis of the Provisions of the Final Rule

After careful review of the available data, including the comments received, the FAA has determined to adopt this proposed rule with the changes described previously.

Subpart A—General Provisions

Subpart A includes provisions of general applicability to proceedings brought under part 16, definitions of terms used in the regulation, and a provision on separation of functions.

The final rule modifies proposed § 16.1(a) to exclude from the coverage of part 16 disputes between U.S. and foreign air carriers and airport-proprietors concerning the reasonableness of airport fees now covered by 14 CFR part 302, as mandated by Congress in the FAA Act, Public Law No. 103–305 (August 23, 1994).

Proposed § 16.1(d) is modified to specify that part 16 applies to investigations initiated by the FAA, as well as complaints filed with the FAA on or after the effective date of the rule.

The definitions in § 16.3 are, for the most part, derived from the definitions of like or similar terms in 14 CFR part 13. The term ''agency employee'' defined as any employee of the Department of Transportation, was added to indicate that other offices within the Department of Transportation may assist the FAA in part 16 cases.

The title of ''Assistant Administrator for Airports'' in the definitions section and throughout the text of the rule has been changed in the final rule to ''Associate Administrator for Airports'' to reflect the correct title for this FAA official, as changed by a recent agency reorganization.

The term ''Director,'' defined as the Director of the Office of Airport Safety and Standards, was added to the definitions section and to the text of the rule. The ''Director'' replaces the ''Assistant Administrator'' as the decisionmaker of the initial determination without a hearing under § 16.31, as discussed more fully herein.

Although not technically incorrect, the term ''FAA decisionmaker'' was deleted from the definitions section and text of the final rule because the term is unnecessary. Deletion of the term should avoid confusion surrounding the ultimate decisionmaker in appeals from initial determinations of the Director without a hearing under § 16.31, and from the initial decisions of hearing officers after a hearing under § 16.241. In both cases, the appeal will be submitted to the Associate Administrator, who will issue a final decision under either § 16.33 or § 16.241.

The substitution of Director and Associate Administrator as decisionmakers instead of higher-level officials reflects the concerns and experiences of agency personnel who reviewed the proposed rule. The Director and Associate Administrator are experienced in airport matters and may be more accessible within the short time periods in the final rule for issuing decisions. The substitution also conforms more closely to current practice in deciding complaints regarding airport compliance.

The term ''Presiding officer'' was deleted from the definitions section because it was referred to only in subpart J, which was withdrawn.

The final rule contains no changes to the separation of function section, § 16.5, except that ''Associate Administrator'' replaces ''Administrator'' in § 16.5(b) and ''FAA decisionmaker'' in § 16.5(c).

Separation of functions is not required by statute because hearings under part 16 are not subject to APA hearing requirements; however, the separation is provided to promote confidence in the impartiality and integrity of decisions under the new procedures. Separation of prosecutorial and adjudicatory functions will be provided from the time the Director's determination is issued in all cases in which an opportunity for hearing is provided, including cases in which the respondent waives hearing and appeals the Director's determination in writing to the Associate Administrator. When separation applies, the Director will be considered as performing the investigatory and prosecutorial function and will not participate in the decision of the Associate Administrator or hearing officer.

Subpart B—General Rules Applicable to Complaints, Proceedings, and Appeals Initiated by the FAA

This subpart applies to all phases of the investigations and adjudications under this part.

The provisions governing filing and service of documents, computation of time, and motions (§§ 16.13, 16.15, 16.17, and 16.19), are based on similar provisions in the Federal Rules of Civil Procedure, the Department of Transportation's Rules of Practice in Proceedings (14 CFR part 302), the FAA Rules of Practice in Civil Penalty Actions (14 CFR part 13, subpart G), and the National Transportation Safety Board's (NSTB) Rules of Practice in Air Safety Proceedings (49 CFR part 821). The proposed rule was modified to change the agency address in § 16.13. To insure timely processing and to reflect

changes in the organization of the Office of the Chief Counsel "FAA Part 16 Airport Proceedings Docket (AGC–600)" replaces "FAA Enforcement Docket (AGC–10)." The additional 5 days provided after service on a party of a document by mail was changed to 3 days in § 16.17(c). This revision conforms to the "mail rule" used in federal practice under the Federal Rules of Civil Procedure.

Subpart C—Special Rules Applicable to Complaints

The final rule requires, under § 16.21, a potential complainant to engage in good faith efforts to resolve the disputed matter informally with potentially responsible respondents before filing a complaint with the FAA under part 16. Informal resolution may include mediation, arbitration, use of a dispute resolution board, or other form of third-party assistance, including assistance from the responsible FAA Airports District Office or FAA Regional Airports Division.

Under § 16.21, it will be necessary for the potential complainant or its representative to certify that good faith efforts have been made to achieve informal resolution. To protect the parties and for consistency with Rule 408 of the Federal Rules of Evidence, the certification will not include information on monetary or other settlement offers made but not agreed upon in writing. As explained earlier, under § 16.21(a), the FAA ADO or Regional Airports Division, will be available upon request to assist the parties with informal resolution.

The final rule retains the requirement that a complainant be "directly and substantially affected by any alleged noncompliance" in order to have standing to file a complaint under § 16.23. However, as explained above complainants alleging revenue diversion by an airport will be considered to be directly and substantially affected by the alleged revenue diversion, if complainants do business with the airport and pay fees or rentals to the airport.

To provide a more efficient and expedited process the time periods for filing a reply to the answer and a rebuttal to the reply in § 16.23 (e) and (f) were reduced from 15 to 10 days.

At the suggestion of one commenter, the final rule adds "lack of standing" as another possible ground for dismissal with prejudice under § 16.25. Besides dismissal of complaints that clearly do not state a cause of action, or those that do not come within the jurisdiction of the Administrator, a complaint may also be dismissed if the complainant lacks standing to file the complaint under §§ 16.3 and 16.23. As a final order of the agency, a dismissal with prejudice would be appealable to a United States Court of Appeals.

As explained above, the final rule substitutes the Director of the Office of Airport Safety and Standards as the official who makes the initial determination after investigation under § 16.31. The Director would issue an initial determination in every case in which the FAA investigates a complaint. Under the final rule, the agency is required to issue a Director's determination in 120 days from the due date of the last pleading (*i.e.*, reply or rebuttal). The provision in the NPRM allowing the Director to extend the period for issuing an initial determination by 60 days for good cause was deleted from the final rule in order to further expedite this administrative complaint procedure.

The Director's determination is intended to provide a timely and authoritative indication of the agency's position on a complaint. While the Director's determination can be appealed to the Associate Administrator under § 16.33, the FAA expects that, in many instances, the Director's determination will resolve the issues raised in the complaint to the satisfaction of the parties. In such cases, the parties may find it more beneficial to negotiate a solution based on the FAA's initial position than to continue to litigate the matter.

Under the final rule, the Associate Administrator will issue the final decision on appeal from a Director's determination without a hearing under § 16.33. If the initial determination finds the sponsor in compliance and dismisses the complaint, the complainant may appeal the determination by a written appeal to the Associate Administrator within 30 days. The Associate Administrator is required to issue a final agency decision in an appeal by a complainant within 60, not 30 days of the due date for the reply brief, as proposed in the NPRM. The additional time for issuing a final agency decision was added to the final rule to assure the agency adequate time to review the record, prepare, and issue a final decision.

If the Director's determination contains a finding of noncompliance and the respondent is entitled to a hearing, the determination will provide the sponsor the opportunity to elect an oral evidentiary hearing under subpart F. The procedure for electing or waiving a hearing is set forth in subpart E. If the respondent waives a hearing and instead elects to file a written appeal to the Associate Administrator, a final decision will be issued by the Associate Administrator under § 16.33.

Subpart D—Special Rules Applicable to Proceedings Initiated by the FAA

Section 16.101 makes clear the FAA's continuing authority to initiate its own investigation of any matter within the applicability of this part without having received a complaint, as authorized by §§ 313 and 1002 of the FAA Act and § 519 of the AAIA.

Subpart E—Proposed Orders of Compliance

Subpart E contains procedures that provide the respondent an opportunity to file a request for hearing within 20 days after service of the Director's determination if the determination proposes a sanction against the sponsor subject to § 519(b) of the AAIA or § 1002 of the FAA Act. The 20-day period to file a request for hearing was reduced from 30 days in the NPRM in order to provide a more efficient and expedited process. If the respondent elects a hearing, the agency will issue a hearing order.

Alternatively, if the respondent waives hearing and instead files a written appeal (within 30 days), the Associate Administrator will issue a final decision in accordance with the procedures set forth in § 16.33. If the respondent fails to respond to the Director's determination, the initial determination becomes final.

The final rule, based on comments received, includes a new ground for the agency to provide the opportunity for a hearing under § 16.109(a): If the agency proposes to issue an order withholding approval of any new application to impose a passenger facility charge pursuant to § 112 of the FAA Act, 49 U.S.C. 47111(e). That new statutory section creates additional enforcement mechanisms against illegal revenue diversion including the withholding of a new application to impose a passenger facility charge. The statute requires the FAA to provide an opportunity for hearing before imposing this sanction.

The opportunity for a hearing by the agency under part 16 is limited to those cases where there is a statutory requirement to offer the opportunity for a hearing before the FAA takes a particular action, or specific cases in which the FAA elects to offer a hearing.

Section 16.109(b)(3) allows respondent and complainant to file a joint motion to withdraw the complaint and dismiss the proposed compliance action. The FAA may, subject to its discretion, grant the motion if it finds that a settlement by the parties fully

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resolves the complaint violation and further compliance action is not necessary.

Subpart F—Hearings

Subpart F contains the procedures for initiating and conducting adjudicative hearings. The hearing order, issued by the Deputy Chief Counsel under § 16.201, will set the scope of the hearing by identifying the issues to be resolved, as well as assigning the hearing officer. If no material facts that require oral examination of witnesses are in dispute, the hearing may be limited to submission of briefs and oral argument.

In the hearing, the agency attorney will represent the agency's position before the hearing officer and will have the same status as any other representatives of a party. The rule includes commonly used adjudicatory procedures, such as representation of the parties by attorneys, intervention, participation by non-parties, pretrial procedures and discovery, the availability of compulsory process to obtain evidence, and procedures for using at the hearing. These provisions are intended to provide the parties with a reasonable opportunity to prepare their cases, while allowing the process to be completed expeditiously. To assure an expeditious hearing process, paragraph (b) was added to § 16.213, discovery, to emphasize the hearing officer's authority and duty to limit discovery wherever feasible.

The final rule made the following clarifications and corrections to the subpart based on comments received. The final rule added "or notice of investigation" to § 16.201(1) to clarify that the provisions of subpart F may apply to proceedings initiated by the FAA under subpart D. The final rule deleted an incorrect citation in § 16.203(a)(2) and replaced it with a citation to § 16.13.

In the NPRM, the last phrase in proposed § 16.209(d) cited section 519(b) of the AAIA. The citation to the AAIA was included because the AAIA provision contains the 180-day time limitation for a determination which could affect the length of extensions of time granted under part 16. (Although, at this time, the FAA does not foresee any circumstances where it would provide for a hearing and section 519(b) of the AAIA would not be applicable, in a case not covered by section 519(b), an extension of time by the hearing officer for any reason could extend all of the due dates beyond the 180-day time limitation.) This provision is being modified in the final rule to clarify this point.

The provisions of § 16.233 on evidence, in part, are to permit the hearing officer to exercise control over the hearing. Contrary to the suggestion of one commenter, they are not intended to authorize the hearing officer to preclude all cross-examination of a witness.

In keeping with the time limitations imposed by section 519(b) of the AAIA, § 16.235(a) of the final rule retains the provision permitting the hearing officer to allow written argument during the hearing only if the hearing officer finds that such argument would not delay the hearing. Parties may make their arguments in posthearing briefs under § 16.235(b).

Subpart G—Initial Decisions, Orders and Appeals

Subpart G provides procedures for issuance of initial decisions and orders by hearing officers, appeals of the initial decision to the Associate Administrator for Airports, and issuance of consent orders.

Section 16.241 governs procedures and time frames for initial decisions and administrative appeals based on 14 CFR 13.20(g)–(i). However, shorter time periods are provided to accommodate the time limits of § 519 of the AAIA. In appeals from initial decisions of hearing officers, under § 16.241(c) and 16.241(f)(2), the Associate Administrator must issue the final agency decision within 30 days of the due date of the reply. This provision insures that the final agency decision is issued within the 180-day time period of section 519.

In addition, the rule includes a provision for *sua sponte* review of an initial decision by the Associate Administrator, consistent with the practice under 14 CFR 302.28(d).

Section 16.243 governing disposal of cases by consent orders is derived from 14 CFR 13.13.

As explained above, the final rule replaced all references to the "FAA decisionmaker," though technically correct, with the "Associate Administrator," to avoid confusion and clarify. The ultimate decisionmaker in part 16 proceedings, with or without hearings, is the Associate Administrator for Airports for the reasons previously given.

Subpart H—Judicial Review

Subpart H contains rules applicable to judicial review of final agency orders. Section 16.247(a) sets forth the basic authority to seek judicial review. The provision is based on 14 CFR 13.235. Specific reference to section 519(b)(4) of the AAIA has been added. Section 16.247(b) identifies FAA decisions and actions under part 16 that the FAA does not consider to be judicially reviewable final agency orders.

Subpart I—Ex Parte Communications

The rule on *ex parte* communications is based on subpart J of the Rules of Practice in Air Safety Proceedings of the NTSB, 49 CFR Part 821, subpart J, modified to reflect the fact that FAA employees function as both parties and decisional employees in hearings conducted under subpart F of part 16.

Subpart J—Alternative Procedure for Certain Complaints Concerning Airport Rates and Charges

As explained above, subpart J of the proposed rule, containing special procedures for the handling of airport fee complaints by U.S. and foreign air carriers, was withdrawn on September 16, 1994 [59 FR 47568].

Regulatory Evaluation Summary

Introduction

This regulatory evaluation examines the costs and benefits of the final rule concerning Rules for Federally-Assisted Airport Proceedings. The rule establishes rules of practice for filing complaints and adjudicating compliance matters involving Federally-assisted airports. The rule is intended to expedite substantially the handling and disposition of airport-related complaints. Since the impacts of the changes are relatively minor this economic summary constitutes the analysis and no regulatory evaluation will be placed in the docket.

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade.

Costs And Benefits

This final rule adopts a new procedure for the filing, investigation, and adjudication of complaints against airports for violation of certain statutes administered by the FAA. The new procedures will substitute for existing procedures under 14 CFR part 13. There are no intended safety benefits that result from this rule. The intended advantages of the rule are in the form of increased cost effectiveness and timeliness in resolving complaints. The rule will use FAA resources better and result in modest cost savings.

About 30 investigations are initiated per year due to complaints filed with the FAA. Each investigation takes an average of 3 years before a ruling is issued. The typical investigation requires a field investigation, an initial review by the FAA's Office of Airports Safety and Standards, and a legal review by an attorney in the Office of Chief Counsel. A GS–12 (step 5) employee requires 30 hours to complete the field investigation, a GS–13 (step 5) requires 30 hours to complete the initial review, and a GS–14 (step 5) employee requires 20 hours to complete the legal review. The average cost per investigation is $3,100. (See Table 1.)

TABLE 1.—COST OF INVESTIGATIONS CURRENT AND UNDER NEW RULE

	Hours	Average grade	Yearly salary	Hourly rate	Loaded rate	Cost
CURRENT SITUATION						
Field investigation	35	GS–12	$50,388	$24.14	$31.39	$1,098.54
Initial review at HQ	30	GS–13	59,917	28.71	37.32	1,119.68
Attorney review at HQ	20	GS–14	70,804	33.93	44.10	882.08
Average cost per investigation						$3,100
Average annual number of investigations						30
Average annual cost of investigations						$93,009
NEW SITUATION						
Field	4	GS–12	$50,388	$24.14	$31.39	$125.55
Initial review at HQ	40	GS–13	59,917	28.71	37.32	1,492.90
Attorney review at HQ	20	GS–14	70,804	33.93	44.10	882.08
Average cost per investigation						$2,501
Average annual number of investigations						30
Average annual cost of investigations						$75,016
Savings						$17,993

This number assumes a 30-percent loaded hourly rate for fringe benefits. The annual cost of investigations is estimated to be $93,000.

Under the new rule, determinations will be made without the need for a field investigation. The FAA will be able to decide the merits of the case by looking at the record solely. The field investigation is expected to require 4 hours of the GS–12 (step 5) employee time, mostly to complete the proper forms; the initial review at headquarters is expected to require 40 hours of the GS–13 (step 5) employee's time, and the legal review is expected to remain at 20 hours of the GS–14 (step 5) employee's time. The average cost per investigation is estimated to be $2,500 and the annual cost of investigations will be $75,000 (Table 1). The final rule will result in an average cost savings of $18,000 per year on investigations. Furthermore the FAA estimates that instead of 3 years per investigation, each investigation will now take on average 1 year.

Conclusion

The FAA has determined that the final rule would have only moderate economic impacts on the industry, public, or government. The only measurable economic impact the FAA estimates is a slight cost savings to administer airport proceedings due to the utilization of government resources in a more efficient manner. The FAA finds that the proposed rule is cost-beneficial.

International Trade Impact Assessment

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. There should be no effect on aircraft manufacturers or operators (U.S. or foreign). Therefore, the FAA has determined that the proposed rule would neither have an effect on the sale of foreign aviation products nor services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number or small entities. Based on the potential relief that the rule provides and the criteria contained in FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This final rule contains no information collection requirements that require approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*)

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Analysis, the FAA has determined that this final rule is not economically significant under Executive Order 12866. This final rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 111034, February 26, 1979) and Executive Order 12866. The FAA certifies that this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 13

Enforcement procedures, Investigations, Penalties.

14 CFR Part 16

Enforcement procedures, Investigations.

The Amendments

Accordingly, the Federal Aviation Administration amends chapter I of title 14 of the Code of Federal Regulations as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

2. Section 13.3 is amended by adding a new paragraph (d) to read as follows:

§ 13.3 Investigations (general).

* * * * *

(d) A complaint against the sponsor, proprietor, or operator of a Federally-assisted airport involving violations of the legal authorities listed in § 16.1 of this chapter shall be filed in accordance with the provisions of part 16 of this chapter, except in the case of complaints, investigations, and proceedings initiated before December 16, 1996, the effective date of part 16 of this chapter.

3. A new part 16 is added to subchapter B to read as follows:

PART 16—RULES OF PRACTICE FOR FEDERALLY-ASSISTED AIRPORT ENFORCEMENT PROCEEDINGS

Subpart A—General Provisions

Sec.
16.1 Applicability and description of part.
16.3 Definitions.
16.5 Separation of functions.

Subpart B—General Rules Applicable to Complaints, Proceedings Initiated by the FAA, and Appeals

16.11 Expedition and other modification of process.
16.13 Filing of documents.
16.15 Service of documents on the parties and the agency.
16.17 Computation of time.
16.19 Motions.

Subpart C—Special Rules Applicable to Complaints

16.21 Pre-complaint resolution.
16.23 Complaints, answers, replies, rebuttals, and other documents.
16.25 Dismissals.
16.27 Incomplete complaints.
16.29 Investigations.
16.31 Director's determinations after investigations.
16.33 Final decisions without hearing.

Subpart D—Special Rules Applicable to Proceedings Initiated by the FAA

16.101 Basis for the initiation of agency action.
16.103 Notice of investigation.
16.105 Failure to resolve informally.

Subpart E—Proposed Orders of Compliance

16.109 Orders terminating eligibility for grants, cease and desist orders, and other compliance orders.

Subpart F—Hearings

16.201 Notice and order of hearing.
16.202 Powers of a hearing officer.
16.203 Appearances, parties, and rights of parties.
16.207 Intervention and other participation.
16.209 Extension of time.
16.211 Prehearing conference.
16.213 Discovery.
16.215 Depositions.
16.217 Witnesses.
16.219 Subpoenas.
16.221 Witness fees.
16.223 Evidence.
16.225 Public disclosure of evidence.
16.227 Standard of proof.
16.229 Burden of proof.
16.231 Offer of proof.
16.233 Record.
16.235 Argument before the hearing officer.
16.237 Waiver of procedures.

Subpart G—Initial Decisions, Orders and Appeals

16.241 Initial decisions, orders, and appeals.
16.243 Consent orders.

Subpart H—Judicial Review

16.247 Judicial review of a final decision and order.

Subpart I—Ex Parte Communications

16.301 Definitions.
16.303 Prohibited ex parte communications.
16.305 Procedures for handling ex parte communications.
16.307 Requirement to show cause and imposition of sanction.

Authority: 49 U.S.C. 106(g), 322, 1110, 1111, 1115, 1116, 1718 (a) and (b), 1719, 1723, 1726, 1727, 40103(e), 40113, 40116, 44502(b), 46101, 46104, 46110, 47104, 47106(e), 47107, 47108, 47111(d), 47122, 47123–47125, 47151–47153, 48103.

Subpart A—General Provisions

§ 16.1 Applicability and description of part.

(a) *General.* The provisions of this part govern all proceedings involving Federally-assisted airports, except for disputes between U.S. and foreign air carriers and airport proprietors concerning the reasonableness of airport fees covered by 14 CFR part 302, whether the proceedings are instituted by order of the FAA or by filing with the FAA a complaint, under the following authorities:

(1) 49 U.S.C. 40103(e), prohibiting the grant of exclusive rights for the use of any landing area or air navigation facility on which Federal funds have been expended (formerly section 308 of the Federal Aviation Act of 1958, as amended).

(2) Requirements of the Anti-Head Tax Act, 49 U.S.C. 40116.

(3) The assurances contained in grant-in-aid agreements issued under the Federal Airport Act of 1946, 49 U.S.C. 1101 *et seq* (repealed 1970).

(4) The assurances contained in grant-in-aid agreements issued under the Airport and Airway Development Act of 1970, as amended, 49 U.S.C. 1701 *et seq.*

(5) The assurances contained in grant-in-aid agreements issued under the Airport and Airway Improvement Act of 1982 (AAIA), as amended, 49 U.S.C. 47101 *et seq.*, specifically section 511(a), 49 U.S.C. 47107(a) and (b).

(6) Section 505(d) of the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. 47113.

(7) Obligations contained in property deeds for property transferred pursuant to section 16 of the Federal Airport Act (49 U.S.C. 1115), section 23 of the Airport and Airway Development Act (49 U.S.C. 1723), or section 516 of the Airport and Airway Improvement Act (49 U.S.C. 47125).

(8) Obligations contained in property deeds for property transferred under the Surplus Property Act (49 U.S.C. 47151–47153).

(b) *Other agencies.* Where a grant assurance concerns a statute, executive

order, regulation, or other authority that provides an administrative process for the investigation or adjudication of complaints by a Federal agency other than the FAA, persons shall use the administrative process established by those authorities. Where a grant assurance concerns a statute, executive order, regulation, or other authority that enables a Federal agency other than the FAA to investigate, adjudicate, and enforce compliance under those authorities on its own initiative, the FAA may defer to that Federal agency.

(c) *Other enforcement.* If a complaint or action initiated by the FAA involves a violation of the 49 U.S.C. subtitle VII or FAA regulations, except as specified in paragraphs (a)(1) and (a)(2) of this section, the FAA may take investigative and enforcement action under 14 CFR part 13, ''Investigative and Enforcement Procedures.''

(d) *Effective date.* This part applies to a complaint filed with the FAA and to an investigation initiated by the FAA on or after December 16, 1996.

§ 16.3 Definitions.

Terms defined in the Acts are used as so defined. As used in this part:

Act means a statute listed in § 16.1 and any regulation, agreement, or document of conveyance issued or made under that statute.

Agency attorney means the Deputy Chief Counsel; the Assistant Chief Counsel and attorneys in the Airports/Environmental Law Division of the Office of the Chief Counsel; the Assistant Chief Counsel and attorneys in an FAA region or center who represent the FAA during the investigation of a complaint or at a hearing on a complaint, and who prosecute on behalf of the FAA, as appropriate. An agency attorney shall not include the Chief Counsel; the Assistant Chief Counsel for Litigation, or any attorney on the staff of the Assistant Chief Counsel for Litigation, who advises the Associate Administrator regarding an initial decision of the hearing officer or any appeal to the Associate Administrator or who is supervised in that action by a person who provides such advice in an action covered by this part.

Agency employee means any employee of the U.S. Department of Transportation.

Associate Administrator means the Associate Administrator for Airports or a designee.

Complainant means the person submitting a complaint.

Complaint means a written document meeting the requirements of this part filed with the FAA by a person directly and substantially affected by anything allegedly done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator.

Director means the Director of the Office of Airport Safety and Standards.

Director's determination means the initial determination made by the Director following an investigation, which is a non-final agency decision.

File means to submit written documents to the FAA for inclusion in the Part 16 Airport Proceedings Docket or to a hearing officer.

Final decision and order means a final agency decision that disposes of a complaint or determines a respondent's compliance with any Act, as defined in this section, and directs appropriate action.

Hearing officer means an attorney designated by the FAA in a hearing order to serve as a hearing officer in a hearing under this part. The following are not designated as hearing officers: the Chief Counsel and Deputy Chief Counsel; the Assistant Chief Counsel and attorneys in the FAA region or center in which the noncompliance has allegedly occurred or is occurring; the Assistant Chief Counsel and attorneys in the Airports and Environmental Law Division of the FAA Office of the Chief Counsel; and the Assistant Chief Counsel and attorneys in the Litigation Division of the FAA Office of Chief Counsel.

Initial decision means a decision made by the hearing officer in a hearing under subpart F of this part.

Mail means U.S. first class mail; U.S. certified mail; and U.S. express mail.

Noncompliance means anything done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator.

Party means the complainant(s) and the respondent(s) named in the complaint and, after an initial determination providing an opportunity for hearing is issued under § 16.31 and subpart E of this part, the agency.

Person in addition to its meaning under 49 U.S.C. 40102(a)(33), includes a public agency as defined in 49 U.S.C. 47102(a)(15).

Personal delivery means hand delivery or overnight express delivery service.

Respondent means any person named in a complaint as a person responsible for noncompliance.

Sponsor means:

(1) Any public agency which, either individually or jointly with one or more other public agencies, has received Federal financial assistance for airport development or planning under the Federal Airport Act, Airport and Airway Development Act or Airport and Airway Improvement Act;

(2) Any private owner of a public-use airport that has received financial assistance from the FAA for such airport; and

(3) Any person to whom the Federal Government has conveyed property for airport purposes under section 13(g) of the Surplus Property Act of 1944, as amended.

§ 16.5 Separation of functions.

(a) Proceedings under this part, including hearings under subpart F of this part, will be prosecuted by an agency attorney.

(b) After issuance of an initial determination in which the FAA provides the opportunity for a hearing, an agency employee engaged in the performance of investigative or prosecutorial functions in a proceeding under this part will not, in that case or a factually related case, participate or give advice in an initial decision by the hearing officer, or a final decision by the Associate Administrator or designee on written appeal, and will not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the hearing officer, the Associate Administrator on written appeal, or agency employees advising those officials in that capacity.

(c) The Chief Counsel, the Assistant Chief Counsel for Litigation, or an attorney on the staff of the Assistant Chief Counsel for Litigation advises the Associate Administrator regarding an initial decision, an appeal, or a final decision regarding any case brought under this part.

Subpart B—General Rules Applicable to Complaints, Proceedings Initiated by the FAA, and Appeals

§ 16.11 Expedition and other modification of process.

(a) Under the authority of 49 U.S.C. 40113 and 47121, the Director may conduct investigations, issue orders, and take such other actions as are necessary to fulfill the purposes of this part, including the extension of any time period prescribed where necessary or appropriate for a fair and complete hearing of matters before the agency.

(b) Notwithstanding any other provision of this part, upon finding that circumstances require expedited handling of a particular case or controversy, the Director may issue an

order directing any of the following prior to the issuance of the Director's determination:

(1) Shortening the time period for any action under this part consistent with due process;

(2) If other adequate opportunity to respond to pleadings is available, eliminating the reply, rebuttal, or other actions prescribed by this part;

(3) Designating alternative methods of service; or

(4) Directing such other measures as may be required.

§ 16.13 Filing of documents.

Except as otherwise provided in this part, documents shall be filed with the FAA during a proceeding under this part as follows:

(a) *Filing address.* Documents to be filed with the FAA shall be filed with the Office of the Chief Counsel, Attention: FAA Part 16 Airport Proceedings Docket, AGC–610, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC, 20591. Documents to be filed with a hearing officer shall be filed at the address stated in the hearing order.

(b) *Date and method of filing.* Filing of any document shall be by personal delivery or mail as defined in this part, or by facsimile (when confirmed by filing on the same date by one of the foregoing methods). Unless the date is shown to be inaccurate, documents to be filed with the FAA shall be deemed to be filed on the date of personal delivery, on the mailing date shown on the certificate of service, on the date shown on the postmark if there is no certificate of service, on the send date shown on the facsimile (provided filing has been confirmed through one of the foregoing methods), or on the mailing date shown by other evidence if there is no certificate of service and no postmark.

(c) *Number of copies.* Unless otherwise specified, an executed original and three copies of each document shall be filed with the FAA Part 16 Airport Proceedings Docket. Copies need not be signed, but the name of the person signing the original shall be shown. If a hearing order has been issued in the case, one of the three copies shall be filed with the hearing officer. If filing by facsimile, the facsimile copy does not constitute one of the copies required under this section.

(d) *Form.* Documents filed with the FAA shall be typewritten or legibly printed. In the case of docketed proceedings, the document shall include the docket number of the proceeding on the front page.

(e) *Signing of documents and other papers.* The original of every document filed shall be signed by the person filing it or the person's duly authorized representative. The signature shall serve as a certification that the signer has read the document and, based on reasonable inquiry and to the best of the signer's knowledge, information, and belief, the document is—

(1) Consistent with this part;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the administrative process.

(f) *Designation of person to receive service.* The initial document filed by any person shall state on the first page the name, post office address, telephone number, and facsimile number, if any, of the person(s) to be served with documents in the proceeding. If any of these items change during the proceeding, the person shall promptly file notice of the change with the FAA Part 16 Airport Proceedings Docket and the hearing officer and shall serve the notice on all parties.

(g) *Docket numbers.* Each submission identified as a complaint under this part by the submitting person will be assigned a docket number.

§ 16.15 Service of documents on the parties and the agency.

Except as otherwise provided in this part, documents shall be served as follows:

(a) *Who must be served.* Copies of all documents filed with the FAA Part 16 Airport Proceedings Docket shall be served by the persons filing them on all parties to the proceeding. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on the FAA and all parties. Certificates of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and facsimile numbers (if also served by facsimile) by [specify method of service]:

[list persons, addresses, facsimile numbers]

Dated this ______ day of ______, 19____.
[signature], for [party]

(b) *Method of service.* Except as otherwise agreed by the parties and the hearing officer, the method of service is the same as set forth in § 16.13(b) for filing documents.

(c) *Where service shall be made.* Service shall be made to the persons identified in accordance with § 16.13(f). If no such person has been designated, service shall be made on the party.

(d) *Presumption of service.* There shall be a presumption of lawful service—

(1) When acknowledgment of receipt is by a person who customarily or in the ordinary course of business receives mail at the address of the party or of the person designated under § 16.13(f); or

(2) When a properly addressed envelope, sent to the most current address submitted under § 16.13(f), has been returned as undeliverable, unclaimed, or refused.

(e) *Date of service.* The date of service shall be determined in the same manner as the filing date under § 16.13(b).

§ 16.17 Computation of time.

This section applies to any period of time prescribed or allowed by this part, by notice or order of the hearing officer, or by an applicable statute.

(a) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this part.

(b) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, or legal holiday for the FAA, in which case, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(c) Whenever a party has the right or is required to do some act within a prescribed period after service of a document upon the party, and the document is served on the party by mail, 3 days shall be added to the prescribed period.

§ 16.19 Motions.

(a) *General.* An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Unless otherwise ordered by the agency, the filing of a motion will not stay the date that any action is permitted or required by this part.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing, shall state with particularity the relief sought and the grounds for the relief sought, and shall be accompanied by affidavits or other evidence relied upon. Motions introduced during hearings may be made orally on the record, unless the hearing officer directs otherwise.

(c) *Answers to motions.* Except as otherwise provided in this part, or except when a motion is made during a hearing, any party may file an answer in support of or in opposition to a motion, accompanied by affidavits or other evidence relied upon, provided that the

answer to the motion is filed within 10 days after the motion has been served upon the person answering, or any other period set by the hearing officer. Where a motion is made during a hearing, the answer and the ruling thereon may be made at the hearing, or orally or in writing within the time set by the hearing officer.

Subpart C—Special Rules Applicable to Complaints

§ 16.21 Pre-complaint resolution.

(a) Prior to filing a complaint under this part, a person directly and substantially affected by the alleged noncompliance shall initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance. These efforts at informal resolution may include, without limitation, at the parties' expense, mediation, arbitration, or the use of a dispute resolution board, or other form of third party assistance. The FAA Airports District Office, FAA Airports Field Office, or FAA Regional Airports Division responsible for administrating financial assistance to the respondent airport proprietor, will be available upon request to assist the parties with informal resolution.

(b) A complaint under this part will not be considered unless the person or authorized representative filing the complaint certifies that substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint have been made and that there appears no reasonable prospect for timely resolution of the dispute. This certification shall include a brief description of the party's efforts to obtain informal resolution but shall not include information on monetary or other settlement offers made but not agreed upon in writing by all parties.

§ 16.23 Complaints, answers, replies, rebuttals, and other documents.

(a) A person directly and substantially affected by any alleged noncompliance may file a complaint with the Administrator. A person doing business with an airport and paying fees or rentals to the airport shall be considered directly and substantially affected by alleged revenue diversion as defined in 49 U.S.C. 47107(b).

(b) Complaints filed under this part shall—

(1) State the name and address of each person who is the subject of the complaint and, with respect to each person, the specific provisions of each Act that the complainant believes were violated;

(2) Be served, in accordance with § 16.15, along with all documents then available in the exercise of reasonable diligence, offered in support of the complaint, upon all persons named in the complaint as persons responsible for the alleged action(s) or omission(s) upon which the complaint is based;

(3) Provide a concise but complete statement of the facts relied upon to substantiate each allegation; and

(4) Describe how the complainant was directly and substantially affected by the things done or omitted to be done by the respondents.

(c) Unless the complaint is dismissed pursuant to § 16.25 or § 16.27, the FAA notifies the complainant and respondents in writing within 20 days after the date the FAA receives the complaint that the complaint has been docketed and that respondents are required to file an answer within 20 days of the date of service of the notification.

(d) The respondent shall file an answer within 20 days of the date of service of the FAA notification.

(e) The complainant may file a reply within 10 days of the date of service of the answer.

(f) The respondent may file a rebuttal within 10 days of the date of service of the complainant's reply.

(g) The answer, reply, and rebuttal shall, like the complaint, be accompanied by supporting documentation upon which the parties rely.

(h) The answer shall deny or admit the allegations made in the complaint or state that the person filing the document is without sufficient knowledge or information to admit or deny an allegation, and shall assert any affirmative defense.

(i) The answer, reply, and rebuttal shall each contain a concise but complete statement of the facts relied upon to substantiate the answers, admissions, denials, or averments made.

(j) The respondent's answer may include a motion to dismiss the complaint, or any portion thereof, with a supporting memorandum of points and authorities. If a motion to dismiss is filed, the complainant may respond as part of its reply notwithstanding the 10-day time limit for answers to motions in § 16.19(c).

§ 16.25 Dismissals.

Within 20 days after the receipt of the complaint, the Director will dismiss a complaint, or any claim made in a complaint, with prejudice if:

(a) It appears on its face to be outside the jurisdiction of the Administrator under the Acts listed in § 16.1;

(b) On its face it does not state a claim that warrants an investigation or further action by the FAA; or

(c) The complainant lacks standing to file a complaint under §§ 16.3 and 16.23. The Director's dismissal will include the reasons for the dismissal.

§ 16.27 Incomplete complaints.

If a complaint is not dismissed pursuant to § 16.25 of this part, but is deficient as to one or more of the requirements set forth in § 16.21 or § 16.23(b), the Director will dismiss the complaint within 20 days after receiving it. Dismissal will be without prejudice to the refiling of the complaint after amendment to correct the deficiency. The Director's dismissal will include the reasons for the dismissal.

§ 16.29 Investigations.

(a) If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA investigates the subject matter of the complaint.

(b) The investigation may include one or more of the following, at the sole discretion of the FAA:

(1) A review of the written submissions or pleadings of the parties, as supplemented by any informal investigation the FAA considers necessary and by additional information furnished by the parties at FAA request. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided under this subpart. Each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.

(2) Obtaining additional oral and documentary evidence by use of the agency's authority to compel production of such evidence under section 313 Aviation Act, 49 U.S.C. 40113 and 46104, and section 519 of the Airport and Airway Improvement Act, 49 U.S.C. 47122. The Administrator's statutory authority to issue compulsory process has been delegated to the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Airports and Environmental Law, and each Assistant Chief Counsel for a region or center.

(3) Conducting or requiring that a sponsor conduct an audit of airport financial records and transactions as provided in 49 U.S.C. 47107 and 47121.

§ 16.31 Director's determinations after investigations.

(a) After consideration of the pleadings and other information obtained by the FAA after investigation,

the Director will render an initial determination and provide it to each party by certified mail within 120 days of the date the last pleading specified in § 16.23 was due.

(b) The Director's determination will set forth a concise explanation of the factual and legal basis for the Director's determination on each claim made by the complainant.

(c) A party adversely affected by the Director's determination may appeal the initial determination to the Associate Administrator as provided in § 16.33.

(d) If the Director's determination finds the respondent in noncompliance and proposes the issuance of a compliance order, the initial determination will include notice of opportunity for a hearing under subpart F of this part, if such an opportunity is provided by the FAA. The respondent may elect or waive a hearing as provided in subpart E of this part.

§ 16.33 Final decisions without hearing.

(a) The Associate Administrator will issue a final decision on appeal from the Director's determination, without a hearing, where—

(1) The complaint is dismissed after investigation;

(2) A hearing is not required by statute and is not otherwise made available by the FAA; or

(3) The FAA provides opportunity for a hearing to the respondent and the respondent waives the opportunity for a hearing as provided in subpart E of this part.

(b) In the cases described in paragraph (a) of this section, a party adversely affected by the Director's determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination.

(c) A reply to an appeal may be filed with the Associate Administrator within 20 days after the date of service of the appeal.

(d) The Associate Administrator will issue a final decision and order within 60 days after the due date of the reply.

(e) If no appeal is filed within the time period specified in paragraph (b) of this section, the Director's determination becomes the final decision and order of the FAA without further action. A Director's determination that becomes final because there is no administrative appeal is not judicially reviewable.

Subpart D—Special Rules Applicable to Proceedings Initiated by the FAA

§ 16.101 Basis for the initiation of agency action.

The FAA may initiate its own investigation of any matter within the applicability of this part without having received a complaint. The investigation may include, without limitation, any of the actions described in § 16.29(b).

§ 16.103 Notice of investigation.

Following the initiation of an investigation under § 16.101, the FAA sends a notice to the person(s) subject to investigation. The notice will set forth the areas of the agency's concern and the reasons therefor; request a response to the notice within 30 days of the date of service; and inform the respondent that the FAA will, in its discretion, invite good faith efforts to resolve the matter.

§ 16.105 Failure to resolve informally.

If the matters addressed in the FAA notices are not resolved informally, the FAA may issue a Director's determination under § 16.31.

Subpart E—Proposed Orders of Compliance

§ 16.109 Orders terminating eligibility for grants, cease and desist orders, and other compliance orders.

This section applies to initial determinations issued under § 16.31 that provide the opportunity for a hearing.

(a) The agency will provide the opportunity for a hearing if, in the Director's determination, the agency proposes to issue an order terminating eligibility for grants pursuant to 49 U.S.C. 47106(e) and 47111(d), an order suspending the payment of grant funds, an order withholding approval of any new application to impose a passenger facility charge pursuant to section 112 of the Federal Aviation Administration Act of 1994, 49 U.S.C. 47111(e), a cease and desist order, an order directing the refund of fees unlawfully collected, or any other compliance order issued by the Administrator to carry out the provisions of the Acts, and required to be issued after notice and opportunity for a hearing. In cases in which a hearing is not required by statute, the FAA may provide opportunity for a hearing at its discretion.

(b) In a case in which the agency provides the opportunity for a hearing, the Director's determination issued under § 16.31 will include a statement of the availability of a hearing under subpart F of this part.

(c) Within 20 days after service of a Director's determination under § 16.31 and paragraph (b) of this section, a person subject to the proposed compliance order may—

(1) Request a hearing under subpart F of this part;

(2) Waive hearing and appeal the Director's determination in writing to the Associate Administrator, as provided in § 16.33;

(3) File, jointly with a complainant, a motion to withdraw the complaint and to dismiss the proposed compliance action; or

(4) Submit, jointly with the agency attorney, a proposed consent order under § 16.243(e).

(d) If the respondent fails to request a hearing or to file an appeal in writing within the time periods provided in paragraph (c) of this section, the Director's determination becomes final.

Subpart F—Hearings

§ 16.201 Notice and order of hearing.

(a) If a respondent is provided the opportunity for hearing in an initial determination and does not waive hearing, the Deputy Chief Counsel within 10 days after the respondent elects a hearing will issue and serve on the respondent and complainant a hearing order. The hearing order will set forth:

(1) The allegations in the complaint, or notice of investigation, and the chronology and results of the investigation preliminary to the hearing;

(2) The relevant statutory, judicial, regulatory, and other authorities;

(3) The issues to be decided;

(4) Such rules of procedure as may be necessary to supplement the provisions of this part;

(5) The name and address of the person designated as hearing officer, and the assignment of authority to the hearing officer to conduct the hearing in accordance with the procedures set forth in this part; and

(6) The date by which the hearing officer is directed to issue an initial decision.

(b) Where there are no genuine issues of material fact requiring oral examination of witnesses, the hearing order may contain a direction to the hearing officer to conduct a hearing by submission of briefs and oral argument without the presentation of testimony or other evidence.

§ 16.202 Powers of a hearing officer.

In accordance with the rules of this subpart, a hearing officer may:

(a) Give notice of, and hold, prehearing conferences and hearings;

(b) Administer oaths and affirmations;
(c) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;
(d) Limit the frequency and extent of discovery;
(e) Rule on offers of proof;
(f) Receive relevant and material evidence;
(g) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;
(h) Hold conferences to settle or to simplify the issues by consent of the parties;
(i) Dispose of procedural motions and requests;
(j) Examine witnesses; and
(k) Make findings of fact and conclusions of law, and issue an initial decision.

§ 16.203 Appearances, parties, and rights of parties.

(a) *Appearances.* Any party may appear and be heard in person.

(1) Any party may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another duly authorized representative.

(2) An attorney, or other duly authorized representative, who represents a party shall file a notice of appearance in accordance with § 16.13.

(b) *Parties and agency participation.*

(1) The parties to the hearing are the respondent (s) named in the hearing order, the complainant(s), and the agency.

(2) Unless otherwise specified in the hearing order, the agency attorney will serve as prosecutor for the agency from the date of issuance of the Director's determination providing an opportunity for hearing.

§ 16.207 Intervention and other participation.

(a) A person may submit a motion for leave to intervene as a party. Except for good cause shown, a motion for leave to intervene shall be submitted not later than 10 days after the notice of hearing and hearing order.

(b) If the hearing officer finds that intervention will not unduly broaden the issues or delay the proceedings and, if the person has a property or financial interest that may not be addressed adequately by the parties, the hearing officer may grant a motion for leave to intervene. The hearing officer may determine the extent to which an intervenor may participate in the proceedings.

(c) Other persons may petition the hearing officer for leave to participate in the hearing. Participation is limited to the filing of post-hearing briefs and reply to the hearing officer and the Associate Administrator. Such briefs shall be filed and served on all parties in the same manner as the parties' post hearing briefs are filed.

(d) Participation under this section is at the discretion of the FAA, and no decision permitting participation shall be deemed to constitute an expression by the FAA that the participant has such a substantial interest in the proceeding as would entitle it to judicial review of such decision.

§ 16.209 Extension of time.

(a) *Extension by oral agreement.* The parties may agree to extend for a reasonable period of time for filing a document under this part. If the parties agree, the hearing officer shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the hearing officer to be signed by the hearing officer and filed with the hearing docket. The hearing officer may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) *Extension by motion.* A party shall file a written motion for an extension of time with the hearing officer not later than 7 days before the document is due unless good cause for the late filing is shown. A party filing a written motion for an extension of time shall serve a copy of the motion on each party.

(c) *Failure to rule.* If the hearing officer fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed denied.

(d) *Effect on time limits.* In a hearing required by section 519(b) of the Airport and Airways Improvement Act, as amended in 1987, 49 U.S.C. 47106(e) and 47111(d), the due date for the hearing officer's initial decision and for the final agency decision are extended by the length of the extension granted by the hearing officer only if the hearing officer grants an extension of time as a result of an agreement by the parties as specified in paragraph (a) of this section or, if the hearing officer grants an extension of time as a result of the sponsor's failure to adhere to the hearing schedule. In any other hearing, an extension of time granted by the hearing officer for any reason extends the due date for the hearing officer's initial decision and for the final agency decision by the length of time of the hearing officer's decision.

16.211 Prehearing conference.

(a) *Prehearing conference notice.* The hearing officer schedules a prehearing conference and serves a prehearing conference notice on the parties promptly after being designated as a hearing officer.

(1) The prehearing conference notice specifies the date, time, place, and manner (in person or by telephone) of the prehearing conference.

(2) The prehearing conference notice may direct the parties to exchange proposed witness lists, requests for evidence and the production of documents in the possession of another party, responses to interrogatories, admissions, proposed procedural schedules, and proposed stipulations before the date of the prehearing conference.

(b) *The prehearing conference.* The prehearing conference is conducted by telephone or in person, at the hearing officer's discretion. The prehearing conference addresses matters raised in the prehearing conference notice and such other matters as the hearing officer determines will assist in a prompt, full and fair hearing of the issues.

(c) *Prehearing conference report.* At the close of the prehearing conference, the hearing officer rules on any requests for evidence and the production of documents in the possession of other parties, responses to interrogatories, and admissions; on any requests for depositions; on any proposed stipulations; and on any pending applications for subpoenas as permitted by § 16.219. In addition, the hearing officer establishes the schedule, which shall provide for the issuance of an initial decision not later than 110 days after issuance of the Director's determination order unless otherwise provided in the hearing order.

§ 16.213 Discovery.

(a) Discovery is limited to requests for admissions, requests for production of documents, interrogatories, and depositions as authorized by § 16.215.

(b) The hearing officer shall limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested may be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other

discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

§ 16.215 Depositions.

(a) *General.* For good cause shown, the hearing officer may order that the testimony of a witness may be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Generally, an order to take the deposition of a witness is entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing;

(2) The deposition is deemed necessary to perpetuate the testimony of the witness; or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue burden to other parties or in undue delay.

(b) *Application for deposition.* Any party desiring to take the deposition of a witness shall make application therefor to the hearing officer in writing, with a copy of the application served on each party. The application shall include:

(1) The name and residence of the witness;

(2) The time and place for the taking of the proposed deposition;

(3) The reasons why such deposition should be taken; and

(4) A general description of the matters concerning which the witness will be asked to testify.

(c) *Order authorizing deposition.* If good cause is shown, the hearing officer, in his or her discretion, issues an order authorizing the deposition and specifying the name of the witness to be deposed, the location and time of the deposition and the general scope and subject matter of the testimony to be taken.

(d) *Procedures for deposition.*

(1) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers of the witness transcribed verbatim.

(2) Objections to questions or evidence shall be recorded in the transcript of the deposition. The interposing of an objection shall not relieve the witness of the obligation to answer questions, except where the answer would violate a privilege.

(3) The written transcript shall be subscribed by the witness, unless the parties by stipulation waive the signing, or the witness is ill, cannot be found, or refuses to sign. The reporter shall note the reason for failure to sign.

§ 16.217 Witnesses.

(a) Each party may designate as a witness any person who is able and willing to give testimony that is relevant and material to the issues in the hearing case, subject to the limitation set forth in paragraph (b) of this section.

(b) The hearing officer may exclude testimony of witnesses that would be irrelevant, immaterial, or unduly repetitious.

(c) Any witness may be accompanied by counsel. Counsel representing a nonparty witness has no right to examine the witness or otherwise participate in the development of testimony.

§ 16.219 Subpoenas.

(a) *Request for subpoena.* A party may apply to the hearing officer, within the time specified for such applications in the prehearing conference report, for a subpoena to compel testimony at a hearing or to require the production of documents only from the following persons:

(1) Another party;

(2) An officer, employee, or agent of another party;

(3) Any other person named in the complaint as participating in or benefiting from the actions of the respondent alleged to have violated any Act;

(4) An officer, employee, or agent of any other person named in the complaint as participating in or benefiting from the actions of the respondent alleged to have violated any Act.

(b) *Issuance and service of subpoena.*

(1) The hearing officer issues the subpoena if the hearing officer determines that the evidence to be obtained by the subpoena is relevant and material to the resolution of the issues in the case.

(2) Subpoenas shall be served by personal service, or upon an agent designated in writing for the purpose, or by certified mail, return receipt addressed to such person or agent. Whenever service is made by registered or certified mail, the date of mailing shall be considered as the time when service is made.

(3) A subpoena issued under this part is effective throughout the United States or any territory or possession thereof.

(c) *Motions to quash or modify subpoena.*

(1) A party or any person upon whom a subpoena has been served may file a motion to quash or modify the subpoena with the hearing officer at or before the time specified in the subpoena for the filing of such motions. The applicant shall describe in detail the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive.

(2) A motion to quash or modify the subpoena stays the effect of the subpoena pending a decision by the hearing officer on the motion.

§ 16.221 Witness fees.

(a) The party on whose behalf a witness appears is responsible for paying any witness fees and mileage expenses.

(b) Except for employees of the United States summoned to testify as to matters related to their public employment, witnesses summoned by subpoena shall be paid the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 16.223 Evidence.

(a) *General.* A party may submit direct and rebuttal evidence in accordance with this section.

(b) *Requirement for written testimony and evidence.* Except in the case of evidence obtained by subpoena, or in the case of a special ruling by the hearing officer to admit oral testimony, a party's direct and rebuttal evidence shall be submitted in written form in advance of the oral hearing pursuant to the schedule established in the hearing officer's prehearing conference report. Written direct and rebuttal fact testimony shall be certified by the witness as true and correct. Subject to the same exception (for evidence obtained by subpoena or subject to a special ruling by the hearing officer), oral examination of a party's own witness is limited to certification of the accuracy of written evidence, including correction and updating, if necessary, and reexamination following cross-examination by other parties.

(c) *Subpoenaed testimony.* Testimony of witnesses appearing under subpoena may be obtained orally.

(d) *Cross-examination.* A party may conduct cross-examination that may be required for disclosure of the facts, subject to control by the hearing officer for fairness, expedition and exclusion of extraneous matters.

(e) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this part. The fact that

evidence is hearsay goes to the weight of evidence and does not affect its admissibility.

(f) *Admission of evidence.* The hearing officer admits evidence introduced by a party in support of its case in accordance with this section, but may exclude irrelevant, immaterial, or unduly repetitious evidence.

(g) *Expert or opinion witnesses.* An employee of the FAA or DOT may not be called as an expert or opinion witness for any party other than the agency except as provided in Department of Transportation regulations at 49 CFR part 9.

§ 16.225 Public disclosure of evidence.

(a) Except as provided in this section, the hearing shall be open to the public.

(b) The hearing officer may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the hearing officer. The person shall state specific grounds for nondisclosure in the motion.

(c) The hearing officer shall grant the motion to withhold information from public disclosure if the hearing officer determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial information, or is otherwise prohibited by law.

§ 16.227 Standard of proof.

The hearing officer shall issue an initial decision or shall rule in a party's favor only if the decision or ruling is supported by, and in accordance with, reliable, probative, and substantial evidence contained in the record and is in accordance with law.

§ 16.229 Burden of proof.

(a) The burden of proof of noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 16.231 Offer of proof.

A party whose evidence has been excluded by a ruling of the hearing officer may offer the evidence on the record when filing an appeal.

§ 16.233 Record.

(a) *Exclusive record.* The transcript of all testimony in the hearing, all exhibits received into evidence, all motions, applications requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(b) *Examination and copy of record.* Any interested person may examine the record at the Part 16 Airport Proceedings Docket, AGC–600, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Any person may have a copy of the record after payment of reasonable costs for search and reproduction of the record.

§ 16.235 Argument before the hearing officer.

(a) *Argument during the hearing.* During the hearing, the hearing officer shall give the parties reasonable opportunity to present oral argument on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The hearing officer may direct written argument during the hearing if the hearing officer finds that submission of written arguments would not delay the hearing.

(b) *Posthearing briefs.* The hearing officer may request or permit the parties to submit posthearing briefs. The hearing officer may provide for the filing of simultaneous reply briefs as well, if such filing will not unduly delay the issuance of the hearing officer's initial decision. Posthearing briefs shall include proposed findings of fact and conclusions of law; exceptions to rulings of the hearing officer; references to the record in support of the findings of fact; and supporting arguments for the proposed findings, proposed conclusions, and exceptions.

§ 16.237 Waiver of procedures.

(a) The hearing officer shall waive such procedural steps as all parties to the hearing agree to waive before issuance of an initial decision.

(b) Consent to a waiver of any procedural step bars the raising of this issue on appeal.

(c) The parties may not by consent waive the obligation of the hearing officer to enter an initial decision on the record.

Subpart G—Initial Decisions, Orders and Appeals

§ 16.241 Initial decisions, order, and appeals.

(a) The hearing officer shall issue an initial decision based on the record developed during the proceeding and shall send the initial decision to the parties not later than 110 days after the Director's determination unless otherwise provided in the hearing order.

(b) Each party adversely affected by the hearing officer's initial decision may file an appeal with the Associate Administrator within 15 days of the date the initial decision is issued. Each party may file a reply to an appeal within 10 days after it is served on the party. Filing and service of appeals and replies shall be by personal delivery.

(c) If an appeal is filed, the Associate Administrator reviews the entire record and issues a final agency decision and order within 30 days of the due date of the reply. If no appeal is filed, the Associate Administrator may take review of the case on his or her own motion. If the Associate Administrator finds that the respondent is not in compliance with any Act or any regulation, agreement, or document of conveyance issued or made under such Act, the final agency order includes a statement of corrective action, if appropriate, and identifies sanctions for continued noncompliance.

(d) If no appeal is filed, and the Associate Administrator does not take review of the initial decision on the Associate Administrator's own motion, the initial decision shall take effect as the final agency decision and order on the sixteenth day after the actual date the initial decision is issued.

(e) The failure to file an appeal is deemed a waiver of any rights to seek judicial review of an initial decision that becomes a final agency decision by operation of paragraph (d) of this section.

(f) If the Associate Administrator takes review on the Associate Administrator's own motion, the Associate Administrator issues a notice of review by the sixteenth day after the actual date the initial decision is issued.

(1) The notice sets forth the specific findings of fact and conclusions of law in the initial decision that are subject to review by the Associate Administrator.

(2) Parties may file one brief on review to the Associate Administrator or rely on their posthearing briefs to the hearing officer. Briefs on review shall be filed not later than 10 days after service of the notice of review. Filing and service of briefs on review shall be by personal delivery.

(3) The Associate Administrator issues a final agency decision and order within 30 days of the due date of the briefs on review. If the Associate Administrator finds that the respondent is not in compliance with any Act or any regulation, agreement or document of conveyance issued under such Act, the final agency order includes a statement of corrective action, if appropriate, and identifies sanctions for continued noncompliance.

§ 16.243 Consent orders.

(a) The agency attorney and the respondents may agree at any time before the issuance of a final decision and order to dispose of the case by issuance of a consent order. Good faith efforts to resolve a complaint through issuance of a consent order may continue throughout the administrative process. Except as provided in § 16.209, such efforts may not serve as the basis for extensions of the times set forth in this part.

(b) A proposal for a consent order, specified in paragraph (a) of this section, shall include:

(1) A proposed consent order;

(2) An admission of all jurisdictional facts;

(3) An express waiver of the right to further procedural steps and of all rights of judicial review; and

(4) The hearing order, if issued, and an acknowledgment that the hearing order may be used to construe the terms of the consent order.

(c) If the issuance of a consent order has been agreed upon by all parties to the hearing, the proposed consent order shall be filed with the hearing officer, along with a draft order adopting the consent decree and dismissing the case, for the hearing officer's adoption.

(d) The deadline for the hearing officer's initial decision and the final agency decision is extended by the amount of days elapsed between the filing of the proposed consent order with the hearing officer and the issuance of the hearing officer's order continuing the hearing.

(e) If the agency attorney and sponsor agree to dispose of a case by issuance of a consent order before the FAA issues a hearing order, the proposal for a consent order is submitted jointly to the official authorized to issue a hearing order, together with a request to adopt the consent order and dismiss the case. The official authorized to issue the hearing order issues the consent order as an order of the FAA and terminates the proceeding.

Subpart H—Judicial Review

§ 16.247 Judicial review of a final decision and order.

(a) A person may seek judicial review, in a United States Court of Appeals, of a final decision and order of the Associate Administrator as provided in 49 U.S.C. 46110 or section 519(b)(4) of the Airport and Airway Improvement Act of 1982, as amended, (AAIA), 49 U.S.C. 47106(d) and 47111(d). A party seeking judicial review of a final decision and order shall file a petition for review with the Court not later than 60 days after a final decision and order under the AAIA has been served on the party or within 60 days after the entry of an order under 49 U.S.C. 40101 *et seq*.

(b) The following do not constitute final decisions and orders subject to judicial review:

(1) An FAA decision to dismiss a complaint without prejudice, as set forth in § 16.27;

(2) A Director's determination;

(3) An initial decision issued by a hearing officer at the conclusion of a hearing;

(4) A Director's determination or an initial decision of a hearing officer that becomes the final decision of the Associate Administrator because it was not appealed within the applicable time periods provided under §§ 16.33(b) and 16.241(b).

Subpart I—Ex Parte Communications

§ 16.301 Definitions.

As used in this subpart:

Decisional employee means the Administrator, Deputy Administrator, Associate Administrator, Director, hearing officer, or other FAA employee who is or who may reasonably be expected to be involved in the decisional process of the proceeding.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this part, or communications between FAA employees who participate as parties to a hearing pursuant to 16.203(b) of this part and other parties to a hearing.

§ 16.303 Prohibited ex parte communications.

(a) The prohibitions of this section shall apply from the time a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply at the time of the acquisition of such knowledge.

(b) Except to the extent required for the disposition of ex parte matters as authorized by law:

(1) No interested person outside the FAA and no FAA employee participating as a party shall make or knowingly cause to be made to any decisional employee an ex parte communication relevant to the merits of the proceeding;

(2) No FAA employee shall make or knowingly cause to be made to any interested person outside the FAA an ex parte communication relevant to the merits of the proceeding; or

(3) Ex parte communications regarding solely matters of agency procedure or practice are not prohibited by this section.

§ 16.305 Procedures for handling ex parte communications.

A decisional employee who receives or who makes or knowingly causes to be made a communication prohibited by § 16.303 shall place in the public record of the proceeding:

(a) All such written communications;

(b) Memoranda stating the substance of all such oral communications; and

(c) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (a) and (b) of this section.

§ 16.307 Requirement to show cause and imposition of sanction.

(a) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of § 16.303, the Associate Administrator or his designee or the hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(b) The Associate Administrator may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the FAA, consider a violation of this subpart sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

Issued in Washington, DC, on October 8, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–26180 Filed 10–10–96; 8:45 am]
BILLING CODE 4910–13–M

Appendix F-1 ► Part 16 Decisions (Case Files)

The FAA maintains a Part 16 Rules and Administrative Decisions Home Page. The FAA issues final administrative decisions in cases involving complaints against federally assisted airports. The site provides access to the FAA Part 16 rules of practice and administrative decisions. The site is located online and is updated as additional Part 16 decisions are issued. In addition, the site has search capability in the following format:

Search for Director's Determinations and Final Agency Decisions by entering information in one or more of the fields below and then pressing the "Search for Cases" button:

Complainant:

Respondent:

Docket Number: 16- -

Date Range: All Cases...

Search for Cases

FAA Part 16 cases filed since January 2002 can also be searched on DOT's Docket Management System. To access this site go to Docket Management System.

EXAMPLE OF CASE FILE RESULTS

-- Click on the Complainant Name to View Summary Record--

Complainant	Respondent	Docket Number	Complaint Date
Richard M. Grayson; Gate 9 Hangar LLC	DeKalb County, GA	16-05-13	
Skydive Paris Inc.	Henry County, Tennessee	16-05-06	
Lanier Aviation LLC	City of Gainesville, GA; Gainesville Airport Authority	16-05-03	
The Aviation Center, Incorporated	City of Ann Arbor, Michigan	16-05-01	
Pacific Coast Flyers, Inc.; Donnya Daubney d/b/a Carlsbad Aircraft Pilot Supply; Roger Baker,	County of San Diego, California	16-04-08	

Appendix F-2 ► Reserved

Appendix F-3 ► Sample Part 16 Corrective Action Acceptance

Richard S. Lawyer, Esq.
Office of the City Attorney
XXX Business Route Road
City, State XX245

Dear Mr. Lawyer:

Re: Docket No. 16-0X-XX Corrective Action Plan

Thank you for your letter of March 30, 2009, setting forth the City's Corrective Action Plan to address the Order contained in the Director's Determination (DD) Complainant v. Respondent, FAA Docket 16-0X-XX, dated March 1, 2009.

The DD ordered the City to submit, within 30 days, a corrective action plan explaining how it intends to eliminate the violations outlined in the DD, including the projected timeframe for completion. The DD also stated that the City should reassess the manner in which it classifies fuelers in a manner consistent with the FAA's policy on self-fueling, and reassess its insurance requirements to ensure the coverage required reflects the level of risk that is reasonable in terms of type of aircraft, amount of fuel dispensed, and type of fuel facility.

In its corrective action plan, the City proposes four (4) actions addressing the Order in the DD. These proposed actions and the FAA's response to each proposed action are discussed below.

Proposed Action 1: The City proposes to reduce the $1 million additional ability to pay "to the amount of the total deductible or self-insured retention of the particular applicant for the insurance policies the fueling permit holder is required to carry." In addition, the City will "continue to offer a variety of ways this requirement can be met, including but not limited to an unconditional letter of credit, binding, or personal guaranty from a company or individual with sufficient assets."

FAA Response: The FAA concurs with limiting the additional ability to pay to the amount of a deductible and to permit applicants to meet the requirement through a variety of methodologies. The City must, however, ensure that this requirement is applied uniformly to all similarly situated users.

Proposed Action 2: The City indicates that AeroTenant, LLC will be required to provide liability insurance coverage at the same level as Transport Co. and the fixed-base operator (FBO). Although the City "feels that the current $5 million requirement is appropriate for the existing fueling permit holders," it adds that all comparable self-fuelers will be required to provide the same level of liability insurance, regardless of when they entered into a lease agreement with the City but the City will be able to establish a lower minimum required insurance level through a variance procedure.

FAA Response: The FAA has no objection to this proposed action provided the FAA's comments with regards to Proposed Action 4 are addressed.

Proposed Action 3: The City intends to include in its new Fueling Rules and Regulations a provision allowing for an evaluation of the level of insurance coverage every two (2) years.

FAA Response: The FAA has no objection to this proposed action.

Proposed Action 4: The City proposes to institute a "variance procedure to permit a relaxation of applicable requirements in particular circumstances" and that this "variance procedure will permit the City to provide a fueling permit with a minimum liability insurance requirement lower than $5 million if the characteristics of the particular fueling facility justify a variance." The City adds that the "variance procedure would allow the applicant to present reasons justifying the requested relaxation of the particular requirement and require the City to make specific findings of fact and conclusions for each determination."

FAA Response: In the Director's Determination, the FAA stated that "a $5 million in liability coverage applied to a single-engine Cessna 172 may not be available from insurance companies. This would make the requirement essentially unreasonable for aircraft such as a Cessna 172" and that "the City should reassess its insurance requirements to ensure the coverage required reflects the level of risk that is reasonable in terms of type of aircraft, amount of fuel dispensed, and type of fuel facility." In other words, the FAA's position is that the $5 million in liability coverage should not be the basic standard for all fueling at the Airport. In addition, although the concept of a variance is generally consistent with the Order in the Director's Determination, the variance in and by itself, must not become an impediment to self-fueling at the Airport.

Therefore, in order to reduce the likelihood of another complaint, as part of its variance process and the new Fueling Rules and Regulations, the City must:

(1) Recognize that a $5 million liability requirement imposed on all aircraft and especially upon small aircraft, is inherently unreasonable;
(2) Ensure that the variance procedures are not unnecessarily burdensome and unattainable;
(3) Ensure that the terms and conditions for the variance are part of the City's new Fueling Rules and Regulations and are readily available to the public; and
(4) Ensure that the overall variance process is not arbitrary and is uniformly applied to similarly situated fuelers.

Based on the above, the FAA conditionally accepts the City's corrective action plan, including the proposed 90-day timeframe, provided that the FAA concerns outlined under Proposed Action 4, are incorporated in the City's new Fueling Rules and Regulations. In addition, we request that the City provide this office with a draft of its new Fueling Rules and Regulations before adoption.

If you have any questions or require assistance, please contact Manager, Airport Compliance Division at (202) 267-XXXX.

Sincerely,

Director,
Office of Airport Compliance
and Field Operations

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Appendix G ► Formal Compliance Inspection

1. PRELIMINARY PREPARATION. Prior to conducting a compliance inspection visit to the airport, the responsible Airports employee shall perform a preinspection office review. It should normally include the following element:

a. Preinspection Preparation. The first step is to review airport data available in the files. The inspector should review all conveyance documents and grant agreements in order to fully understand the specific commitments of the airport owner. This will include any continuing special conditions of grant agreements and the terms and conditions of release granted by the FAA. Previous inspection records should be reviewed to determine the owner's past performance in such matters as operation of the airport. Physical maintenance and financial activities. This information will assist in determining whether the existing airport condition is static, improving or deteriorating. If it has not already been done, the inspector will want to draw up a list of leases in effect showing dates of renewal or expiration. The inspector should review recent correspondence with the owner to see what follow up may be needed during the inspection. It will also be helpful to study the ALP, property use maps and land use and operating plans, if any. A review of recent grant funded projects will also be helpful. A list of known airport obstructions will be useful during the airport visit.

b. Compliance Worksheet. A standard worksheet was designed to be used as a simple, concise record of an airport's condition as observed during a “screening” inspection. It is not a statement of the owner's compliance status, but rather is a source of information for determining the compliance status.. The method to be used in collecting essential compliance data must be adapted to the situation. Thus, at larger airports with more complex factors to be considered or at those with a history of poor compliance performance, a screening inspection might be inappropriate. In such cases, a more comprehensive, locally prepared worksheet may be preferable. The choice of whether to use a worksheet at all is left to the discretion of field offices. If one is used, it usually is best not to fill it out in the owner's presence since it may cause unwarranted apprehension, thus restricting the flow of information. Regardless of the method use to collect and record data, adequate records must be maintained to clearly document what was reviewed and what was discovered.

c. Use of the Worksheet. While many of the items included in the worksheet are self-explanatory, the following guidance is helpful.

Item I: Entries here give the inspector's general impression as to whether the airport is developing, deteriorating, or stagnant. Observed changes which are undesirable or have an unsatisfactory general appearance should be explained on the back of the form.

Item II: Record here an evaluation of the physical condition of the airport's facilities in light of the owner's maintenance effort. This calls for a realistic appraisal of whether the facilities are being properly preserved. Any that are rated unsatisfactory should be explained on the back of the form. Other data sources, such as FAA Form 5010 inspections, other records, or FAR Part 139 inspection findings can be used to further substantiate findings

Item III: Any individual approach slope which fails to meet applicable criteria should be identified on the back of the form, together with comments on whether the owner can be required to correct the condition. Similarly, any unmarked obstruction or incompatible activity on adjacent land should be explained. Determine if clear zone interests and zoning, if any, are adequate and if not, what future requirements should be considered.

Item IV: The operations plan and land use plan listed here are discussed in paragraph 4-17. Although such plans are not a mandatory requirement, their use will facilitate effective administration of any airport. The inspector should review those that exist, together with airport regulations and minimum standards, to determine whether they can be considered satisfactory in light of the owner's obligations. If such plans are not satisfactory, the owner should be advised of necessary modifications.

Item V: Observe whether the owner is complying with exclusive rights policy and with civil rights requirements of DOT Regulations, Part 21.

Item VI: This item requires collection of data on new leases or agreements executed since the most recent past compliance inspection. Basic data to include on the back of the form are identity of lessee, date of execution, term of lease, and nature of occupancy or activity covered. If the screening inspector is not qualified to judge the acceptability of the lease or agreement or if procedure calls for review by the regional Counsel, defer the entry in Item VI.B. until a decision can be outlined. Where a contract for airport management has been entered into, it must be reviewed to assure that the owner has retained enough control to enable it to meet its continuing obligations to the federal government. Nonaviation leases of surplus airport property should be reviewed in connection with Item VIII.

Item VII: Requires the inspector to compare the ALP to existing and planned development of the airport and determine whether they are consistent. An explanation is necessary if the ALP is out of date or fails to depict accurately existing and planned facilities.

Item VIII: Calls for the inspector to review the uses being made of real surplus property and to determine whether such uses are proper. The inspector must determine if income is being realized from land conveyed for revenue production and if it is being applied to or reserved for airport purposes.

Item IX: Concerns a review of the current financial report, if available, as an indicator of the airport's financial condition. By observing recent physical improvements (or lack thereof), the inspector can verify unusual capital expenditures. By noting the presence of activities, which normally would generate revenues, the inspector should be able to judge whether all income is being reflected in the financial records. Conclusions should be entered in IX.B. The status of any funds committed as a condition of a release will be checked and noted in IX.C.

Item X: Refers primarily to any other specific commitments undertaken by the airport owner as a condition of an FAA action. Special conditions of grant agreements, although normally controlled by project payments, are included because they become compliance factors if they continue in effect beyond the closeout of the project.

2. SCOPE OF DETERMINATIONS.

To accurately determine the compliance status of an airport, the responsible FAA official must have available comprehensive information on all compliance matters. In evaluating this data, the official will want to pay particular attention to the following:

a. Maintenance and Operation. Various federal programs fund development and improvement of airport facilities. Consequently, there must be an effective application of effort to assure the proper operation and maintenance of the airport. The FAA's responsibility requires consideration of the following:

(1) Preservation. Compare the actual conditions as noted with those of previous observations and records on the airport to determine whether the preventive maintenance measures being taken are effectively preserving the facility.

(2) Maintenance Plan. Look into plans and arrangements relied on by the airport owner to meet maintenance commitments:

- Do they fix responsibility?
- Do they adequately provide for cyclical preventive repairs on a realistic schedule?
- Does the airport owner actually have the capability to meet these obligations? Is there an annual budget or other evidence that adequate resources are being applied to maintenance?

(3) Acceptable Level. Develop with the owner mutually agreeable criteria for acceptable maintenance of the airport. Such an agreement may take into consideration the duration of the owner's obligation to the federal government, any plans for extending the useful life of airport facilities, and the type of aeronautical usage to which the facility is subjected. For example, we might agree that to arrest the deterioration of a runway surface, a seal coat on only certain portions of the runway would be adequate for a stated period of time. This constitutes an acknowledgment by the FAA that during such a period accomplishment of the specified seal coating would be an acceptable level of maintenance. Any such understandings should be recorded in the compliance files.

(4) Operating Procedures. Check into procedures for operating the airport:

- Are they adequate and effective?
- What arrangements are in effect to turn on any field lighting equipment; mark and light temporary airfield hazards; issue NOTAMS when required, etc.?
- Is use of the airfield controlled by adequate ground safety regulations?
- Has the owner established operating rules including appropriate restrictions to protect airfield paving from excessive wheel loads?
- What plans are in effect to clear the airfield of disabled aircraft?

b. Approach Protection. Each of the airport's aerial approaches must be examined to determine whether any obstructions (as defined in current FAA criteria) exist and, if so, whether they violate a compliance obligation. Many obstructions do not violate a compliance obligation. Some

have been there for many years and actually predate development of the airport. There is no obligation to remove these unless such removal was made a specific condition of a grant agreement. Some are located a considerable distance from the runway on land not controlled by the airport owner, or are otherwise not reasonably within the airport's power to correct. Still others may have been the subject of an FAA airspace review that determined they were not a hazard or they were not a hazard if marked and lighted in accordance with FAA standards.

(1) Owner's Status. Where an approach surface is affected by an obstruction and the owner is obligated to maintain clear approaches, that owner is in noncompliance unless FAA can determine that elimination of the obstruction is not reasonably within the owner's power and/or the obstruction is not a hazard to navigation. The airport owner's primary obligation is to prevent or remove hazards.

(2) Future Outlook. Recent trends in uses of adjacent properties should be reviewed to see whether probable developments might pose a threat to any runway approaches. Measures being taken by the owner to protect these approaches should be reviewed. Is the owner doing everything that can reasonably be done to protect them?

(3) Effect of Obstructions. If obstructions exist, the records should indicate whether FAA has reviewed the object under a coordinated airspace review to determine its effect on the safe and efficient use of airspace. If FAA has determined the object is not a hazard, the airport owner will not be required to move or lower the object.

(4) Zoning. Where the airport relies on local zoning ordinances, the review should cover the effectiveness of the ordinances and the status of any legal proceedings involving them. Are the zoned areas appropriate to protect all existing and planned approaches?

c. Surplus Property Income. Income from property acquired under P.L. No. 80-289 and used to produce nonaviation revenues or funds derived from the disposal of such property must be applied to airport purposes. Thus the compliance review of a surplus property airport must include an evaluation of the owner's stewardship of properties conveyed for specific purposes. Most surplus airports conveyed under P.L. No. 80-289 contain significant areas deeded to the grantee for the purpose of generating revenue to support and further develop the aeronautical facilities. Since no other land uses were intended by the Act, it must be assumed that any property not needed for aeronautical activity was conveyed to produce revenue. There should be an agreement between the FAA and the owner as to which areas are for aeronautical activity and which for revenue production. This agreement should be reflected in the land use plan or property map or other document acceptable to FAA.

(1) Revenue Production.

(a) If a surplus airport includes revenue production property, a detailed review of available financial records shall be made. As a very minimum, these records should be carefully screened to ensure that the grantee has established an airport fund, or at least a separate airport account in which all transactions affecting the surplus property have been recorded. Where financial records are obscure or inconclusive, the grantee shall be required to produce whatever supplemental data are needed to clearly reveal the disposition of airport revenues.

(b) The grantee must make a reasonable effort to develop a net revenue (i.e., an amount over and above expenses in connection therewith) from such property. However, there is no violation if the property is not used. It may not be donated or leased for nominal consideration, but if used at all must produce reasonable net revenue. The compliance report must clearly reveal whether the current usage of the property conforms to these criteria. Where excess revenues accumulate, the guidance contained in the *Revenue Use Policy* shall be followed.

(c) Proceeds of Disposal. The law prohibits the sale or other disposal of surplus airport property without the written consent of the FAA. When given, such consent will obligate the owner to expend an amount equal to the FMV of the property for airport purposes. Where a transaction of this kind has been authorized by an FAA release, the compliance review shall include a thorough check into the status of the funds involved. Are they fully accounted for, and are the owner's actions to properly apply them satisfactory?

d. Availability of Airport Facilities. The reviewer should note whether the full benefits of the airport are being made available to users. This requires more than the opportunity to land an aircraft on a safe, well-constructed runway. To add utility and purpose of flight and to fully realize the intended benefits of airport development, there should be, depending on the type of airport, a reasonable variety of supporting services such as aircraft fuel, storage or tie-down and minor repair capabilities. At some locations the availability of a telephone may be all that can be economically justified. There are no criteria for measuring the adequacy of essential supporting services, and the owner of a public airport has not specific obligation to provide any of them. However, there is a basic obligation to ensure that, whatever arrangements are in effect, such services as are provided are available on fair, reasonable, and nondiscriminatory terms.

e. Adherence to Airport Layout Plan.

(1) In considering the compliance status of a federally obligated airport, the FAA approved ALP or land use plan should be consulted. At some airports subject only to surplus property compliance obligations, an FAA approved ALP may not have been required. At these airports, see whether there is any comparable plan or layout, such as a master development plan, which might reveal the ultimate development objectives of the airport owner. Where appropriate, the premises should be inspected to determine whether there have been any improvements, or whether any are being considered, which might be inconsistent with such plans. If an airport includes grant acquired land, specific consideration will be given to whether all of it still is needed for airport purposes.

(2) Whenever an actual or proposed variation from an approved ALP is found, determine whether it is significant; violates design or safety criteria; precludes future expansion needed for the foreseeable aeronautical use potential of the airport; or impairs the ability of the airport owner to comply with any of the airport's obligations under agreements with the federal government.

(3) The results of these determinations shall be recorded and one of the following actions taken:

(a) Determine that the variation is not significant and requires no further action;

(b) Obtain a modified ALP incorporating required changes; or

(c) Notify the airport owner that unless adherence to the previously approved ALP is affected within a specified, reasonable time, it will be in violation of its agreement with the federal government.

(4) There is no obligation to review an ALP to reflect development recommended by the FAA if the airport owner does not propose to carry it out. FAA's opinion of what development is desirable is not incumbent on the owner. However, the ALP must reflect existing conditions and those alterations currently planned by the owner, which has received FAA approval, and the FAA must formally approve the ALP.

SPONSOR QUESTIONNAIRE - AIRPORT COMPLIANCE STATUS

AIRPORT NAME ____

AIRPORT OWNER ____

Before completing the questionnaire below, you should be familiar with and understand the attached Exhibit A *Guide to Sponsor Obligations*, and Exhibit B, *Planning Airport Pavement Maintenance*. Refer to corresponding paragraphs of Exhibit A and Exhibit B before answering each question to be sure you have covered all applicable areas to be considered. NARRATIVE COMMENTS MAY BE ATTACHED.

PLEASE COMPLETE ALL ITEMS. YOU MAY USE N/A IF THE ITEM IS NOT APPLICABLE TO YOUR AIRPORT.

SOURCES OF OBLIGATIONS (Page one of Exhibit A)

What are your airport's applicable sources of obligations?
Surplus Property Conveyances (Regulation 16 and P.L. No. 289) __________________________
Section 16/23/516 Property Conveyances _______________________________
Federal Grant Sponsor Assurances ____________________________________
Other ____

A. MAINTENANCE OF THE AIRPORT (Paragraph b of Exhibit A)

1. Is the airport inspected on a regular schedule? ______ Yes ______ No

   Weekly?__________________Monthly?_______________Other? _________________

2. Are sponsor-owned visual landing aids (Visual Approach Slope Indicator (VASI), REILS, etc.) checked and calibrated on a regular schedule, at least quarterly? ______ Yes ______ No

   Date of last calibration? ____

   By whom? ____

3. Physical condition for following facilities is: (Good, Fair, Poor)

   a. Paving_______________________________________
   b. Nav-aids_____________________________________
   c. Others_______________________________________

4. Are realistic measures being followed to preserve physical condition of paving, lighting, grading, marking

etc.? ______ Yes ______ No

If no, please explain: ____
____

5. Do you have a pavement maintenance program in place, with records to support maintenance activities? ___ Yes ______ No

If no, please explain: ____
____

B. <u>APPROACH PROTECTION</u> (Paragraph d of Exhibit A)

1. If obstructions are indicated:

a. Are the obstructions on land under the control of the airport (owned in fee or easement)? ___
Yes ______ No

b. What plans are there for removing the obstructions? ______________________________
____
______

c. If no plans for removal, why? ____
____

2. Are there obstructions (natural or manmade) existing that are not reflected on the Airport Master Record, FAA Form 5010-1? ______ Yes ______ No
If yes, please explain: ____
____

C. <u>USE OF AIRPORT PROPERTY</u> (Paragraphs h & i of Exhibit A)

1. Is each area of land being used for the purpose intended by grant agreement or land conveyance? ______ Yes ______ No

2. If yours is a SURPLUS PROPERTY AIRPORT, are all areas of surplus property land that are being used for NONAERONAUTICAL purposes producing income at fair market value rent? ______ Yes ______ No

3. What kind of documentation is maintained to support the lease amounts?
____

4. Has FAA approved in writing each area of SURPLUS airport property which has been disposed of or sold? ______ Yes ______ No

5. Do you maintain a separate account of sale proceeds from released land?
______ Yes ______ No

If yes, what is balance: $ ________________

What are your plans for use of these funds? ______________________________________
____
____

6. Are any areas of GRANT ACQUIRED LAND being used for nonaeronautical purposes? ______ Yes ______ No
If yes, please explain: ____
____

D. USE OF AIRPORT REVENUES (Paragraph k of Exhibit A)

1. Is income from airport operations and revenue-producing property fully accounted for? ________ Yes ______ No

If no, please explain: ____
____

2. Are records adequate to show what use is made of airport revenue (or to reserve it for airport purposes)? ______ Yes ______No

If no, please explain: ____
____

3. Is all revenue produced on the airport applied toward the operation, maintenance, and development of the airport? ______ Yes ______ No
If no, please provide specific information regarding use of such funds: ________________
____
____

4. Is airport revenue used for the payment of nonairport City personnel salaries?
______Yes ______ No

If yes, is the airport deducting the amount of such nonairport salaries from their payment to the City under the cost allocation plan? ______ Yes ______ No

5. What evidence is available to support that the appropriate deduction to the cost allocation plan has been made?
____
____

6. What controls are used to insure that such a deduction is made?

____
____

E. EXCLUSIVE RIGHTS (Paragraph a of Exhibit A)

1. Has any operator been granted an exclusive right to conduct an aeronautical activity on the airport?______ Yes ______ No

2. Are there any complaints of discrimination, based on exclusive use pending on your airport? _____ Yes ______ No

3. Have any requests to conduct an aeronautical activity on the airport been denied?
______ Yes ______ No

If yes, please explain: ____

F. CONTROL AND OPERATION OF THE AIRPORT
(Paragraphs c, f, m & n of Exhibit A)

1. Is the airport available to the public under fair, equal, reasonable, and nondiscriminatory conditions? _____ Yes ______ No

2. Describe steps routinely taken to ensure safety of aircraft and persons?
____
____
____

3. Are airport facilities operated at all times in a safe and serviceable condition?
______ Yes ______ No

4. Is the airport ever temporarily closed for nonaeronautical purposes?
______ Yes ______ No

If yes, please explain when and the reason: ___________________________________
____

Was this coordinated with Airports Division prior to closing? ____Yes ______ No

5. Has the airport owner entered into any agreement that deprives him of ability to carry out obligations to the U.S.? ______ Yes ______ No

6. For airports obligated under federal grant programs, does the fee and rental structure provide for making the airport as self-sustaining as possible under circumstances existing at the airport? _ Yes ______ No
Is documentation maintained to support lease amounts? ______ Yes ______ No

G. <u>CONFORMITY TO AIRPORT LAYOUT PLAN</u> (Paragraph g of Exhibit A)

1. Do you have a copy of the latest approved ALP? ______ Yes ______ No
Date: ____________

2. Is it being kept current? ______ Yes ______ No

3. Is all development in conformance to the approved ALP? _____ Yes ______ No

If no, please explain: ____
____

H. <u>CONTINUING SPECIAL CONDITIONS</u> (Paragraphs j.4 & k.4 of Exhibit A)

1. If your location has received an FAA grant to acquire land for noise compatibility or future aeronautical use, interim income from such land MAY be required to be used ONLY for work which would be eligible under a grant, and may not be used for matching funds as your share of a grant. Is your location affected by such a requirement?
______ Yes ______ No

If yes, what is the status of such funds? ____
____

2. Describe any other special conditions included in a grant agreement that remain in effect after the grant was closed. ____
____
If so, what actions have you taken? ____
____

I. <u>DISPOSAL OF GRANT ACQUIRED LAND (FAAP/ADAP/AIP)</u>
(Paragraph j of Exhibit A)

1. Was any airport land sold or otherwise disposed of without FAA approval?
______ Yes ______ No

If yes, what was amount received? ___________________________________

2. Has FAA approval been obtained for use of all or a portion of the proceeds realized from sale of grant acquired land? ______ Yes ______ No

Date: _________________________
Amount: ______________________

J. <u>COMPATIBLE LAND USE</u> (Paragraph e of Exhibit A)

1. What actions have been taken to restrict use of lands in the vicinity of the airport to activities and purposes compatible with normal airport operations?

____
____
____

2. Are all land uses in the vicinity of the airport OVER WHICH SPONSOR HAS JURISDICTION compatible with airport use? _____ Yes ______ No

If no, please explain: ____
____
____

K. FAA FORMS 7460-1 & 7480-1

Are you aware of when it is required to submit FAA Form 7460-1, *Notice of Proposed Construction or Alteration,* and Form 7480-1, *Notice of Landing Area Proposal*?
______ Yes ______ No

Date: ____

Name: ____
(*Typed Name and Signature of Authorized Official of the Airport)*

Title: ____

Telephone No.: ____

Exhibit A

GUIDE TO SPONSOR OBLIGATIONS

This guide provides information on the various obligations of airport sponsors through federal agreements and/or property conveyances. The obligations listed are those generally found in agreement and conveyance documents. Sponsors should be aware, however, that dissimilarities do exist, and they are therefore urged to review the actual agreement or conveyance document itself to determine the specific obligations to which they are subject.

SOURCES OF OBLIGATIONS

(1) Grant agreements issued under the Federal Airport Act of 1946, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982 (AAIA), as amended.

(2) Surplus airport property instruments of transfer, issued pursuant to Section 13g of the Surplus Property Act of 1944 (Reg 16 & P.O. 289).

(3) Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Development Act of 1970, and under Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA).

(4) AP-4 agreement authorized by various acts between 1939 and 1944. Note: All AP-4 agreements have expired, however, sponsors continue to be subject to the statutory exclusive rights prohibition.)

(5) Environmental documents prepared in accordance with current Federal Aviation Administration requirements that address the National Environmental Policy Act of 1969 and the Airport and Airway Improvement Act of 1982 (AAIA).

OBLIGATIONS

a. Exclusive Rights Prohibition:

(1) Airports subject to: Any federal grant or property conveyance.

(2) Obligation: To operate the airport without granting or permitting any exclusive right to conduct any aeronautical activity at the airport. (Aeronautical activity is defined as any activity which involves, makes possible, or is required for the operation of an aircraft, or which contributes to or is required for the safety of such operations; i.e., air taxi and charter operations, aircraft storage, sale of aviation fuel, etc.)

(3) An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right may be conferred either by express agreement, by imposition of

unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties by excluding others from enjoying or exercising a similar right or rights would be an exclusive right.

(4) Duration of obligation: For as long as the property is used as an airport.

b. Maintenance of the Airport:

(1) Airport subject to: Any federal grant agreement, surplus property conveyance, and certain Section 16/23/516 conveyances.

(2) Obligation: To preserve and maintain the airport facilities in a safe and serviceable condition. This applies to all facilities shown on the approved ALP that are dedicated for aviation use, and includes facilities conveyed under the Surplus Property Act.

(3) Airport Pavement Maintenance: A continuing program of preventive maintenance and minor repair activities which will ensure that airport facilities are at all times in a good and serviceable condition for use in the way they were designed to be used, is required.

(4) Duration of obligation: Throughout the useful life of the facility but no longer than 20 years from the date of execution of grant agreement. For facilities conveyed under the Surplus Property Act, the obligation continues only for the useful life of the facility. In either case, FAA concurrence for discontinuance of maintenance is required.

c. Operation of the Airport:

(1) Airports subject to: Any federal grant agreement and surplus property conveyance.

(2) Obligation: To operate aeronautical and common use areas for the benefit of the public and in a manner that will eliminate hazards to aircraft and persons.

(3) Duration of obligation: Twenty years from the date of execution of the grant agreement. Obligation runs with the land for surplus property conveyance.

d. Protection of Approaches:

(1) Airports subject to: Any federal grant agreement and surplus property conveyance.

(2) Obligation: To prevent, insofar as it is reasonably possible, the growth or establishment of obstructions in the aerial approaches to the airport. (The term "obstruction" refers to natural or man-made objects that penetrate the imaginary surfaces as defined in FAR Part 77, or other appropriate citation applicable to the specific agreement or conveyance document.)

(3) Duration of obligation: Twenty years from the date of execution of the grant agreement. Obligation runs with the land for surplus property conveyance.

e. Compatible Land Use:

(1) Airports subject to: FAAP (after 1964)/ADAP/AIP agreements.

(2) Obligation: To take appropriate action, to the extent reasonable, to restrict the use of lands in the vicinity of the airport to activities and purposes compatible with normal airport operations.

(3) Duration of obligation: Twenty years from the date of execution of the grant agreement.

f. Available on Fair and Reasonable Terms:

(1) Airports subject to: Any federal grant agreement or property conveyance.

(2) Obligation: To operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination.

(3) The airport owner must allow its use by all types, kinds, and classes of aeronautical activity as well as by the general public. However, in the interest of safety and/or efficiency, restrictions on use may be imposed prohibiting or limiting a given type, kind, or class of aeronautical use of the airport. Reasonable rules or regulations to restrict use of the airport may be imposed. The reasonableness of restrictions will be determined using the assistance of local Flight Standards and Air Traffic representatives.

(4) Duration of obligation: Twenty years from the date of execution of grant agreements prior to 1964. For grants executed subsequent to the passage of the Civil Rights Act of 1964, statutory requirement prohibiting discrimination remains in effect for as long as the property is used as an airport. Obligation runs with the land for surplus property and Section 16/23/516 conveyances.

g. Adherence to the Airport Layout Plan:

(1) Airports subject to: Any federal grant agreements.

(2) Obligation: To develop, operate, and maintain the airport in accordance with the latest approved Airport Layout Plan. In addition, AIRPORT LAND DEPICTED ON THE AIRPORT PROPERTY MAP (EXHIBIT "A") TO THE LATEST GRANT AGREEMENT CANNOT BE DISPOSED OF OR OTHERWISE ENCUMBERED WITHOUT PRIOR FAA APPROVAL.

(3) Duration of obligation: Twenty years from the date of execution of grant agreement.

h. Use of Surplus Property:

(1) Airports subject to: Surplus property conveyances.

(2) Obligation: Real property conveyed under the Surplus Property Act must be used to support the development, maintenance, and operation of the airport. If not needed to directly support an aviation use, such property must be available for use to produce income for the airport. Such property may not be leased or rented for discount or for nominal consideration to subsidize non airport objectives. Airport property cannot be used, leased, sold, salvaged, or disposed of for other than airport purposes without FAA approval.

(3) Duration of obligation: Runs with the land.

i. Use of Section 16/23/516 lands:

(1) Airports subject to: Section 16/23/516 conveyances.

(2) Obligation: Real Property must be used for airport purposes; i.e., uses directly related to the actual operation or the foreseeable aeronautical development of the airport. Incidental use of the property must be approved by the FAA.

(3) Duration of obligation: Runs with the land.

j. Sale or Other Disposal of Property Acquired Under Federal Grant Agreements.

(1) Airports subject to: Any federal grant agreements.

(2) Obligation: To obtain FAA approval for the sale or other disposal of property acquired with federal funds under the various grant programs, as well as approval for the use of any net proceeds realized.

(3) Duration of obligation:

(a) At locations where the most recent grant agreement was executed prior to January 2, 1979, all land acquired under FAAP/ADAP (regardless of the project under which it was acquired) and designated as airport property on the latest Exhibit "A", is subject to the above obligation for 20 years from the date of execution of that most recent grant.

(b) At locations with grant agreements executed on or after January 2, 1979, all land acquired under FAAP/ADAP/AIP (regardless of the project under which it was acquired) and designated as airport property on the latest Exhibit "A", remains subject to the above obligation without time limitation. The standard 20-year grant obligation period does not apply.

(4) Special Condition Affecting Noise Land: Locations with grant agreements involving land acquired for noise compatibility must dispose of such land at the earliest practicable

time following designation by FAA, with the net proceeds of the sale returned to the airport.

k. Use of Airport Revenue:

(1) Airports subject to: Any federal grant agreement or property conveyance.

(2) Obligation: To apply revenue derived from the use of airport property toward the operation, maintenance, and development of the airport. Diversion of airport revenue to a non airport purpose must be approved by the FAA. (NOTE: Airports that have received AIP funds in some cases may expend airport revenue for the capital or operational costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport, and directly related to the actual transportation or passengers or property. Contact your FAA airports district office for additional information and approval.)

(3) Duration of obligation: Twenty years from the date of the grant agreement. Obligation runs with the land for surplus property and Section 16/23/516 conveyances.

(4) Special Condition Affecting Noise Land and Future Aeronautical Use Land: Locations with grant agreements including noise land or future aeronautical use land must apply revenue derived from interim use of the property to projects eligible for funding under the AIP. Income may not be used for the matching share of any grant.

l. National Emergency Use Provision:

(1) Airports subject to: Surplus property conveyances (where sponsor has not been released from this clause.)

(2) Obligation: During any war or national emergency, the federal government has the right of exclusive possession and control of the airport.

(3) Duration of obligation: Runs with the land (unless released from this clause of the FAA.)

m. Fee and Rental Structure:

(1) Airports subject to: Any federal grant agreement.

(2) Obligation: To maintain a fee and rental structure for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible. (Sponsors are directed by the FAA to assess fair market value rent for all leases.)

(3) Duration of obligation: Twenty years from the date of execution of the grant agreements.

n. Preserving Rights and Powers:

(1) Airports subject to: Any federal grant agreements.

(2) Obligation: To not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the sponsor assurances without FAA approval, and to act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. To not dispose of or encumber its title or other interests in the site and facilities for the duration of the terms, conditions, and assurances in the grant agreement without FAA approval.

(3) Duration of obligation: Twenty years from the date of execution of the grant agreements.

o. Environmental Requirements: The Airport Airway Improvement Act of 1982 (AAIA) requires that for certain types of projects, an environmental review be conducted. The review can take the form of an environmental assessment or an environmental impact statement. These environmental documents often contain commitments related to mitigation of environmental impacts. FAA approval of environmental documents containing such commitments have the effect of requiring that these commitments be fulfilled before FAA grant issuance or as part of the grant.

p. The above obligations represent the more important and potentially most controversial of the obligations assumed by an airport sponsor. Other obligations that may be found in grant agreements are:

- Use of Federal Government Aircraft
- Land for Federal Facilities
- Standard Accounting Systems
- Reports and Inspections
- Consultation with Users
- Terminal Development Prerequisites
- Construction Inspection and Approval
- Minimum Wage Rates
- Veterans Preference
- Audits and Record keeping Requirements
- Audit Reports
- Local Approval
- Civil Rights
- Construction Accomplishment
- Planning Projects
- Good Title
- Sponsor Fund Availability

Exhibit B

Planning Airport Pavement Maintenance

Maintenance of airport pavements consists of two distinct categories. The most commonly performed and easiest to understand is remedial maintenance. Remedial maintenance is simply the repair of deteriorated pavement. The most important and often overlooked is preventive maintenance. Preventive maintenance requires obtaining a history of pavement performance and planning for future pavement needs. Proper preventive maintenance can extend the serviceable life of the pavement and reduce the amount of required remedial maintenance. There are several necessary steps to begin a preventive and remedial pavement maintenance program. By following these steps, a maintenance program can be constructed to forecast future maintenance needs and determine when rehabilitation outside of normal daily maintenance is required and justified.

Mapping and Categorization

Develop a system of maps whereby the condition and special requirements of given pavement areas can be recorded. Not all pavement structures are constructed alike nor do all pavement structures perform identically, therefore, it is necessary to monitor the maintenance requirements of each general type of pavement. By monitoring the performance of pavement sections of similar construction and usage, we can develop sufficient information to forecast future maintenance requirements.

It may not be necessary to monitor all pavement sections if several sections are representative of the grouping. Inspection of all sections may require considerable cost and effort. Sampling plans have been devised so that an adequate portion of a pavement is inspected and the results are representative of the entire group.

Pavement categories and grouping should be determined with respect to the following:

- Pavement type
- Pavement material
- Base characteristics, depth, material type, soil type
- Drainage characteristics - edge drains, subdrains
- Age of the pavement
- Pavement usage
- Allowable pavement loading (pavement strength)

Pavement type refers to the stress distribution mechanism provided by the pavement structure. Typically, pavement types can be categorized in three classes; Rigid, Flexible, and Overlays. Rigid pavements are normally constructed of Portland Cement concrete and use the stiffness of the concrete slab to distribute the applied loads. Flexible pavements are usually constructed using bituminous products and depend upon the bearing capacity of the structural layers to distribute applied load. Overlays are simply combinations of pavement types.

All pavement structures are designed in layers of progressively stronger materials. These layers usually consist of the surface course, base, subbase(s), and subgrade. The surface course is defined as the uppermost layer that makes direct contact with wheel loads. The layer of material directly under the surface course is considered as the base course. Under the base course is the subbase, and under the subbase is the subgrade (natural soils). The type of material in each layer and the thickness of the layer will directly affect the strength of the pavement. Sections of pavement that have an identical surface course but different base materials may perform differently and should not be categorized together unless additional information is available to indicate that the pavement structures are similar. Likewise, different subgrade soils may perform differently and should be considered when categorizing pavement sections.

The amount of moisture within a pavement layer will greatly affect the strength and thereby the performance of the layer. As the moisture content of a layer increases, the strength decreases. If subsurface drainage is provided, the overall strength of the pavement section will be higher. Some pavement sections have drainable layers built into the structure for additional drainage capacity. These drainage features should be strongly considered when grouping pavement sections. Due to variations in construction and material quality, the age of a pavement structure may not accurately indicate the condition or the performance of the pavement. However, the age of the pavement may be used to further categorize pavement sections and can provide a relative condition of those sections.

Other than deterioration from the adverse affects of weather, the loadings applied to a pavement are the most destructive force that the pavement must withstand. Areas of high and low usage will ultimately determine areas requiring the most or least maintenance. Additionally, areas of high usage readily indicate critical pavements that should receive a high priority in the maintenance schedule. By determining and mapping the pavement loading restrictions, destructive overloads can be avoided. Gross overloads can do unseen damage to a pavement structure that will require substantial repair at a later date. By routing traffic over the proper pavements, maintenance repairs can be reduced.

Initial Condition Survey

After the pavement sections have been grouped together, an initial condition survey should be conducted to determine the extent of distress and the amount of deterioration for each pavement group. This initial survey should be a detailed observation of the pavement with specific types of distress noted and probable causes given. Following an accepted pavement rating method is recommended, but is not necessary. If a widely accepted rating system is used, the values assigned to the pavement can be compared to pavements at other locations. In addition to the present condition of the pavement, a history of any maintenance, repair, or reconstruction should be determined. The history should gather as much information as possible about the initial construction of the pavement and its performance.

Economic Analysis and Prioritizing System

The most common reason that proper maintenance is not accomplished is the seemingly high cost of doing maintenance. It is a well known fact that it is much cheaper to perform remedial maintenance than to perform early reconstruction. Early detection and repair of pavement defects is the most cost effective use of pavement dollars. In all cases of pavement distress, the cause of the distress should be determined first, then repairs can be made to not only correct the present damage, but to prevent or retard its progressive occurrence. All repairs should consider the long term effects rather than short term fixes. It is much cheaper to make the correct repair once than to continually make the wrong repair. Track the cost of maintenance for each pavement group over time. As the condition of the pavement deteriorates over time, the cost of doing maintenance will increase. Eventually, it will be more cost effective to rehabilitate or reconstruct a section of pavement than to perform continual maintenance. Cost comparisons should include both initial and anticipated costs of the alternatives throughout the expected life of the pavement.

Since maintenance dollars are often limited, a fair and comprehensive prioritizing system should be outlined. Areas of high traffic should receive a higher priority since the additional traffic will cause additional damage, and the additional traffic indicates user needs. Areas of low traffic may not deteriorate as rapidly and may require less overall maintenance. This does not implicate that areas of low usage can be ignored. The maintenance performed on any section of pavement should meet the preventive maintenance requirements for that section.

Regularly Scheduled Inspections

After the initial condition surveys are completed and the maintenance program has been implemented, a regular schedule of inspections should be followed to track the condition of the pavement. Regular inspection schedules may be broken down with respect to the degree of inspection and interval of inspection. A typical schedule could include daily inspections for minor surface defects that could present a safety problem, weekly inspections for intermediate defects, and monthly or semi-monthly inspections for major pavement distress. It should be remembered that any or all schedules may require adjustment depending upon the performance of the pavement in question. The regularly scheduled inspections should be well documented and resulting action noted. By developing a checklist or fill in the blank form, some of the individual differences between inspectors are eliminated. Properly completed forms will provide uniformity and consistency to the inspection reports.

Summary

Most airport pavements do not fail because of load-induced damage, but rather, are eventually destroyed by the elements. If protected from weather-induced damage, the service life of the pavement can be prolonged indefinitely. The most destructive element to any properly constructed pavement section is excess moisture. Regardless of how strong the pavement material, or how well the construction, excess moisture in the pavement layers will speed up the deterioration process. Ironically, keeping pavement cracks and joints sealed is the most neglected maintenance item. Far too often, sponsors feel that they can save money by putting off regular sealing of cracks. Cracks and joints must be sealed and resealed to keep excess moisture

out of the pavement structure, and they must be sealed in a timely manner. Likewise, subdrain systems must be kept operable. Periodic inspection and cleaning of subdrain pipes and outlets must be performed to prevent trapping water in the pavement structure. Pavement maintenance is not an exact science, and how to properly maintain each individual pavement section is not easily put in words. As experience is gained in maintaining pavement structures, the necessary and proper maintenance items will become self-evident. Regardless of the extent or amount of maintenance that is performed, the rewards will be readily visible.

Appendix G-1 ► Sample Airport Noncompliance List (ANL)

U.S. Department of Transportation
Federal Aviation Administration

Memorandum

Airports Noncompliance List (ANL) No. 20XX-03

The following obligated airports have been informally determined to be in noncompliance with

Subject:	**ACTION**: Distribution of Airports Noncompliance List (ANL) 20XX-03 (as of May 15, 20XX)	Date:	May 15, 20XX
From:	:ector, Airports Compliance and Field Operations, ACO-1		INTERNAL USE ONLY
To:	Director, Airport Planning and Programming, APP-1 Manager, Airports Financial Assistance Division, APP-500 Manager, Financial Analysis, APP-510 Manager, Programming Branch, AAP-520 AGI-6		

their grant assurances and/or surplus property obligations as of May 15, 20XX. An airport is placed on the list below if it falls in one or more of the following categories: (1) airports with a formal finding of noncompliance under 14 CFR Part 16, (2) airports listed in the Airport Improvement Program (AIP) Report to Congress under 49 U.S.C. § 47131 for certain land use violations, (3) airports that clearly remain in noncompliance despite FAA requests to the sponsor for corrective action and (4) airports where the violations are so egregious as to preclude additional federal financial assistance until the issues are resolved.

As a result, we request that the following airports not receive any further discretionary grants authorized under 49 U.S.C. § 47115 and the General Aviation $150,000 apportionment under 49 U.S.C. § 47114(d)(3)(A) until corrective action is achieved bringing the airport into compliance. At this time, there are no formal findings of noncompliance under 14 CFR Part 16 necessitating the withholding of grants under 49 U.S.C. § 47114(c).

ACO-1 will update this listing as changes occur. This listing is automatically superseded as soon as a new ANL is issued. Your assistance in helping us bring these airports into compliance with their federal obligations is most appreciated. Additional information on those airports having land use compliance issues may be available under the Compliance Section of the System of Airports Reporting (SOAR) by using the airport ID function or by generating a Compliance Report from the same database.

If you have any questions regarding the airports listed or if you have information related to the issues described, please contact ___________, Airport Compliance Specialist (ACO-100) at (202) 267-XXXX.

Director, Airport Compliance and Field Operations

Airports in Noncompliance – May 15, 20XX						
Airport	***ID***	***FAA Region***	***Corrective Action(s) Required Since***	***Type of Finding***	***Problem Area(s)***	***Remarks***
Sponsor (GA Airport)	XXX	XXX	Oct XX	Informal Finding	Exclusive Rights, Land Use	Although the sponsor is cooperating with the FAA, and the sponsor is actively pursuing resolution of the issue, an exclusive right that has been granted to one operator for the entire airport has not yet been eliminated. Therefore, the airport is classified as in noncompliance pending adequate and timely resolution.
Sponsor (Reliever Airport)	XXX	XXX	Oct XX	Informal Finding	Airport Closure, Land Use, Safety, Fee and Rental Structure, Airport Revenues	As of Sept 20XX, the airport sponsor had not taken corrective action regarding the Oct 20XX notification of grant assurances violations, including significant nonaeronautical land uses despite several FAA requests to do so. Therefore, the airport was classified as in noncompliance. Update Aug 20XX: because the closure of the airport was authorized by Congress, not the FAA, under Section 4408 of the Transportation Equity Act (Conference Report No. 109-203 for HR3), for all practical purposes, the airport sponsor is no longer a federally obligated airport and is not an eligible sponsor either.
Sponsor (Primary)	XXX	XXX	May XX	Informal Finding	Land Use, Fee and Rental Structure, Airport Revenues	Region initiated action. As of Sept 20XX, the airport sponsor has not taken corrective action to compensate the airport for unauthorized nonaeronautical uses of airport property. Therefore, the airport is classified as in noncompliance pending adequate and timely resolution.
Sponsor (GA Airport)	XXX	XXX	Jun XX	Informal Finding	Land Use/Closure	Upon land use inspection, it was noted that airport is closed and that is extensively used for nonaeronautical purposes. There is no record of FAA approval for the closure or those uses. Therefore, the airport is classified as in noncompliance pending adequate and timely resolution.

Appendix H ► Sample Audit Information

P B T K PIERCY BOWLER TAYLOR & KERN
Certified Public Accountants • Business Advisors

Independent Auditors' Report on Financial Statements and Accompanying Information

The Honorable Members of the County Commission
County Manager and Director of Aviation
Clark County, Nevada

We have audited the accompanying financial statements of the Clark County Department of Aviation - Clark County, Nevada (the Department), as of and for the years ended June 30, 2003 and 2002. These financial statements are the responsibility of the Department's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Clark County Department of Aviation - Clark County, Nevada, as of June 30, 2003 and 2002, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

The management's discussion and analysis on pages 8 through 16 is not a required part of the basic financial statements but is supplementary information required by the Governmental Accounting Standards Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming an opinion on the Department's basic financial statements. The introductory section, statistical section and accompanying information in the financial section on pages 41 through 47 are presented for the purpose of additional analysis and are not a required part of the basic financial statements. The accompanying information on pages 41 through 47 has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole. The introductory section and statistical section have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we express no opinion on them.

In accordance with *Government Auditing Standards*, we have also issued our report dated September 22, 2003, on our consideration of the Department's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grants. That report presented on page 47, is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

Piercy, Bowler, Taylor & Kern

September 22, 2003

Sample Auditor's Report Excerpts – Page 1

CLARK COUNTY DEPARTMENT OF AVIATION
CLARK COUNTY, NEVADA

MANAGEMENT'S DISCUSSION AND ANALYSIS

For the Year Ended June 30, 2003

The following Management's Discussion and Analysis provides information regarding the financial operations and financial position as reported in the Clark County Department of Aviation (Department) accompanying Comprehensive Annual Financial Report for the fiscal year ended June 30, 2003.

The Department comprises a single enterprise fund of Clark County, Nevada (the County), and operates as a separate department of the County. The Board of County Commissioners is responsible for governing the affairs of the Department.

As an enterprise fund, users of the Department facilities provide the revenues to operate, maintain and acquire necessary services and facilities. The Department is not subsidized by tax revenues of the County.

The Department's vision is to be "A Global Leader." With this vision the Department operates the Clark County Airport System.

The fiscal year ended June 30, 2003, has seen a continuation of the effects of the terrorist attacks of September 11, 2001. The commercial aviation world has faced a continued struggle for survival with hopes for a brighter tomorrow and expectations of an economic rebound for the industry.

The following is a summary of statistical and operating results and highlights for the fiscal year ended June 30, 2003.

Airline rates and charges:

	2003	% Change From Prior Year	2002	% Change From Prior Year	2001	% Change From Prior Year
Landing fee per 1000 pounds	$ 1.22	0.0%	$ 1.22	-1.6%	$ 1.24	0.0%
Terminal rental rates per square foot per annum	68.04	0.0%	68.04	-1.4%	69.00	-1.7%
Gate use fee per year	62,700	0.0%	62,700	-2.3%	64,200	-0.9%

The Department is committed (especially in these uncertain times) to manage airline rates and charges to its benefit and that of the air carriers bringing passengers to Southern Nevada. This continuing commitment is evidenced by the fact that airline rates and charges have been increased only one time in the past fourteen years.

Sample Auditor's Report Excerpts – Page 1

Appendix I ► SPA Reg. 16

SPA Reg. 16

SURPLUS PROPERTY ADMINISTRATION

NOV. 16, 1945

[SPA Reg. 16]

PART 8316—SURPLUS AIRPORT PROPERTY

Sec.
8316.1 Definitions.
8316.2 Scope.
8316.3 Declaration of policy.
8316.4 Surplus airport disposal committee.
8316.5 Declarations.
8316.6 Communications after notice of transmittal.
8316.7 Withdrawals.
8316.8 Permissive use by other Government agency.
8316.9 Disposal of leasehold interests and improvements by owning agencies.
8316.10 Restrictions on use and disposition.
8316.11 Functions of the Civil Aeronautics Administration.
8316.12 Classification of property by Administrator.
8316.13 Disposal as airport property subject to reservations, restrictions, and conditions.
8316.14 Care and handling.
8316.15 Priorities.
8316.16 Permits to operate or use.
8316.17 Valuation.
8316.18 Prices.
8316.19 Submission to Attorney General.
8316.20 Form of transfer.
8316.21 Conditions in instrument of transfer.
8316.22 Records and reports.
8316.23 Regulations by agencies to be reported to the Administrator.
8316.24 Exceptions.

AUTHORITY: §§ 8316.1 to 8316.24, inclusive, issued under Surplus Property Act of 1944, 58 Stat. 765, 50 U. S. C. App. Sup. 1611, and under Pub. Law 181, 79th Cong., 1st Sess.

§ 8316.1 *Definitions*—(a) *Terms defined in act.* Terms not defined in paragraph (b) of this section which are defined in the Surplus Property Act of 1944 shall in this part have the meaning given to them in the act.

(b) *Other terms.* (1) "Airport property" means the entire interest owned by the Government in any airport.

(2) "Airport" means any area of land or water and the improvements thereon primarily used, intended to be used, or determined by the Administrator to be suitable for use for or in connection with the landing and take-off or navigation of aircraft. The term includes "landing areas", "building areas", "airport facilities", and "non-aviation facilities".

(3) "Airport facilities" means any buildings, structures, improvements, and operational equipment, other than non-aviation facilities, which are used and necessary for or in connection with the operation and maintenance of an airport.

(4) "Building area" means any land, other than a landing area, used or necessary for or in connection with the operation or maintenance of an airport.

(5) "Landing area" means any land, or combination of water and land, together with improvements thereon and necessary operational equipment used in connection therewith, which is used for landing, take-offs, and parking of aircraft. The term includes, but it is not limited to, runways, strips, taxiways, and parking aprons.

(6) "Non-aviation facilities" means any buildings, structures, improvements, and equipment, located in a building area and used in connection with but not required for the efficient operation and maintenance of the landing area or the airport facilities.

(7) "State or local government" means any State, territory, or possession of the United States, the District of Columbia, and any political subdivision or instrumentality thereof.

(8) "Surplus airport property" means any airport property which has been determined to be surplus to the further needs and responsibilities of the owning agency in accordance with the act.

§ 8316.2 *Scope.* This part applies to surplus airport property located within the continental United States, its territories and possessions.

§ 8316.3 *Declaration of policy.* It is hereby declared that the national interest requires the disposal of surplus airport property in such a manner and upon such terms and conditions as will encourage and foster the development of civil aviation and provide and preserve for civil aviation and national defense purposes a strong, efficient, and properly maintained nationwide system of public airports, and will insure competition and will not result in monopoly. It is further declared that in making such disposals of surplus airport property the benefits which the public and the Nation will derive therefrom must be the principal consideration and the financial return to the Government a secondary consideration. Airports which are surplus to the needs of owning agencies may be essential to the common defense of the Nation or valuable in the maintenance of an adequate and economical national transportation system. In such cases and in accordance with the rules established herein such airports may be disposed of to State or local governments for considerations other than cash. Where airports are not desired as such by Government agencies or State or local governments, they shall be classified as airports or otherwise according to their best use and any disposition hereunder shall be for a monetary consideration.

§ 8316.4 *Surplus airport disposal committee.* (a) Pursuant to arrangements made with other interested Government agencies, there is hereby established a Surplus Airport Disposal Committee which shall function as an advisory committee to the Surplus Property Administrator and shall consist of five members, one to be designated by the Secretary of War, one by the Secretary of the Navy, one by the Administrator of the Civil Aeronautics Administration, one by the disposal agency, and one by the Surplus Property Administrator who shall serve as Chairman of the Committee.

(b) It shall be the duty of the Surplus Airport Disposal Committee to advise the Surplus Property Administrator as to the manner in which and the conditions upon which the disposal agency should be authorized to dispose of particular airport properties, and as to all other matters upon which advice may be requested by the Administrator.

§ 8316.5 *Declarations.* (a) Declarations of surplus airport property including leasehold interests under leases or similar rights of occupancy not cancelled by the owning agency pursuant to § 8316.9 hereof, shall be filed with the Surplus Property Administrator as provided in Part 8301.[1] The Administrator will transmit two copies of the declaration to the appropriate disposal agency with directions, and will notify the owning agency thereof.

(b) The owning agency may give to the Surplus Airport Disposal Committee a pre-declaration notice accompanied by a tentative statement of the conditions, reservations, and restrictions which it may request, pursuant to § 8316.10 hereof, to be imposed on the disposal of the airport property.

§ 8316.6 *Communications after notice of transmittal.* After the owning agency receives notice of transmittal to a disposal agency of a declaration of surplus airport property, communications of the owning agency with respect to such airport property shall be addressed to the disposal agency, except where communication with the Administrator is required hereunder.

§ 8316.7 *Withdrawals.* If the owning agency wishes to withdraw surplus airport property before it has received notice of the transmittal of the declaration to the disposal agency, it may do so by filing Form SPB-5 with the Administrator. After the owning agency has received notice of such transmittal, it may withdraw such property by filing the form with the disposal agency. Such withdrawals may be made only with the consent of the Administrator if the property has not been assigned to a disposal agency or with the consent of the disposal agency thereafter, except as hereinafter provided.

§ 8316.8 *Permissive use by other Government agency.* When a Government agency utilizing Government-owned real property for or in connection with an airport, under some form of arrangement with the Government agency having primary jurisdiction over the property, no longer needs the property for airport purposes, such real property and any interest therein shall be returned to the agency having primary jurisdiction in accordance with the arrangement made between such agencies. Where, however, the property has been substantially improved while being so utilized, the agency utilizing the property shall make a report of the facts to the Administrator for his determination as to the disposition of the improvements; and such report shall be treated as a declaration of surplus as to such improvements.

[1] SPA Reg. 1 (10 F.R. 14064).

§ 8316.9 *Disposal of leasehold interests and improvements by owning agencies.* (a) At any time after thirty (30) days prior notice to the Surplus Airport Disposal Committee, no objection thereto having been made by such committee, an owning agency may dispose of airport property in the manner provided in this section without declaring it surplus; provided that such property is held only under lease or other similar right of occupancy which is for the duration of the war or the national emergency and six months thereafter, or is for an unexpired period of not more than twelve months and has no renewal or purchase privilege.

(b) Any such leasehold interest or similar right of occupancy shall be terminated or cancelled by the owning agency and any Government-owned improvements disposed of by any one or more of the following methods:

(1) By transfer to the lessor or owner of the premises in full or partial satisfaction of any obligation to restore the premises, provided the lessor or owner shall pay for any excess value.

(2) By disposition in accordance with contractual commitments.

(3) By sale intact.

(4) By transfer to another Government agency intact.

(5) By disposal of all readily severable property in accordance with any other applicable regulations of the Administrator.

(6) By demolition contract let only on competitive bids whereby title to material not readily severable passes to the demolition contractor.

(7) By demolition of property not readily severable and disposal of surplus used building and construction materials by competitive bidding and of other resulting materials in accordance with any other applicable regulations of the Administrator. Any competitive bidding shall be conducted under rules and regulations prescribed by the owning agencies containing provisions, among others, requiring lots to be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms, requiring wide public notice concerning such sales and time intervals between notice and sale adequate to give all interested purchasers a fair opportunity to buy, and reserving the right to reject all bids.

(8) By abandonment if the owning agency has no obligation to remove such improvements and it finds in writing that such property is without commercial value or that the estimated cost of its care, handling, removal, and disposition would exceed the estimated proceeds of sale.

(c) Disposals of improvements by owning agencies hereunder shall be made at prices that are fair and reasonable under all the circumstances taking into account the limited sale value of the property in place and its special value, if any, to the purchaser. In all cases, prior to disposal a written estimate shall be made of both the value of the improvements for use in place and their salvage value. The disposal agencies for industrial and marine real property shall, upon request, furnish advice and assistance to the owning agencies in the establishment of fair and reasonable prices hereunder.

(d) Where an airport consists of property a portion of which is owned by the Government and the balance of which is property under lease to the Government, such lease shall not be cancelled by the owning agency, but the leasehold interest as well as the Government-owned property shall be declared surplus.

§ 8316.10 *Restrictions on use and disposition.* When an owning agency declares airport property surplus, such owning agency, the Civil Aeronautics Administration, or the Surplus Airport Disposal Committee may submit to the Administrator a request that the disposal be made subject to any or all of the following reservations, restrictions, and conditions:

(a) *Use by the transferee.* (1) That the airport shall be used for public airport purposes on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of section 303 of the Civil Aeronautics Act of 1938.

(2) That the entire landing area and all improvements, facilities, and equipment of the airport shall be maintained at all times in good and serviceable condition to assure its efficient operation.

(3) That insofar as is within its powers and reasonably possible the transferee shall prevent any use of land either within or outside the boundaries of the airport, including the construction, erection, alteration, or growth, or any structure or other object thereon, which use would be a hazard to the landing, taking off, or maneuvering of aircraft at the airport, or otherwise limit its usefulness as an airport.

(4) That the building areas and nonaviation facilities shall be used, altered, modified, or improved only in a manner which does not interfere with the efficient operation of the landing area and of the airport facilities.

(b) *Use by the Government.* (1) That the Government shall at all times have the right to use the airport in common with others; *Provided, however,* That such use may be limited as may be determined at any time by the Civil Aeronautics Administration or the successor Government agency to be necessary to prevent interference with use by other authorized aircraft, so long as such limitation does not restrict Government use to less than twenty-five (25) per centum of capacity of the airport. Government use of the airport to this extent shall be without charge of any nature other than payment for damage caused by Government aircraft.

(2) That during the existence of any emergency declared by the President or the Congress, the Government shall have the right without charge except as indicated below to the full, unrestricted possession, control, and use of the landing area, building areas, and airport facilities or any part thereof, including any additions or improvements thereto made subsequently to the declaration of the airport property as surplus; *Provided, however,* That the Government shall be responsible during the period of such use for the entire cost of maintaining all such areas, facilities, and improvements, or the portions used, and shall pay a fair rental for the use of any installations or structures which have been added thereto without Federal aid.

§ 8316.11 *Functions of the Civil Aeronautics Administration.* In the disposal of surplus airport property under this part, the disposal agency may avail itself of the services of representatives of the Civil Aeronautics Administration in all negotiations for the disposal of the property and shall consult with and obtain the recommendations of the Civil Aeronautics Administration as to all decisions pertaining to civil aviation. In addition the Civil Aeronautics Administration shall furnish such technical assistance as the Surplus Property Administrator or the disposal agency may request and the Civil Aeronautics Administration is in a position to provide.

§ 8316.12 *Classification of property by Administrator.* (a) Upon receipt of a declaration of surplus airport property, the Surplus Property Administrator shall consider any requests for reservations, restrictions, and conditions submitted by the owning agency, or by the War and Navy Departments, or by the Civil Aeronautics Administration, or by the Surplus Airport Disposal Committee, and shall determine the future uses for which the property is best adapted, how the property can best be disposed of to meet the objectives of the act, and whether any or all of the requests for reservations, restrictions and conditions should be imposed.

(b) If the Administrator classifies the property for disposal as an airport, it shall be disposed of under this part; if the Administrator classifies it for disposition otherwise than as airport property and the owning agency does not withdraw it as hereinafter provided, it shall be assigned to the appropriate disposal agency and disposed of under other applicable regulations of the Administrator. Where a landing area is used in connection with an industrial installation, the Administrator shall determine whether to classify such landing area and its airport facilities as airport properties for disposal under this part, or whether to classify the landing area otherwise and assign it for disposal by the appropriate disposal agency.

§ 8316.13 *Disposal as airport property subject to reservations, restrictions, and conditions.* (a) If the Administrator classifies the property for disposal as an airport, there shall be imposed on the disposal of the airport property a condition that there shall be no exclusive right for the use of any landing area or air navigation facilities upon which Federal funds have been expended; and there shall also be imposed any or all of the reservations, restrictions, and conditions requested pursuant to § 8316.10 hereof and approved by the Administrator; and the disposal agency shall immediately undertake to so dispose of it as such. Notice of availability shall be given to Government agencies listed in Exhibit A hereto; and to the State and political

subdivisions and any municipality in which it is situated and to all municipalities in the vicinity thereof; and to the general public.

(b) In the event (1) the Administrator does not classify the property for disposal as airport property when so requested, or (2) does not approve any or all of the requested reservations, restrictions, and conditions, or (3) the disposal agency finds that it is unable to dispose of the property with the reservations, restrictions, and conditions imposed under § 8316.10 or as an airport, the owning agency shall be notified, and the owning agency may, if it desires, withdraw such airport property from surplus on making reimbursement for the cost of care and handling, or recommend the elimination or modification of such reservations, restrictions, and conditions, or the disposal of the property otherwise than as an airport. In cases arising under subparagraph (3) above, the disposal agency shall also notify the Administrator.

(c) Where the owning agency has withdrawn the airport property from surplus pursuant to the provisions of paragraph (b), and later re-declares such property surplus, with or without requesting conditions for its disposition, the Administrator shall determine the terms and conditions upon which it shall be disposed of and the proper classification to be given and shall assign it to the appropriate disposal agency for disposal.

(d) The disposal agency shall widely publicize the airport property, giving information adequate to inform interested or prospective transferees as to the general nature of the property, and any reservations, restrictions, or conditions that have been imposed as to its future use. Such publicity shall be by public advertising, and may include press releases, direct circularization to potential transferees, and personal interviews. The disposal agency shall upon request supply to bona fide prospective transferees all available information. The disposal agency shall establish procedures so that all prospective transferees showing due diligence will be given full and complete opportunity to bid.

(e) All priority holders and any other persons interested in purchasing the airport property shall submit their proposals in writing, setting forth the details of their offers and their willingness to abide by the terms, conditions, and restrictions upon which the property is offered.

§ 8316.14 *Care and handling.* (a) (1) Until the disposal agency is prepared to assume responsibility for care and handling and accountability and so notifies the owning agency, the owning agency shall continue to be responsible therefor. The disposal agency shall have access to the property and the records of the owning agency with respect thereto.

(2) The agency then charged with the responsibility for care and handling shall make or cause to be made repairs necessary for the protection and maintenance of the property. It shall give careful consideration to what improvements or changes may be necessary for the completing, converting, or rehabilitating of the property in order best to attain the applicable objectives of the act, and may make commitments and expenditures within its budgetary allotment for such purposes to effect such improvements or changes; *Provided, however,* That no commitments for more than $10,000 of any such budgetary allotment shall be made by such agency for any such changes and improvements in connection with any one airport without prior approval of the Administrator in writing.

(3) The agency then charged with the responsibility for care and handling of surplus airport property shall submit to the Administrator for consideration and direction the renewal of leases or the exercise of options relating to surplus airport property, with the recommendations of such agency.

(4) The disposal agency shall pay the owning agency for the cost of care and handling surplus airport property subsequent to its declaration as such under Part 8301, including rental and taxes when due, until accountability and responsibility for such property is assumed by the disposal agency.

(b) *Transfer of title papers, documents, etc.* Upon request of the disposal agency, the owning agency shall immediately supply the disposal agency with the originals or true copies of all information and documents pertaining to the airport property which are in the possession of the owning agency and copies of which have not been filed with the declaration. These shall include appraisal reports, abstracts of title, maps, surveys, tax receipts, deeds, affidavits of title, copies of judgments, declarations of taking in condemnation proceedings, and all other title papers relating to the property. All such papers and documents which may still be needed by the owning agency shall be returned to it as soon as the needs of the disposal agency have been satisfied. The disposal agency may transfer to the purchaser of airport property, as part of the disposal transaction, any abstract of title or title guarantee which relates to the property being transferred and which is no longer needed either by the owning or by the disposal agency.

§ 8316.15 *Priorities.* (a) Government agencies shall be accorded first priority, and State and local governments, including any municipality in which the property is located and all municipalities in the vicinity thereof, second priority to acquire surplus airport properties. If the airport is offered for disposition subject to any or all of the conditions contained in § 8316.10, all priorities shall be exercised subject to such conditions.

(b) *Time and method of exercise.* The time for exercise of priorities by Government agencies or State or local governments shall be a period of thirty (30) days after the date of notices of availability given to them respectively, which notices may run concurrently; or such additional period as the disposal agency or the Administrator may allow when necessary or appropriate to complete proposals made, and in order to facilitate disposition of the property. Within such period the priority holder shall indicate his intention to exercise the priority by making an offer or by submitting to the disposal agency a written application requesting that the airport property be held for disposal to it. Such offer or application shall state the terms on which the applicant is willing to acquire the property, or state that a transfer without reimbursement or transfer of funds is authorized by law, and shall contain all pertinent facts pertaining to the applicant's need for the property. If the applicant requires time to acquire funds or to obtain authority to take the property, it shall so state and indicate the length of time needed for that purpose. Upon receipt of an offer or an application, with such a statement, the disposal agency shall review the application, determine what time, if any, shall be allowed the applicant to conclude the acquisition of the property, and advise the applicant of such determination. All priorities shall expire if not exercised within the priority period and such additional time as the disposal agency may allow.

(c) *Determination between claimants having same priority.* Whenever two or more Government agencies or two or more State or local governments, respectively, shall during the priority period make acceptable offers for the same property, the matter shall be determined on the basis of the relative needs of the claimants and the public interest to be served. If the matter cannot be determined by agreement between the claimants, disposal of such property shall not be made until the disposal agency shall have reported the matter in writing to the Administrator, setting forth its recommendations and all the facts, including the basis of the respective claims, together with any statements in writing that the claimants or any of them may wish to file with the Administrator. The Administrator will review the matter and report his determination to the disposal agency. The Administrator's determination shall be final for all purposes.

§ 8316.16 *Permits to operate or use.* (a) Pending the disposition of surplus airport property by sale or lease, the owning agency, prior to the date accountability is assumed by the disposal agency, and the disposal agency thereafter, may (1) grant a revocable permit to maintain and operate the landing area and airport facilities included within any surplus airport property as a public airport to a Government agency or State or local government evincing an interest in acquiring the property with or without cash payment and on such terms as the accountable agency deems proper, or (2) grant a revocable permit for the landing area and airport facilities to be used for the landing, take-off, servicing, and operation of duly licensed aircraft.

(b) Permits or licenses to operate the property under subparagraph (1) or to use the facilities under subparagraph (2) shall be subject to the approval of the Administrator and to compliance by the licensees with all laws, ordinances, or other applicable regulations.

§ 8316.17 *Valuation.* (a) No appraisal need be made where transfer to a Government agency without reim-

bursement or transfer of funds or disposal to a State or local government without a cash payment is contemplated. If it is determined that the property will not be so transferred or disposed of, the disposal agency shall establish its estimate of the fair value of the property.

(b) The estimate of fair value shall represent the maximum price which a well-informed buyer, acting intelligently and voluntarily, would be warranted in paying if he were acquiring the property for long-term investment or for continued use in the light of the obligations to be assumed by the buyer.

(c) If at any time prior to the sale of an airport property conditions affecting its value change, the disposal agency shall modify its estimate accordingly.

(d) For the purpose of establishing its estimate of fair value of the property, the disposal agency may utilize the services of its own staff, the staff of another Federal agency or, where deemed necessary, independent appraisers, and shall maintain an adequate written record to support its estimate. Each such appraisal record or report shall contain the appraiser's certificate that he has no interest, direct or indirect, in the property or its sale. In cases where owning agencies submit appraisal reports which contain adequate and reliable information, the disposal agency may use such information in establishing its estimate of the fair value of the property.

§ 8316.18 *Prices.* (a) The disposal agency shall determine the price at which a disposal of an airport property shall be made.

(b) Sale of an airport property as an airport to a buyer entitled to a priority shall be at a price which is substantially the same as the estimate of fair value, except that (1) a transfer to another Government agency without reimbursement or transfer of funds may be made where authorized by law, or (2) upon the authorization of the Administrator the disposal agency shall dispose of airport property to any State or local government without a cash payment in consideration of the acceptance by such State or local government of all reservations, restrictions, and conditions imposed by the Administrator.

(c) Sale of an airport property as an airport to any purchaser other than a buyer entitled to a priority shall be at a price approximating the estimate of fair value as established by the disposal agency and shall be made at the highest price obtainable, except that the applicable objectives of the act may be taken into consideration in rejecting offers regardless of their amounts or in selecting a buyer from among equal bidders. Sales under this paragraph shall be for a monetary consideration.

§ 8316.19 *Submission to Attorney General.* Whenever any disposal agency shall begin negotiations for the disposition to private interests of an airport property which cost the Government $1,000,000 or more, the disposal agency shall promptly notify the Attorney General of the proposed disposition and the probable terms or conditions thereof, and of the extent and nature of the facilities installed or provided thereon.

§ 8316.20 *Form of transfer.* Deeds or instruments of transfer shall be in the form approved by the Attorney General. Transfers of title shall be by quit-claim deed where the airport property is transferred without a cash payment. If in other cases the disposal agency finds that a warranty deed is necessary to obtain a reasonable price for the property or to render the title marketable, such form of deed may be used where recommended and approved by the Attorney General as provided in the act.

§ 8316.21 *Conditions in instrument of transfer.* Any deed, lease, or other instrument executed to transfer airport property pursuant to any disposal made under this part, containing reservations, restrictions, or conditions as to the future use or maintenance of the property, shall contain provisions in effect:

(1) That upon a breach of any of the reservations, restrictions, or conditions by the immediate or any subsequent transferee, the title, right of possession, or other right transferred shall at the option of the Government revert to the Government upon demand; and

(2) That any such airport property may be successively transferred only with the approval of the Civil Aeronautics Administration or the successor Government agency and with the proviso that any such transferee assumes all the obligations imposed by the disposal agency in the disposal to the original purchaser.

§ 8316.22 *Records and reports.* Owning and disposal agencies shall prepare and maintain such records as will show full compliance with the provisions of this part as to each disposal transaction. The information in such records shall be available at all reasonable times for public inspection. Reports shall be prepared and filed with the Surplus Property Administrator in such manner as may be specified by order issued under this part subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

§ 8316.23 *Regulations by agencies to be reported to the Administrator.* Each owning agency and each disposal agency shall file with the Administrator copies of all regulations, orders, and instructions of general applicability which they may issue in furtherance of the provisions, or any of them, of this part.

§ 8316.24 *Exceptions.* Exceptions to any portion of the procedure herein may be made by direction of the Administrator where such exception would not be in violation of the act.

This part shall become effective November 16, 1945.

W. STUART SYMINGTON,
Administrator.

NOVEMBER 16, 1945.

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Appendix J ► DoD Base Realignment and Closure (BRAC)

Department of Defense Base Realignment and Closure (BRAC)
Fiscal Years 1988, 1991, 1993, 1995
Status of Transition of Military Airfields to Civil Airports

Military Airport Property Transferred to Civil Sponsor by Deed

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. R/Ws	Civilian Airport Name	Arpt Role	Loc. ID
1	Fritzsche AAF	Marina, CA	91	95	1	Marina Municipal	GA	OAR
2	Norton AFB	San Bernardino, CA	88	94	1	San Bernardino Intl	R	SBD
3	Williams AFB	Phoenix, AZ	91	93	3	Williams Gateway	R	IWA
4	Cecil Field NAS	Jacksonville, FL	93	98	4	Cecil Field	R	VQQ
5	K.I. Sawyer AFB	Gwinn, MI	93	95	1	Sawyer Airport	PR	SAW
6	Memphis NAS	Millington, TN	93	95	1	Millington Municipal	GA	NQA
7	England AFB (50%)	Alexandria, LA	91	92	2	Alexandria International	PR	AEX
8	Bergstrom AFB (37%)	Austin, TX	91	93	2	Austin-Bergstrom International	PR	AUS
9	Barbers Point NAS	Oahu, HI	93	97	3	Kalaeloa	GA	JRF
10	Agana NAS	Agana, GU	93	98	2	Guam International	PR	GUM
Military Airport Property Transferred to Civil Sponsor by Long Term Lease								
11	Chanute AFB,	Rantoul, IL	88	93	2	Rantoul National Aviation Center	GA	2I5
12	George AFB	Victorville, CA	88	92	2	Southern California Logistics	R	VCV
13	Mather AFB	Sacramento, CA	88	93	2	Sacramento Mather	R	MHR
14	Pease AFB	Portsmouth, NH	88	91	1	Pease International Tradeport	CM	PSM
15	Castle AFB	Merced, CA	91	95	1	Castle Airport	GA	MER
16	Eaker AFB	Blytheville, AR	91	92	1	Arkansas International	GA	BYH
17	Myrtle Beach AFB	Myrtle Beach, SC	91	93	1	Myrtle Beach International	PR	MYR
18	Rickenbacker AFB	Columbus, OH	91	94	2	Rickenbacker International	R	LCK
19	Wurtsmith AFB	Oscoda, MI	91	93	1	Oscoda-Wurtsmith	GA	OSC
20	Tipton AAF	Odenton, MD	88	95	1	Tipton Airport	R	FME
21	Plattsburgh AFB	Plattsburgh, NY	93	95	1	(Runway currently closed to Public)	GA	PBG

Military Airport Property Transferred to Civil Sponsor Joint Use Agreement								
22	Grissom AFB	Peru, IN	91	94	1	Grissom ARB (Grissom Aeroplex)	GA	GUS
23	March AFB	Riverside, CA	93	96	1	March ARB (March Inland Port)	R	RIV
24	Blackstone AAF	Blackstone, VA	95	97	2	Allen C. Parkinson / BAAF	GA	BKT
Military Airport Property Expected to be Transferred to Civil Sponsor Planning Underway								
25	Griffiss AFB	Rome, NY	93	95	1		GA	RME
Military Airport Property That Could be Transferred to Civil Sponsor Planning Underway								
26	El Toro MCAS	Santa Ana, CA	93	98	5		R	OCX
27	Dallas NAS	Ft. Worth, TX	93	95	1		R	NBE
28	Warminster NADC	Philadelphia. PA	91	94	1		GA	NJP
29	Adak NAS	Adak Island,AK	95	98	2		CM	ADK
30	Allen AAF	Fort Greely, AK	95		1	Realigned Airfield	GA	BIG
Military Airfields With Potential for Joint Civil/Military Use								
31	Gray AAF (Ft Hood)	Killeen, TX	Not	BRAC	1	Use by ACs – suppl'ent Killeen Muni	PR	BIF
32	Phillips AAF	Aberdeen Prov. MD	Not	BRAC	1	Harford County	GA	APG
33	Malmstrom AFB	Great Falls, MT	95		1	Realigned airfield	GA	GFA
Military Airfields Converting to Civil Use – Not Open for Public Use								
34	McClellan AFB	Sacramento, CA	95	00	1	(Private Use)	GA	MCC
35	Kelly AFB	San Antonio, TX	95	99	1	(Private Use Airport)	GA	SKF
36	Moffett NAS	San Jose, CA	91	94	2	Transferred to NASA	NA	NUQ
37	Loring AFB	Loring, Maine	91	94	1	Loring International (Private use)	GA	LIZ
38	Reese AFB	Lubbock, TX	95	97	3		GA	REE
39	Calverton NWIRP	Calverton, NY	N/A		2	--Surplused by Special Legislation	GA	CTO
Excess Military Assets With Minimal Conversion Potential for Civil Airport Use								
40	Hamilton AAF	San Francisco, CA	88	93	1	No local airport sponsor		SRF
41	Alameda NAS	Alameda, CA	91	97	2	No local airport sponsor		NGZ
42	Chase NAS	Beeville, TX	91	92	3	No local airport sponsor		NIR
43	Moore AAF (Ft. Devens)	Boston, MA	91	95	1	No local airport sponsor		AYE
44	Richards-Gebaur ARB	Kansas City, MO	91	94	1	Richards-Gebaur Memorial (Closed Jan2000)		GVW
45	Tustin MCAS	Tustin, CA	91	99	1	No local airport sponsor		NTK
46	Glenview NAS	Glenview, IL	93	97	2	No local airport sponsor		NBU
47	So. Weymouth NAS	So. Weymouth, MA	95	97	2	No local airport sponsor		NZW
48	Seneca AAF	Romulus, NY	95	00	1	No local airport sponsor		SSN
49	Homestead AFB	Homestead, FL	93	94	1	Homestead Regional		HST

Former Military Airfields Receiving Military Airport Program Funding (Non-BRAC) and Hence Obligated by Grant Assurances					
1.	*Stewart Int'l (SWF)*	Newburgh, N.Y.	05-30-91	1995	21.0
2.	Ellington Field (EFD)	Houston, TX	07-03-91	1995	15.81
3.	Albuquerque Int'l (ABQ)	Albuquerque, NM	09-20-91	1995	14.20
4.	Manchester (MHT)	Manchester, NH	09-24-91	1995	15.63
5.	Lincoln Municipal (LNK)	Lincoln, NE	09-26-92	1996	11.76
6.	Laredo Int'l (LRD)	Laredo, TX	09-20-93	1997	18.53
7.	Smyrna Airport (MQY)	Smyrna, TN	09-20-93	1997	6.73762
8.	Chippewa Co. Int'l (CIU) (Kincheloe, MI)	SaultSte Marie, MI	09-30-98	2002	3.130445
Joint Use Military Airfields Receiving Military Airport Program Funding ***And Hence Obligated by Grant Assurances***					
1.	Mid America (Scott AFB) (BLV)	Belleville, IL	09-19-91	1995	25.0
2.	Gray AAF	Killeen, TX			0

How Can Base Realignment and Closure (BRAC) Property be Used for a Public Airport?

One of the most common and effective reuses of an Air Force installation is as a public airport. This reuse extensively uses existing facilities and can be obtained at no cost through a public airport conveyance, subject to support by the Federal Aviation Administration (FAA).

Who can receive a public airport conveyance?

The appropriate public agency that will operate the airport (e.g., an airport authority) will generally be the recipient. If a local redevelopment authority (LRA) has such powers, it may receive the airport property.

What's the process for obtaining property as a public airport?

An LRA should consult with the Air Force Real Property Agency (AFRPA) and the FAA as soon as a public airport is identified as a likely reuse. AFRPA provides the FAA with a description of the installation property and facilities. FAA reviews the regional and national air traffic patterns, plans, and projections and considers the effects (beneficial and adverse) of converting the installation to a public airport. Based on these considerations, the FAA determines whether the installation airfield is suitable for conversion to public use. FAA then informs AFRPA and the LRA of its findings. If the FAA finds that the installation is suitable for use as a public airport, the LRA may request FAA funding of an Airport Master Plan. Funding of plans is provided through the Airport Improvement Program (AIP), from the Aviation Trust Fund. If funding is granted, the LRA (or other local airport authority) may proceed with development of

its Airport Master Plan, including an Airport Layout Plan, in cooperation with the FAA. The Master Plan will include the property and facilities specifically required for aviation operations, as well as additional property needed to develop sources of revenue from nonaviation businesses (nonaviation revenue-generating property) in order to support aviation operations. The plan should be coordinated with other ongoing redevelopment planning to ensure that all proposed land uses are compatible. The authority submits the completed plan and application for public airport conveyance to AFRPA for review, and AFRPA forwards the application to FAA. The application must demonstrate a financial need for the nonaviation revenue-generating property, i.e., the cost of supporting aviation operations requires the income that would be created on the additional real estate. AFRPA, if necessary, can help facilitate resolution of any conflicts among the two parties (FAA and LRA) regarding property boundaries, particularly with respect to the amount of nonaviation revenue-generating property.

Who decides whether to grant a public airport conveyance?

Upon request from AFRPA, the FAA formally recommends to AFRPA, in writing, whether the property should be conveyed for public airport purposes, with the use conditions it deems appropriate. If the FAA accepts the authority's application, it will recommend that AFRPA transfer the property at no cost to the appropriate local authority. The accepted application and Airport Master Plan should be incorporated into the community's redevelopment plan. AFRPA will issue a formal Record of Decision (ROD) if it decides to grant a public airport conveyance. FAA issues its own ROD to indicate that the property is essential, suitable, or desirable for airport purposes. AFRPA is then responsible for ultimate transfer of the airport property directly to the recipient airport authority, although FAA may request an opportunity to review the proposed deed of conveyance.

What conditions apply to public airports?

Property conveyed for use as a public airport will be subject to restrictions imposed by the FAA. Standard provisions include that the property may not be used for other purposes without FAA consent, and that the airport must be for use by the general public. Failure to comply with the FAA's use restrictions will result in the property reverting to the federal government. In addition, FAA will only recommend for transfer those parcels that are directly necessary for aviation operations or for those nonaviation revenue-generating activities that are required to offset the costs of the aviation operations. Disputes concerning appropriate property boundaries should be resolved among FAA, AFRPA, and the airport sponsor. Funds from the Aviation Trust Fund can be used for Airport Improvement Program (AIP) eligible construction projects at public airports included in the National Plan of Integrated Airport Systems.

What if FAA doesn’t approve the public airport?

If FAA initially determines the airfield to be unsuitable for public use, FAA will not consider the property further for public airport use and will not make a positive recommendation to the Air Force. Without the FAA's recommendation, the Air Force cannot convey property by a public airport conveyance. The LRA may wish to seek alternate disposal mechanisms for the airfield, including sale for private use.

Appendix J-1 ► Airport Joint Use Agreement for Military Use of Civilian Airfields

NATIONAL GUARD BUREAU
AIR NATIONAL GUARD PAMPHLET 32-1001
8 APRIL 2003

AIRPORT JOINT USE AGREEMENTS FOR MILITARY USE OF CIVILAN AIRFIELDS

This pamphlet implements AFPD 10-10, *Civil Aircraft Use of United States Air Force Airfields*, and AFPD 32-10, *Installations and Facilities*, and applies to Air National Guard (ANG) flying units that operate on public airports. This pamphlet provides guidance for negotiating fair and reasonable charges to the government (AF) for joint use of the flying facilities of a public airport.

SUMMARY OF REVISIONS

This document is substantially revised and must be completely reviewed. It adds clarification of responsibilities, standard forms and processes, allowable costs and calculation procedures. It corrects policy with regard to local operations agreements, joint participation projects and long-term leases.

1. General.

1.1. Title 49, United States Code (U.S.C.), Chapter 471, ‘Airport Development (Title 49 U.S.C., Sections 47101-47129), provides that each of the airport’s facilities developed with financial assistance from the United States Government and each of the airport’s facilities usable for the landing and taking off of aircraft always will be available without charge for use by government aircraft in common with other aircraft, except that if the use is substantial, the government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used.

1.2. Federal Aviation Administration (FAA) Grant Assurance 27, *Use by Government Aircraft*, defines substantial use as any one of the following:

1.2.1. Five (5) or more government aircraft regularly based at the airport or on land adjacent thereto

1.2.2. The total number of movements (counting each landing as a movement) of government aircraft is 300 or more in a month.

1.2.3. The gross accumulative weight of government aircraft using the airport (the total movement of government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds in a month.

1.3. Where the ANG has aircraft permanently assigned on a civilian airport, substantial use will be acknowledged and a payment agreement made to reimburse the airport for a reasonable share, proportionate to the total military use (assigned and transient), of the cost of operating and maintaining the facilities used.

2. Responsibilities and Authorities.

2.1. Deputy Assistant Secretary of the Air Force Installations, (SAF/IEI), is responsible for policy and oversight for the Air Force's installation programs and is the approval authority for Airport Joint Use Agreements (AJUAs). All negotiated agreements must be submitted in writing to SAF/IEI for approval prior to signature by the concerned parties

2.2. Air Force General Counsel, (SAF/GCN) will be a coordinating office on negotiated agreements to ensure they are legally sufficient prior to approval by SAF/IEI.

2.3. The Air National Guard Civil Engineer, (ANG/CE) is responsible for negotiation of agreements where a based ANG unit is the host. Negotiations will be coordinated with all other military units assigned at or operating from the location. Authority to negotiate agreements and renewals will not be delegated to the field unit.

2.4. United States Property and Fiscal Officer (USPFO), will act in a advisory role during negotiations for ANG and Army National Guard units, but will have no authority to conduct negotiations or agree to terms and conditions for the AJUA.

2.5. ANG Units. The Base Civil Engineer (BCE) will facilitate data collection and meetings, but will have no authority to conduct negotiations or agree to terms and conditions for the AJUA. Operations personnel will assist in collecting flight data and validating percentage of flying by non-ANG units. Various base offices will assist in calculating the value of ANG provided services

3. Standard Procedures and Formats.

To ensure consistency among agreements, all AJUAs will follow
a standard process for calculation of fees and a standard format agreement (**Attachment 2**).

3.1. Air National Guard Civil Engineer Programs Division (ANG/CEP) will initiate renewal negotiations with airport owner/operators not less than one (1) year prior to the expiration of the AJUA then in effect. The new AJUA should be signed by all parties prior to the expiration of the existing agreement.

3.1.1. When a renewal can not be completed prior to expiration of the existing agreement, the unit must take steps to ensure all payments are terminated.

3.1.2. If fiscal years are crossed while negotiations are ongoing, funds in the budget for each year should obligated via AF Form 406, *Miscellaneous Obligation/Reimbursement Document (MORD)*, in accordance with Defense Finance and Accounting Service DFAS-DE 7010.2-R,

Commercial Transactions at Base Level, until a final fee is agreed to. Missed payments are then made with these properly obligated funds.

3.1.3. When a renewal can not be completed prior to expiration of the existing agreement, Title 42
U.S.C., Chapter 15A, Subchapter 1, Sec. 1856b allows a unit that is the primary source of fire protection on the airport to continue to respond to civil aircraft emergencies.

3.2. Mid-term renewals can be requested by either the government (ANG) or the airport if services provided or costs incurred have changed significantly. Both parties must agree to a mid-term renegotiation.

3.3. The renewal process will be completed in four phases.

3.3.1. Phase 1 - Data Collection. A copy of this pamphlet and associated cost worksheet will be provided to each airport prior to negotiations. The cost worksheet and control tower operations information must be collected by the airport and unit and forwarded to ANG/CEP prior to scheduling a negotiation meeting.

3.3.1.1. If the airport has an alternative budget document that clearly delineates joint use area operations and maintenance costs, it can be submitted in lieu of the cost worksheet.

3.3.1.2. Control tower operations information should include, as a minimum, the total number of military operations for an entire fiscal or calendar year and the total number of all operations for the same period.

3.3.2. Phase 2 - Negotiation. A team from ANG/CEP will meet with unit representatives and airport officials to reach an agreement in principal – new fee and term of agreement. This phase generally concludes in a single meeting, but can require several meetings if additional data is required or there is disagreement over the cost calculation.

3.3.3. Phase 3 - Draft Agreement. When an agreement in principal is reach, ANG/CEP will produce a draft document using the standard format at **Attachment 2**. This draft will be sent electronically to the unit and airport officials for review. When the draft is approved by all parties, it will be sent to SAF/IEI for approval to execute.

3.3.4. Phase 4 - Final Agreement. After SAF/IEI approval, three originals of a final document will be forwarded to the unit for signatures. Following final signature by ANG/CE, originals will be provided to the unit base civil engineer (BCE), the airport authority and one will be maintained in ANG/CEP.

3.3.4.1. Government signatures on the document are the Adjutant General, the United States Property and Fiscal Officer (coordination only) and ANG Civil Engineer (final signature on behalf of the Chief, Air National Guard).

3.3.4.2. Airport signatures can vary depending on local requirements. Requested signature blocks should be identified by the airport during the draft review.

3.4. If negotiations reach an impasse, the issue will be referred to the Air Force Audit Agency (AFAA) for a management advisory service (MAS). AFAA will review all airport and military costs and operations and issue a determination on the appropriate fee. This determination will be binding on the ANG and will limit any further negotiations.

4. Allowable Costs and Cost Sharing

4.1. The AJUA is not a contract or federal award. It is a payment document. As such it does not require a contracting warrant for execution and is not subject to the cost accounting principals of Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments.*

4.2. The AJUA fee will be determined by multiplying the airport's operations and maintenance costs for the jointly used areas by the percentage of military operations and subtracting appropriate credits for military provided services.

4.3. ANG will share in appropriate direct costs of operating and maintaining the jointly used areas. **Attachment 3** is a guide to calculating allowable costs. This is just a guide and is not necessarily all inclusive. Additional categories may be included, but must be accompanied by supporting documentation. Alternative budget documents produced by the airport for other purposes may be submitted in lieu of this worksheet if they clearly delineate direct joint use area costs from all other airport costs.

4.3.1. Direct costs do not include the overhead costs of operating the airport such as:

4.3.1.1. Indirect costs (consulting fees, professional fees, environmental fines, training, facility maintenance, etc.)

4.3.1.2. Administrative overhead (administrative salaries, marketing, travel, postage, janitorial, telephone, office supplies, uniforms etc.)

4.3.1.3. Authority accounting (profit, overhead, debt service, depreciation, deferred maintenance, contingencies, etc.)

4.3.1.4. Insurance (liability or fire)

4.3.2. The jointly used areas are generally only the runways and taxiways of the airfield.

4.3.2.1. Jointly used area costs do not include commercial areas such as terminals, parking ramps, maintenance hangars, parking garages, etc.

4.3.2.2. Certain features of the airfield will not be excluded from the cost calculation simply because they are not routinely used by the based military aircraft. Example: the maintenance costs and traffic counts associated with a runway that is too short for the based aircraft will not be excluded since it could be used by military aircraft from other units.

4.3.3. Where the airport, at the military's written request, provides a service specifically and solely for the benefit of the military, 100% of the airport's expense can be claimed under the AJUA. Specific supporting documentation of actual costs must be provided by the airport to justify these 100% line items.

4.4. Proportionate use is defined as the percentage of military operations. This will be calculated by dividing the total number of military operations by the total number of all operations as shown in a tower count for an entire fiscal year or calendar year.

4.4.1. Weight based calculations will not be allowed. The operations and maintenance costs covered by the AJUA are not affected by aircraft weight so it is not an appropriate metric for determining the military proportionate use.

4.4.2. Each unit that contributes to the total percentage of military operations, regardless of service, component or home station, will be individually responsible for their portion of the fee. The host, in most cases ANG, will be responsible for negotiating on behalf of all military users, but is not responsible for paying the whole fee. The total fee will be prorated to all military users based on their proportion of the military tower count.

4.4.3. Where helicopter operations are included in the military tower count, each helicopter operation will be counted on an equal basis with fixed wing aircraft. No discount will be given since the costs covered under the AJUA are not dependent on the weight of the aircraft. The only exception to this rule would be a location where the helicopter unit has it's own landing pads and does not use the joint areas of the airport in any way. In this case, the helicopter count should be eliminated from the tower counts.

4.5. Proportionate use by the government will be offset by any significant contributions in kind provided by the military (fire protection services, control tower operations, weather services, snow removal equipment and operations, etc.).

4.5.1. The offset for provided services is based on the value of the cost avoidance to the airport.
Only the portion of a service the airport would be required to supply per FAA rules can be considered an offset to the AJUA fee. Example: if the military fire department is primary on the airfield and the station has 24 people, but FAA would only require a station with 16, then the offset would be the value of salaries, vehicles, equipment, etc., for 16 people.

4.5.2. Where fire protection is provided under a mutual aid agreement, the costs for either party (airport or ANG unit) will be considered as offsetting. Fire protection will not be a part of the cost calculation and the final agreement will only make reference to the mutual aid agreement.

4.5.3. Only direct costs of providing the services will be considered when determining the offset since only direct airport costs are allowed as part of the AJUA fee.

4.6. An inflation clause can be added to the calculated fee if all calculations are done using past year actual cost figures. If the calculation uses projected budget figures then inflation is already included and will not be added again.

4.6.1. The maximum inflation allowable is the Air Force (AF) recognized consumer price index value. This will be added to each year's fee over the term of the agreement and then converted back to a level annual payment to simplify accounting.

5. Terms and Conditions.

5.1. AJUA payments can be made in a variety of ways depending on local requirements or desires
(monthly, quarterly, annually). The standard document assumes payments will be made in arrears.
Payment in advance can be allowed if additional language is added to the agreement stipulating a pro-rata return of the payment in the event of early termination.

5.2. AJUAs will normally be for a period of five (5) years. AJUAs may be negotiated for a shorter period if there is sufficient justification provided by the airport. Longer AJUAs may be negotiated at the mutual agreement of both parties.

5.3. If requested by both parties, a separate operations agreement can be drafted and signed at the local level. This operations agreement can cover such issues as airfield access and security, emergency procedures, snow plans, master planning arrangements, etc. but will not include any financial provisions. This agreement can be referenced in the AJUA if the signed document is submitted with the AJUA for staffing.

5.4. Where fire protection is provided by the ANG or the airport exclusively, the local unit may draft and sign a separate fire operations agreement. This agreement can cover operational issues but will not include any financial provisions. This agreement can be referenced in the AJUA if the signed document is submitted with the AJUA for staffing.

5.5. Where air traffic control services are provided by the ANG, either through an air traffic control squadron or by contract services, the local unit may draft and sign a separate air traffic control operations agreement. This agreement can cover operational issues but will not include any financial provisions. This agreement can be referenced in the AJUA if the signed document is submitted with the AJUA for staffing.

6. Related Issues - Major Repairs, New Construction and Leases.

6.1. The AJUA covers operations and maintenance costs only. Major repair and/or new construction projects required in the jointly used areas of the airport are not included in the AJUA. ANG contribution to any such project will be negotiated and covered in a separate written agreement with the owner/operator of the airport at the time the work is required. No offsets to the AJUA fee will be sought for joint participation in these projects. No increase in the AJUA fee will be granted for projects completed by the airport or the depreciation associated with them.

6.1.1. Joint participation projects will be completed using a military construction cooperative agreement (MCCA). These agreements are separate and distinct from the AJUA and must be able to stand the audit test on their own merit. MCCAs can be initiated by the local BCE and are submitted to ANG/CEP for approval and programming.

6.1.2. Joint participation projects will be evaluate for approval based on three criteria. There must be a military need for the project, the project must not be eligible for Airport Improvement Project (AIP) funding through FAA, and there must be federal funds available for the project.

6.1.2.1. If a project is eligible for FAA funding under the AIP program then the maximum federal participation will be provided by FAA. ANG will not offset the FAA share of the project and cannot, by law, offset the minimum contribution required by the airport.

6.2. Long-term leases for property occupied by ANG units are separate and distinct from the AJUA. While some AJUAs do run concurrently with the lease, they are separate programs and are not dependent upon each other. No offset to the AJUA fee will be sought for lease payments made and no increase in AJUA fee will be granted to the airport to supplement lease payments.

6.2.1. In most cases, lease payments for property occupied by the ANG unit is at a nominal rate ($1 per year). This is consistent with FAA policy, which states that aviation related military units are not required to pay fair market value for leased property. This practice does not violate FAA Grant Assurances.

DANIEL JAMES, III, Lieutenant General, USAF
Director, Air National Guard

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Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

AFPD 10-10, Civil Aircraft Use of United States Air Force Airfields
AFPD 32-10, Installations and Facilities
AFI 10-1001, Civil Aircraft Landing Permits
AFI 10-1002, Agreements for Civil Aircraft Use o f Air Force Airfields
AFRCPAM, 32-1001, Airport Joint Use Agreements

Abbreviations and Acronyms

AF—Air Force
AFAA—Air Force Audit Agency
FAA—Federal Aviation Administration
AIP—Airport Improvement Program
ANG—Air National Guard
AJUA—Airport Joint Use Agreement
BCE—Base Civil Engineer
DFAS—Defense Finance and Accounting Service
FAA—Federal Aviation Administration
MAS ––Management Advisory Service
MCCA ––Military Construction Cooperative Agreement
MORD ––Miscellaneous Obligation/Reimbursement Document
OMB—Management and Budget
U.S.C.—United States Code
USPFO—United States Property and Fiscal Officer

Terms

Airport Joint Use Agreement (AJUA)—An agreement between a military unit stationed at a civilian airport that delineates responsibilities and outlines payment arrangements pursuant to the requirements of Title 49 U.S.C., Section 47101-47129.

Joint Participation Project—Major repair or new construction efforts done on the jointly used areas that are jointly funded by the airport and the military.

Joint Use Areas—The areas of a civilian airport that are jointly used by civilian and military aircraft. This area is generally limited to the runways and taxiways.

Operations and Maintenance Costs—Costs incurred in the daily operation and recurring maintenance of jointly used areas.

Percentage of Military Operations—Taking numbers from the official control tower counts, divide the total number of military operations (local and itinerant) by the total number of all

operations (air carrier, air cargo, general aviation and military in both local and itinerant categories).

Substantial Use—A situation where a military unit has s significant enough impact on a civilian airport that reimbursement for operations and maintenance costs is warranted. It is further defined by FAA Grant Assurance 27, *Use by Government Aircraft*.

Attachment 2

STANDARD TEMPLATE AIRPORT JOINT USE AGREEMENT BETWEEN AIRPORT AUTHORITY AND UNITED STATES OF AMERICA

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AIRPORT JOINT USE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of ________, 200_, by and between the
______________________("Authority"); and the UNITED STATES OF AMERICA, acting by and through the Chief, National Guard Bureau, and the STATE OF ____________, acting by and through its Adjutant General (collectively, "Government").

RECITALS

a. The (Authority) owns and operates _____________ Airport ("Airport"), located in the City of ________, State of _______.

b. Title 49, United States Code, Chapter 471, "Airport Development," (Title 49 U.S.C., Sections 47101-47129), provides that each of the Airport's facilities developed with financial assistance from the United States Government and each of the Airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by government aircraft in common with other aircraft, except that if the use is substantial, the government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facilities used.

c. The government requires substantial use of the flying facilities at the Airport for the _________ Air National Guard, as well as for other occasional transient government aircraft.

d. The (Authority) is agreeable to such substantial use, in common with other users of the Airport, of the flying facilities by the government under this agreement.

e. The government and the (Authority) desire to provide for the delineation of responsibility for operation and maintenance of the flying facilities jointly used in common with others at the Airport, and to establish the government's reasonable share, proportional to such use, of the cost of operating and maintaining such jointly used flying facilities.

AGREEMENT:

1. DEFINITIONS

For purposes of this Agreement, the Jointly Used Flying Facilities of the Airport are the runways, taxiways, lighting systems, navigational aids, markings and appurtenances open to public use and use by the government, including all improvements and facilities pertaining thereto and situated thereon and all future additions, improvements, and facilities thereto as may be added or constructed from time to time. The Jointly Used Flying Facilities do not include land areas used exclusively by the government or the terminal buildings, hangars, non-government parking aprons and ramps, or other areas or structures used exclusively by the (Authority) or its lessees, permittees, or licensees for civilian or commercial purposes.

2. JOINT USE

Subject to the terms and conditions of this Agreement, the government shall have the use, in common with other users of the Airport, present and prospective, of the Jointly Used Flying Facilities, together with all necessary and convenient rights of ingress and egress to and from the Jointly Used Flying Facilities and the Air National Guard installation and other government facilities located on the Airport. Routes for ingress and egress for the government's employees, agents, customers and contractors shall not unduly restrict the government in its operations.

3. (AUTHORITY) RESPONSIBILITIES

The (Authority) will be responsible for the following services and functions, to standards in accordance with Paragraph 6 below:

a. Furnishing all personnel, materials and equipment required in the rendering of the services to be provided under the Agreement.

b. Performing any and all maintenance of the Jointly Used Flying Facilities, including but not limited to:

(1) Joint sealing, crack repair, surface repairs, airfield markings and repair or replacement of damaged sections of airfield pavement;
(2) Runway, taxiway, and approach lighting and the regulators and controls therefore;
(3) Beacons, obstruction lights, wind indicators, and other navigational aids;
(4) Grass cutting and grounds care, drainage, and dust and erosion control of unpaved areas, adjacent to runways and taxiways;

(5) Sweeping runways and taxiways;
(6) Controlling insects and pests;
(7) Removing snow, ice and other hazards from runways and taxiways within a reasonable time after such runways and taxiways have been so encumbered.

c. Furnishing utilities necessary to operate the Jointly Used Flying Facilities.

d. Removing disabled aircraft as expeditiously as possible, subject to the rules and regulations of the
National Transportation Safety Board, in order to minimize the time the Jointly Used Flying Facilities, or any part thereof, would be closed because of such aircraft.

4. GOVERNMENT RESPONSIBILITIES

a. The government will be responsible for the following:

(1) Removing disabled government aircraft as expeditiously as possible in order to minimize the time the Jointly Used Flying Facilities, or any part thereof, would be closed because of such aircraft.

(2) Removing snow and ice from all ramps, aprons, and taxiways used exclusively by government aircraft.

(3) Subject to availability of appropriations therefore, repairing within a reasonable time damage to the Jointly Used Flying Facilities to the extent that such damage is caused solely by government aircraft operations and is in excess of the fair wear and tear resulting from the military use contemplated under this Agreement.

5. PAYMENTS

a. In consideration of and for the faithful performance of this Agreement, and subject to the availability of federal appropriations, the government shall pay to the (Authority) as its proportionate share of operating and maintaining the Jointly Used Flying Facilities, the following: (TO BE NEGOTIATED)

b. Payments for the periods set out in Paragraph 5a above shall be made upon submission of appropriate invoices to the government as designated in Paragraph 5c below; provided, however, that if during the term of this Agreement, sufficient funds are not available through the annual appropriations at the beginning of any fiscal year to carry out the provisions of this Agreement, the government will so notify the (Authority) in writing.

c. Bills for the payments provided hereunder shall be directed to: Payer Identification, or to such other address as the government may from time to time provide to the (Authority) in writing.

d. Either party may request renegotiation if either party, at the request or with the formal concurrence of the other, as the case may be, requires services not contemplated by this Agreement, or reduces or eliminates services it undertakes to provide under this Agreement.

6. AIRFIELD MANAGEMENT

a. The (Authority) agrees that maintenance of the Jointly Used Flying Facilities shall, at all times, be in accordance with Federal Aviation Administration (FAA) standards for the operation of a commercial airport and operation of jet aircraft.

b. The government agrees that any markings and equipment installed by it pursuant to Paragraph 7 of the Agreement shall be coordinated with the (Authority), and not be in conflict with FAA standards.

7. GOVERNMENT RESERVED RIGHTS

a. The government reserves the right, at its sole cost and expense and subject to Paragraph 6b above, to:

(1) Provide and maintain in the Jointly Used Flying Facilities airfield markings required solely for military aircraft operations.

(2) Install, operate and maintain in the Jointly Used Flying Facilities any and all additional equipment, necessary for the safe and efficient operation of military aircraft including but not limited to arresting systems and navigational aids.

8. FIRE PROTECTION AND CRASH RESCUE

The parties to this Agreement have entered into a separate reciprocal fire protection agreement, which sets forth each party's responsibilities of fire protection and crash rescue services.

or

The parties to this Agreement have entered into a separate mutual aid fire protection agreement, which sets forth each party's responsibilities of fire protection and crash rescue services.

or

a. The government maintains a fire fighting and crash rescue organization in support of military operations at the Airport. Within the limits of the existing capabilities of this organization, the government agrees to respond to fire and crash rescue emergencies involving civil aircraft, subject to subparagraphs 8b, 8c, and 8d below.

b. The (Authority) agrees to release, acquit, and forever discharge the government, its officers, agents, and employees for all liability arising out of or connected with the use of or failure to supply in individual cases, government fire fighting and crash rescue equipment or personnel for fire control and crash rescue activities at or in the vicinity of the Airport. The (Authority) further agrees to the extent allowed under applicable law to indemnify, defend, and hold harmless the government, its officers, agents, and employees against any and all claims, of whatever description, arising out of or connected with such use of or failure to supply in individual cases, government fire fighting and crash rescue equipment or personnel, except where such claims

arise out of or result from the gross negligence or willful misconduct of the officers, agents, or employees of the United States, without contributory fault on the part of any person, firm, or corporation. The (Authority) agrees to execute and maintain in effect a hold harmless agreement as required by applicable Air Force instructions for all periods during which emergency fire fighting and crash rescue service is provided to civil aircraft by the government.

c. The (Authority) will reimburse the government for expenses incurred by the government for fire fighting and crash rescue materials expended in connection with providing such service to civil aircraft.

d. The government's responsibility under this Paragraph 8 shall continue only so long as a fire fighting and crash rescue organization is authorized for military operations at the Airport. The government shall have no obligation to maintain any fire fighting and crash rescue organization or to provide any increase in fire fighting and crash rescue equipment or personnel or to conduct any training or inspection for the purposes of this Paragraph. It is further understood that the government's fire fighting and crash rescue equipment shall not be routinely parked on the Jointly Use Flying Facilities during non-emergency landings of civil aircraft.

e. Notwithstanding the foregoing, so long as the government operates and maintains a fire fighting and crash rescue organization for military operations at the Airport, the government will, consistent with military operations as determined by the government, cooperate with the federal government agencies having jurisdiction over civil aircraft in the conduct of periodic inspections of fire fighting and crash rescue response time.

9. RECORDS AND BOOKS OF ACCOUNT

The (Authority) agrees to keep records and books of account, showing the actual cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures made in fulfilling the obligations of this Agreement. The Comptroller General of the United States or any of his or her duly authorized representatives shall, until the expiration of three (3) years after final payment, have access at all times to such records and books of account, or to any directly pertinent books, documents, papers, and records of any of the (Authority)'s contractors or subcontractors engaged in the performance of and involving transactions related to this Agreement. The (Authority) further agrees that representatives of the Air Force Audit Agency or any other designated representative of the government shall have the same right of access to such records, books of account, documents and papers as is available to the Comptroller General.

10. TERM

This Agreement shall be effective for a term of five (5) years beginning (month/day, year), and ending (month/day, year).

11. TERMINATION

a. This Agreement may be terminated by the government at any time by giving at least thirty (30) days' notice thereof in writing to the (Authority).

b. The government, by giving written notice to the (Authority), may terminate the right of the (Authority) to proceed under this Agreement if it is found, after notice and hearing by the Secretary of the Air Force or his or her duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by the (Authority), or any agent or representative of the (Authority), to any officer or employee of the government with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such agreement, provided that the existence of the facts upon which the Secretary of the Air Force or his or her duly authorized representative makes such findings shall be an issue and may be reviewed in any competent court.

c. In the event this Agreement is terminated as provided in subparagraph 11a above, the government shall be entitled to pursue the same remedies against the (Authority) as it could pursue in the event of a breach of the Agreement by the (Authority) and in addition to any other damages to which it may be entitled by law, the government shall be entitled to exemplary damages in an amount (as determined by the Secretary of the Air Force or his or her duly authorized representative) which shall be not less than three (3) or more than ten (10) times the costs incurred by the (Authority) in providing any such gratuities to any such officer or employee.

d. The rights and remedies of the government provided in subparagraph 11c above shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. GENERAL PROVISIONS

a. Compliance with Law. The (Authority) shall comply with all federal, state and local laws, rules and regulations applicable to the activities conducted under this Agreement.

b. Assignment. The (Authority) shall neither transfer nor assign this Agreement without the prior written consent of the government, which shall not be unreasonably withheld or delayed.

c. Liability. Except as otherwise provided in this Agreement, neither party shall be liable for damages to property or injuries to persons arising from acts of the other in the use of the Jointly Used Flying Facilities or occurring as a consequence of the performance of responsibilities under this Agreement.

d. Third Party Benefit. No member or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise there from, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

e. Entire Agreement. It is expressly agreed that this written instrument embodies the entire financial arrangement and agreement of the parties regarding the use of the Jointly Used Flying Facilities by the government, and there are no understandings or agreements, verbal or otherwise, between the parties in regard to it except as expressly set forth herein. Specifically, no landing fees or other fees not provided in this Agreement will be assessed by the (Authority) against the government in the use of the Jointly Used Flying Facilities during the term of this Agreement.

f. Modification. This Agreement may only be modified or amended by mutual agreement of the parties in writing and signed by each of the parties hereto.

g. Waiver. The failure of either party to insist, in any one or more instances, upon the strict performance of any of the terms, conditions, covenants, or provisions of this Agreement shall not be construed as a waiver or relinquishment of the right to the future performance of any such terms, conditions, covenants, or provisions. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by such party.

h. Paragraph Headings. The brief headings or titles preceding each Paragraph and subparagraph are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Agreement.

13. MAJOR REPAIRS AND NEW CONSTRUCTION

Major repair projects and/or new construction projects required for the Jointly Used Flying Facilities (collectively, "Joint Use Projects") are not included under this Agreement. Any government contribution to Joint Use Projects shall be the subject of separate negotiations and written agreement between the (Authority) and the government at such time as the work is required. Any government participation in the costs of Joint Use Projects is subject to the availability of federal funds for such purpose at the time the work is required.

14. NOTICES

a. No notice, order, direction, determination, requirement, consent or approval under this Agreement shall be of any effect unless it is in writing and addressed as provided herein.

b. Written communications to the (Authority) shall be addressed to:

Name of Airport
Street or P.O. Box
City/State/Zip Code

c. Written communications to the government shall be in duplicate with copies to the United States of America and the State of (name) addressed respectively, as follows:

(1) To the United States of America:

ANG/CE
3500 Fetchet Avenue
Andrews AFB, MD 20762-5157

(2) To the State of (name):

The Adjutant General
Street or P.O. Box
City/State/Zip Code

IN WITNESS WHEREOF, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth opposite their respective signatures.
Dated: ________________________________ (AIRPORT OWNER/OPERTOR NAME)
By: _____________________________________
(Title)_________________________________
Approved as to form and legal sufficiency:
____
Dated:________________________________ STATE OF (NAME)
Coordinated with:
_____________________________________ By:_____________________________________
U.S. Property & Fiscal Officer The Adjutant General
Dated: ________________________________ UNITED STATES OF AMERICA
By: _____________________________________
For the Chief, National Guard Bureau

Attachment 3

ALLOWABLE COST ITEMS

A3.1. Allowable Cost Items.

A3.1.1. Salaries - Labor/Contract: Salaries for general labor used in grass cutting, snow removal, and trade labor providing maintenance/ repair of joint use facilities. Salaries limited to costs incurred in joint use area (i.e., landscaping/grass cutting, snow removal around the terminal, etc. not allowed). Submit list of employees-type and total number.

A3.1.2. Pavement Maintenance: Maintenance to runways, taxiways, overruns, shoulders of runways and taxiways (i.e., joint sealing, broken/shattered slabs repair or replacement, patching, tar/rubber removal, and paint restriping.) Do not include salaries already listed above.

A3.1.3. Airfield Sweeping: Supplies and fuels for sweeping joint use runways and taxiways. Do not include salaries already listed above.

A3.1.4. Grass Cutting: Supplies and fuels for mowing joint-use area (i.e., between runways, taxiways, clear zone, etc.). Do not include salaries already listed above.

A3.1.5. Snow Plowing and Removal: Supplies and fuels for snow removal in joint-use area. Do not include salaries already listed above.

A3.1.6. Airfield Equipment Maintenance: Maintenance of equipment used in joint use area (i.e., mowers, sweepers, snow removal equipment). Does not include general purpose vehicles used for overall airport operations. Please attach a list of equipment. Do not include salaries already listed above.

A3.1.7. Airfield Lighting Maintenance: Maintenance and parts such as bulbs, wiring, etc., for runways and taxiway lighting. Do not include salaries already listed above.

A3.1.8. Navigational Aids Maintenance: Maintenance and parts for those that are not maintained by FAA or military (windsock, indicators, VORs, VASI, etc.). Please attach a list of applicable navigational aids. Do not include salaries already listed above

A3.1.9. Utilities Maintenance: Maintenance and parts for utility lines (electrical, water, etc.) in the joint use areas. Do not include salaries already listed above.

A3.1.10. Airfield Supplies: General supply items to include small equipment/tools and ground fuels not already included in other categories above.

A3.1.11. Utilities: Utility bills directly supporting joint use area -- primarily electricity for airfield lighting.

A3.1.12. Erosion Control/Storm Drainage: Such items as grass seeding, grading, minor ditching and earthwork for sloping, and drainage in joint use areas. Repair/upgrade of storm

drain system such as pipes, catch basins, ditches, etc. Environmental permits, sampling and analysis fees for joint use areas only.

A3.1.13. Entomology/Animal Control: Pest and animal control measures within the joint use areas.

A3.1.14. Air Traffic Control/Weather Services: Only where they are not provided by FAA or the military.

A3.1.15. Fire Protection: Only where the Airport exclusively provides fire protection (no mutual aid or reciprocal fire agreement).

A3.1.16. Other: Provide a detailed explanation of the additional cost item and appropriate supporting documentation.

A3.2. This is only a guide. Alternative budget breakouts can be submitted with justification and supporting documentation.

A3.3. The following items occurring within or without the joint-use area(s) are not allowable costs.

A3.3.1. **Operations and maintenance of non-joint use facilities** (terminals, parking facilities, commercial ramps and hangars, fuels facilities, etc.)

A3.3.2. Indirect costs (consulting fees, professional fees, environmental fines, training, facility maintenance, etc.)

A3.3.3. Administrative overhead (administrative salaries, marketing, travel, postage, janitorial, telephone, office supplies, uniforms etc.)

A3.3.4. Authority accounting (profit, overhead, debt service, depreciation, deferred maintenance, contingencies, etc.)

A3.3.5. Insurance (liability or fire)

Appendix K ► PART 155—Release of Airport Property from Surplus Property Disposal Restrictions

Authority: 49 U.S.C. §§ 106(g), 40113, 47151–47153.
Source: Docket No. 1329, 27 FR 12361, Dec. 13, 1962, unless otherwise noted.

§ 155.1 Applicability.

This part applies to releases from terms, conditions, reservations, or restrictions in any deed, surrender of leasehold, or other instrument of transfer or conveyance (in this part called "instrument of disposal") by which some right, title, or interest of the United States in real or personal property was conveyed to a nonfederal public agency under Section 13 of the Surplus Property Act of 1944 (58 Stat. 765; 61 Stat. 678) to be used by that agency in developing, improving, operating, or maintaining a public airport or to provide a source of revenue from nonaviation business at a public airport.

§ 155.3 Applicable law.

(a) Section 4 of the Act of October 1, 1949 (63 Stat. 700) authorizes the Administrator to grant the releases described in § 155.1, if he determines that—

(1) The property to which the release relates no longer serves the purpose for which it was made subject to the terms, conditions, reservations, or restrictions concerned; or

(2) The release will not prevent accomplishing the purpose for which the property was made subject to the terms, conditions, reservations, or restrictions, and is necessary to protect or advance the interests of the United States in civil aviation.

In addition, Section 4 of that Act authorizes the Administrator to grant the releases subject to terms and conditions that he considers necessary to protect or advance the interests of the United States in civil aviation.

(b) Section 2 of the Act of October 1, 1949 (63 Stat. 700) provides that the restrictions against using structures for industrial purposes in any instrument of disposal issued under Section 13(g)(2)(A) of the Surplus Property Act of 1944, as amended (61 Stat. 678) are considered to be extinguished. In addition, Section 2 authorizes the Administrator to issue any instruments of release or conveyance necessary to remove, of record, such a restriction, without monetary consideration to the United States.

(c) Section 68 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2098) releases, remises, and quitclaims, to persons entitled thereto, all reserved rights of the United States in radioactive minerals in instruments of disposal of public or acquired lands. In addition, Section 3 of the Act of October 1, 1949 (50 U.S.C. App. 1622b) authorizes the Administrator to issue instruments that he considers necessary to correct any instrument of disposal by which surplus property was transferred to a nonfederal public agency for airport purposes or to conform the transfer to the requirements of applicable law. Based on the laws cited in this paragraph, the

Administrator issues appropriate instruments of correction upon the written request of persons entitled to ownership, occupancy, or use of the lands concerned.

§ 155.5 Property and releases covered by this part.

This part applies to—

(a) Any real or personal property that is subject to the terms, conditions, reservations, or restrictions in an instrument of disposal described in §155.1; and

(b) Any release from a term, condition, reservation, or restriction in such an instrument, including a release of—

(1) Personal property, equipment, or structures from any term, condition, reservation, or restriction so far as necessary to allow it to be disposed of for salvage purposes;

(2) Land, personal property, equipment or structures from any term, condition, reservation, or restriction requiring that it be used for airport purposes to allow its use, lease, or sale for nonairport use in place;

(3) Land, personal property, equipment, or structures from any term, condition, reservation, or restriction requiring its maintenance for airport use;

(4) Land, personal property, equipment, or structures from all terms, conditions, restrictions, or reservations to allow its use, lease, sale, or other disposal for nonairport purposes; and

(5) Land, personal property, equipment, or structures from the reservation of right of use by the United States in time of war or national emergency, to facilitate financing the operation and maintenance or further development of a public airport.

§ 155.7 General policies.

(a) Upon a request under §155.11, the Administrator issues any instrument that is necessary to remove, of record, any restriction against the use of property for industrial purposes that is in an instrument of disposal covered by this part.

(b) The Administrator does not issue a release under this part if it would allow the sale of the property concerned to a third party, unless the public agency concerned has obligated itself to use the proceeds from the sale exclusively for developing, improving, operating, or maintaining a public airport.

(c) Except for a release from a restriction against using property for industrial purposes, the Administrator does not issue a release under this part unless it is justified under §155.3(a) (1) or (2).

(d) The Administrator may issue a release from the terms, conditions, reservations, or restrictions of an instrument of disposal subject to any other terms or conditions that he considers necessary to protect or advance the interests of the United States in civil aviation. Such a term or condition, including one regarding the use of proceeds from the sale of property, is imposed as a personal covenant or obligation of the public agency concerned rather than as a term or condition to the release or as a covenant running with the land, unless the Administrator determines that the purpose of the term or condition would be better achieved as a condition or covenant running with the land.

(e) A letter or other document issued by the Administrator that merely grants consent to or approval of a lease, or to the use of the property for other than the airport use contemplated by the instrument of disposal, does not otherwise release the property from the terms, conditions, reservations, or restrictions of the instrument of disposal.

§ 155.9 Release from war or national emergency restrictions.

(a) The primary purpose of each transfer of surplus airport property under Section 13 of the Surplus Property Act of 1944 was to make the property available for public or civil airport needs. However, it was also intended to ensure the availability of the property transferred, and of the entire airport, for use by the United States during a war or national emergency, if needed. As evidence of this purpose, most instruments of disposal of surplus airport property reserved or granted to the United States a right of exclusive possession and control of the airport during a war or emergency, substantially the same as one of the following:

(1) That during the existence of any emergency declared by the President or the Congress, the federal government shall have the right without charge except as indicated below to the full, unrestricted possession, control, and use of the airfield, building areas, and airport facilities or any part thereof, including any additions or improvements thereto made subsequent to the declaration of the airport property as surplus: *Provided, however,* that the federal government shall be responsible during the period of such use for the entire cost of maintaining all such areas, facilities, and improvements, or the portions used, and shall pay a fair rental for the use of any installations or structures which have been added thereto without federal aid.

(2) During any national emergency declared by the President or by Congress, the United States shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the airport at which the surplus property is located or used or of such portion thereof as it may desire: *Provided, however,* That the United States shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession and control, during the period of such use, possession, or control and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession: *Provided further,* that the United States shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively, of any improvements to the airport made without U.S. aid.

(b) A release from the terms, conditions, reservations, or restrictions of an instrument of disposal that might prejudice the needs or interests of the armed forces, is granted only after consultation with the Department of Defense.

§ 155.11 Form and content of requests for release.

(a) A request for the release of surplus airport property from a term, condition, reservation, or restriction in an instrument of disposal need not be in any special form, but must be in writing and signed by an authorized official of the public agency that owns the airport.

(b) A request for a release under this part must be submitted in triplicate to the District Airport Engineer in whose district the airport is located.

(c) Each request for a release must include the following information, if applicable and available:

(1) Identification of the instruments of disposal to which the property concerned is subject.

(2) A description of the property concerned.

(3) The condition of the property concerned.

(4) The purpose for which the property was transferred, such as for use as a part of, or in connection with, operating the airport or for producing revenues from nonaviation business.

(5) The kind of release requested.

(6) The purpose of the release.

(7) A statement of the circumstances justifying the release on the basis set forth in §155.3(a) (1) or (2) with supporting documents.

(8) Maps, photographs, plans, or similar material of the airport and the property concerned that are appropriate to determining whether the release is justified under §155.9.

(9) The proposed use or disposition of the property, including the terms and conditions of any proposed sale or lease and the status of negotiations therefore.

(10) If the release would allow sale of any part of the property, a certified copy of a resolution or ordinance of the governing body of the public agency that owns the airport obligating itself to use the proceeds of the sale exclusively for developing, improving, operating, or maintaining a public airport.

(11) A suggested letter or other instrument of release that would meet the requirements of state and local law for the release requested.

(12) The sponsor's environmental assessment prepared in conformance with Appendix 6 of FAA Order 1050.1C, “Policies and Procedures for Considering Environmental Impacts” (45 FR 2244; Jan. 10, 1980), and FAA Order 5050.4A, *Airport Environmental Handbook*, (45 FR 56624; Aug. 25, 1980),[59] if an assessment is required by Order 5050.4A. Copies of these orders may be examined in the Rules Docket, FAA Office of Chief Counsel, FAA, Washington, D.C., and may be obtained on request at any FAA regional office headquarters or any FAA airports district office.

[Doc. No. 1329, 27 FR 12361, Dec. 13, 1962, as amended by Amdt. 155–1, 45 FR 56622, Aug. 25, 1980]

§ 155.13 Determinations by FAA.

(a) An FAA office that receives a request for a release under this part, and supporting documents therefore, examines it to determine whether the request meets the requirements of the Act of October 1, 1949 (63 Stat. 700) so far as it concerns the interests of the United States in civil aviation and whether it might prejudice the needs and interests of the armed forces. Upon a determination that the release might prejudice those needs and interests, the Department of Defense is consulted as provided in §155.9(b).

(b) Upon completing the review, and receiving the advice of the Department of Defense if the case was referred to it, the FAA advises the airport owner as to whether the release or a modification of it, may be granted. If the release, or a modification of it acceptable to the owner, is granted, the FAA prepares the necessary instruments and delivers them to the airport owner.

[59] Now refer to FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*

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Appendix O ► Sample Minimum Standards for Commercial Aeronautical Activities

Example 1

LIVINGSTON COUNTY AIRPORT, Michigan, November 1, 1998

INTRODUCTION

The Livingston County Aeronautical Facilities Board (hereinafter referred to as the "Board"), is charged with the responsibility for the administration of the Livingston County Airport, Howell, Michigan (hereinafter referred to as "Airport"). In order to foster, encourage, and insure the economic health and orderly development of general aviation and its related aeronautical activities at the Airport, and in order to insure adequate commercial aeronautical services and facilities are available to the users of the airport, the following Minimum Standards and requirements for commercial aeronautical tenants (as defined in Section 1.01), (hereinafter referred to as "Operator"), have been adopted:

This document sets forth the Minimum Standards for an entity based upon and engaging in one or more aeronautical activities at the Airport. Any Operator who is based on the Airport will be subject to applicable federal, state and local laws, codes, ordinances, and other regulatory measures, including Airport Standard Operating Procedures. The Board reserves the right to change these Minimum Standards at its discretion. All entities affected by such changes will have an opportunity to comment on proposed changes and will be appraised of dates of implementation of such changes. See Article XI. A written lease agreement, properly executed by Operator and the Board, is a prerequisite to tenancy on the Airport and the commencement of operations. The lease provisions will be compatible with these Minimum Standards and will not change or modify such standards. All leases shall include a number of standard items that are a part of all leases between the Board and any entity based on the Airport and engaged in aeronautical services or activities.

GENERAL POLICY STATEMENT

A fair and reasonable opportunity, without discrimination, shall be afforded all applicants to qualify, or otherwise compete, for available airport facilities and the furnishing of selected aeronautical services; subject to the Minimum Standards as established by the Board. An Operator shall have the right and privilege of engaging in and conducting the activities selected and specified by the written contract contingent upon meeting the established Minimum Standards, the execution of a written lease with the County of Livingston, the payment of the prescribed rentals, fees, and charges, and compliance with all federal, state, county, and airport laws, rules, codes, and regulations. The granting of such right and privilege, however, shall not be construed as affording the Operator any exclusive right of use of the premises and facilities of the Airport, other than those premises which may be leased exclusively to the Operator, and then only to the extent provided in a written agreement. The prospective Operator shall select one or more aeronautical services covered by these Minimum Standards. When more than one activity is proposed, the minimum requirements will vary (dependent upon the nature of individual

services in such combination) but will not necessarily be cumulative in all instances. Because of these variables, the applicable Minimum Standards to combinations of service will be discussed with the prospective Operator at the time of application. The Board reserves and retains the right for the use of the Airport by others who may desire to use the same, pursuant to applicable federal, state, and local laws, ordinances, codes, Minimum Standards, and other regulatory measures pertaining to such use. The Board reserves the further right to designate the specific Airport areas in which aeronautical services may be conducted. Such designation shall give consideration as to the nature and extent of the operation and the lands available for such proposed uses, consistent with the orderly and safe operation of the Airport.

ARTICLE ONE

DEFINITIONS/QUALIFICATIONS/REQUIREMENTS

1.01 Definition of an Aviation Operator

An aviation Operator is defined as an entity engaging in an activity, which involves, makes possible, or is required for the operation of aircraft, or which contributes to, or is required for the safety of such aircraft operations. The purpose of such activity may be to secure earnings, income, compensation, or profit, whether or not such objective(s) are accomplished. Authorized activities by an Operator shall be strictly limited to any one or a combination of the following aeronautical services performed in full compliance with the specific standards for that activity as set forth herein:

a) Aircraft sales (new and/or used)
b) Airframe and power plant repair facilities
c) Aircraft rentals
d) Flight training
e) Line services (aircraft fuels and oil dispersing)
f) Specialized aircraft repair service - radios, propellers, instruments, and accessories.
g) Aircraft charter and air taxi
i) Specialized commercial flying services
j) Aviation operators subleasing from another aviation operator (See Section 1.04(A)(8)).
k) Warehouse type facilities using air transportation and located on the airport
l) Medical related equipment and supplies
m) Other aviation related activities
n) Airport Shuttle (Ground Transportation) Operator
p) Any other activities not specifically provided for in these Minimum Standards, will be subject to negotiation.

1.02 Prequalification Requirements

The prospective Operator shall submit, in written form, to the Airport Manager, at the time of application, the following information, plus such other information as may be reasonably requested by the Board:

A) Intended Scope of Activities. Before being granted an operating privilege on the Airport, the prospective Operator must submit to the Board a detailed description of the intended activity(s), and the means and methods to be employed to accomplish the activity(s). This description shall include:

1. The services to be offered.
2. The amount of land to be leased
3. The building space to be constructed or leased
4. The number of aircraft to be provided
5. The number of persons to be employed
6. The hours of proposed operation
7. The number and types of insurance coverage to be maintained

B) Financial Responsibility. The prospective Operator shall demonstrate the financial capability to initiate operations and for the construction of improvements and appurtenances that may be required commensurate with the proposed operation(s).

1.03 General Requirements

A) Requirement of a Written Agreement. Prior to the commencement of operations, the prospective Operator will be required to enter into a written agreement with the Board, which agreement will recite the terms and conditions under which he will operate his business on the Airport, including, but not limited to, the term of agreement; the rentals, fees, and charges; the rights, privileges and obligations of the respective parties; and other relevant covenants. It should be understood that these Minimum Standards do not represent a complete recitation of the provisions to be included in the written agreement. Such contract provisions, however, will not change, modify, or be inconsistent with these Minimum Standards.

B) Site Development Standards

1. Physical Facilities. The minimum space requirements shall be satisfied with one (1) building, attached buildings, or separate buildings on permanent foundations. Mobile office facilities may be used on leased property, by special permission of the Board, providing facility is in compliance with all rules, regulations, and ordinances of the FAA,
Livingston County, the Livingston County Building Department and Howell Township. All construction must be approved by the Board and other appropriate agencies.

2. Engineering Standards. No person shall make any alterations of any nature whatsoever to any buildings, ramp or other Airport space, nor erect any building or other structure without prior submission of a written request, including detailed plans and specifications, and have receipt of written permission from the Board. Prospective Operators shall comply with all building codes of the County of Livingston and shall deliver to the Airport Manager "as built" plans upon completion. Alterations or construction must be submitted to the Federal Aviation Administration, FAA Form 7460-1 (Notice of Proposed Construction and/or Alteration) and receive a favorable determination, prior to commencement of any construction.

1.04 General Lease Clauses

A) For all Airport Lease Agreements

1. Aircraft Service by Owner or Operator of Aircraft: No right or privilege granted herein shall prevent any entity operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance repair and self-fueling) that it may choose to perform, subject to board and federal restrictions and these minimum standards.

2. Airport Development: The Board reserves the right to further develop or improve the airfield. If the physical development of the Airport requires the relocation of Operator-owned facilities, the Board agrees to provide a comparable location, and agrees to relocate all Operator-owned buildings or provide similar facilities for the Operator at no cost to the Operator.

3. Board's Rights: The Board reserves the right (but shall not be obligated to the Operator) to maintain and keep in repair the airfield. The Board shall have the right to regularly audit the financial records of all Operators if the Board has an interest in the records. The Board shall have the right to inspect all Operators in order to establish proof of currency of all licenses, compliance with all laws, rules, regulations, and standards with which the Operator is required to comply. The Board reserves the right to operate or conduct any or all aeronautical activities, as a part of airport operations, as necessary to benefit the Airport.

4. Airport Obstructions: The Board reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent the Operator from erecting, or permitting to be erected, any building or other structure on the Airport which in the opinion of the Board, would limit the usefulness of the Airport or constitute a hazard to aircraft.

5. Subordination: Airport leases shall be subordinate to the provisions of any existing or future agreement between the County of Livingston and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

6. Compliance with Laws, Etc.: The Operator shall at all times comply with the airport rules and regulations, federal, state, and local laws, ordinances, codes and other regulatory measures now in existence or, as may be hereafter modified or amended, applicable to the specific type of operation contemplated. The Operator shall procure and maintain during the term of the Agreement all licenses, permits, and other similar authorizations required for the conduct of his business operations.

7. Misrepresentation: All terms and conditions with respect to these Minimum Standards are expressly contained herein, and the Operator agrees that no representation or promise has been made with respect to these Minimum Standards not expressly contained herein.

8. Subleasing: If permitted in the lease between Operator and the Board, all or a portion of a leased area may be subleased to another Operator. No such Operator shall be exempt from these Minimum Standards.

B) For Agreements which provide services to the Public:

1. The Operating entity, its heirs, personal representatives, successors in interest, and assignees, as a part of the consideration hereof, does hereby covenant and agree as a covenant reigning with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in an Airport lease for a purposed for which a Department of Transportation program or activity is extended or for another purposes involving the provision of similar serves or benefits, the Operators shall maintain and operate such facilities and service in compliance with all other requirements imposed in federally assisted programs of the Department of Transportation, and as said regulations may be amended.

2. The Operating entity, for itself, its heirs, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

a) No person on the grounds of race, sex, color, marital status, or national origin shall be excluded from participation in, denied the benefits of, of be otherwise subjected to discrimination in the use of said facilities.

b) That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, sex, color, marital status, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination,

c) That the Operator shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

3. The Operator assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered by 14 CFR Part 152, Subpart E. The Operator assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by their subpart. The Operator assures that it will require that its covered sub-organizations provide assurances to the Operator that they will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E., to the same effect.

4. Operator agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit of service; PROVIDED, that Operator may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. None of the above provisions are required for a hangar lease where space is used only for storing lessee’s aircraft,

and no services are provided to the public, however, the leases must state the intended use, and stipulate that services to the public are prohibited. Reference FAA Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, and the Airport's Rules and Regulations, as may be amended.

ARTICLE TWO

FIXED-BASE OPERATORS

2.01 Qualifications.

An Operator shall qualify as a fixed-base operator (FBO) upon proof that the said Operator is a financially stable and responsible business enterprise. In addition, said Operator shall perform more than one operation as listed in Section 1.01 of these Minimum Standards. The Operator shall demonstrate that the premises from which it operates at the Airport and the personnel employed by it comply with the following requirements, as appropriate to the conduct of Operator's business.

2.02 Minimum Area

The Operator shall construct a building or lease all or a portion of a building to provide suitable facilities for the type of operations proposed. Such space shall include an office area, parking for employees and customers, a public telephone, and properly lighted and heated restrooms for customers and employees. In the event said building is new construction, the land area to be leased shall include a minimum of 2.5 times the building footprint. Building shall include a general aviation service hangar area sufficient for intended use. Ramp area constructed shall be a minimum of 1.5 times the area of hangar.

2.03 Personnel

Provide employees with the proper training and certifications for the operations proposed.

2.04 Equipment

Provide the equipment necessary to perform the operations proposed.

2.05 Hours of Operation

The Operator shall post and maintain hours of operation convenient to customers.

2.06 Insurance

The Operator shall provide insurance coverage for all operations performed in amounts as defined from time to time by the Board. As a member of Michigan Municipal Risk, the Board will follow their recommendations as to coverages required to be provided by Operator.

ARTICLE THREE

AIRCRAFT SALES

Any aeronautical service desiring to engage in the sale of new or used aircraft must lease or provide as a minimum the following:

3.01 Minimum Area

The Operator shall construct a building or lease all or a portion of a building to provide suitable facilities for office space, flight planning, customer lounge area, aircraft parking, and auto parking for customers and employees. Operator shall provide properly lighted and heated restrooms for customers and employees.

3.02 Personnel.

The Operator shall provide one or more persons holding a current pilot certificate and ratings appropriate for the type of aircraft to be demonstrated. Provision must be made for the office to be attended during posted business hours.

3.03 Parts and Service.

The Operator shall have access to an adequate supply of parts and servicing facilities to provide maintenance service to customer's aircraft.

3.04 Hours of Operation.

The Operator shall provide hours of operation convenient to customers.

3.05 Insurance.

The Operator shall provide insurance coverage for all operations performed in amounts as defined from time to time by the Board. As a member of Michigan Municipal Risk, the Board will follow their recommendations as to coverages required to be provided by Operator.

ARTICLE FOUR

AIRFRAME AND/OR POWER PLANT REPAIR OTHER SPECIALIZED AIRCRAFT MAINTENANCE SERVICES

Any service desiring to engage in airframe and/or power plant repair or other specialized aircraft maintenance services shall provide as a minimum the following:

4.01 Minimum Area.

The Operator shall construct a building or lease all or a portion of a building to provide suitable facilities for office space, aircraft parking, and auto parking for customers and employees. Operator shall provide properly lighted and heated restrooms for customers and employees.

4.02 Personnel.

The Operator shall provide a minimum of one person properly certificated by the FAA or other regulatory agency with appropriate ratings for work to be performed.

4.03 Equipment.

The Operator shall provide sufficient equipment, supplies, and parts availability to perform maintenance in accordance with manufacturer recommendations or equivalent on various types of based aircraft.

4.04 Hours of Operation.

The Operator shall post and maintain hours of operation convenient to customers.

4.05 Insurance.

The Operator shall provide insurance coverage for all operations performed in amounts as defined from time to time by the Board. As a member of Michigan Municipal Risk, the Board will follow their recommendations as to coverages required to be provided by Operator.

ARTICLE FIVE
AIRCRAFT RENTAL

Any service desiring to engage in the rental of aircraft to the public shall provide as a minimum the following:

5.01 Minimum Area.

The Operator shall construct a building or lease all or a portion of a building to provide suitable facilities for office space, flight planning, pilot supply sales, customer lounge area, aircraft parking, and auto parking for customers and employees. The Operator shall provide properly lighted and heated restrooms for customers and employees. A telephone shall be supplied for flight plans, weather briefings, or other flight related uses.

5.02 Personnel.

The Operator shall provide for office to be attended during posted working hours.

5.03 Aircraft.

The Operator shall own or have exclusive lease in writing at least one (1) aircraft equipped for flight under instrument conditions. Aircraft to be maintained in accordance with all applicable FAA regulations.

5.04 Hours of Operation.

The Operator shall post and maintain hours of operation convenient to customers.

5.05 Insurance.

The Operator shall provide insurance coverage for all operations performed in amounts as defined from time to time by the Board. As a member of Michigan Municipal Risk, the Board will follow their recommendations as to coverage required to be provided by Operator.

ARTICLE SIX

FLIGHT INSTRUCTION

All independent flight instructors, defined as giving instruction only in student owned aircraft, are exempt from this article of the Minimum Standards. Any single instructor shall have the opportunity to follow Airport's "Guidelines for use of Public Terminal Building by Flight Schools and Instructors(December 17, 1991, as amended)". All other Operator's desiring to engage in flight instruction shall provide as a minimum the following:

6.01 Minimum Area.

The Operator shall construct a building or lease all or a portion of a building to provide suitable facilities for office space, flight planning, pilot supply sales, customer lounge area, aircraft parking, and auto parking for customers and employees. The Operator shall provide properly lighted and heated restrooms for customers and employees. A telephone shall be supplied for flight plans, weather briefings, or other flight related uses.

6.02 Personnel.

The Operator shall provide a minimum of one person holding a current commercial pilot certificate with appropriate ratings for flight instruction. Additional persons to provide for office to be attended during posted working hours.

6.03 Aircraft.

The Operator shall own or have exclusive lease in writing for one (1) aircraft equipped for flight under instrument conditions. Aircraft to be maintained in accordance with all applicable FAA regulations.

6.04 Hours of Operation.

The Operator shall post and maintain hours of operation convenient to customers.

6.05 Insurance.

The Operator shall provide insurance coverage for all operations performed in amounts as defined from time to time by the Board. As a member of Michigan Municipal Risk, the Board will follow their recommendations as to coverage required to be provided by Operator.

ARTICLE SEVEN

AIR TAXI OR CHARTER SERVICE

Any service desiring to engage in air taxi or charter service shall, in addition to meeting all provisions of FAR Part 135, provide as a minimum the following:

7.01 Minimum Area.

The Operator shall construct a building or lease all or a portion of a building to provide suitable facilities for office space, flight planning, customer lounge area, aircraft parking, and auto parking for customers and employees. Operator shall provide properly lighted and heated restrooms for customers and employees.

7.02 Personnel.

The Operator shall provide a minimum of one (1) FAA certified commercial pilot appropriately rated to conduct air service offered. Additional personnel as required to attend office during normal working hours.

7.03 Aircraft.

The Operator shall provide a minimum of one (1) aircraft equipped for flight under instrument conditions. Nonowned aircraft must have exclusive lease in writing.

7.04 Hours of Operation.

The Operator shall post and maintain hours of operation convenient to customers.

7.05 Insurance.

The Operator shall provide insurance coverage for all operations performed in amounts as defined from time to time by the Board. As a member of Michigan Municipal Risk, the Board will follow their recommendations as to coverages required to be provided by Operator.

ARTICLE EIGHT

AIRCRAFT FUELS AND DISPENSING SERVIC

8.01 Fixed-Base Operator (FBO).

Any operator desiring to dispense fuel or provide fueling services must comply with fixed-base operator (FBO) requirements detailed in Section 2.01

8.02 Minimum Area.

The Operator shall construct a building or lease all or a portion of a building to provide suitable facilities for office space, customer lounge area, aircraft parking, and auto parking for customers and employees. The Operator shall provide properly lighted and heated restrooms for customers and employees. A public telephone shall be supplied for flight plans, weather briefings, or other public uses.

8.03 Personnel.

The Operator shall provide one or more persons trained in the servicing of aircraft on duty during posted working hours.

8.04 Equipment.

The Operator shall provide minimum fixed fuel storage of at least 10,000 gallons aviation gasoline and 10,000 gallons aviation jet fuel. Additional equipment as required to perform services in Paragraph 8.05.

8.05 Services Required.

The Operator shall provide the following the following services:
a. Fuel service for 100LL and Avjet.
b. Portable preheaters.
c. Tow vehicles.

8.06 Hours of Operation.

The Operator shall post and maintain hours of operation convenient to customers. Hours shall be not less than eight (8) hours per day, seven (7) days per week.

8.07 Insurance.

The Operator shall provide insurance coverage for all operations performed in amounts as defined from time to time by the Board. As a member of Michigan Municipal Risk, the Board will follow their recommendations as to coverages required to be provided by Operator.

8.08 Commercial/Noncommercial Compliance with Fire/Safety Standards.

All Commercial Operators, or noncommercial operators authorized to conduct business or operate at the Livingston County Airport shall comply with the Airport's "Fire Safety/Fuel Handling Standards" considered a part of these Minimum Standards.

ARTICLE NINE

AERIAL APPLICATION OPERATIONS

9.01 Compliance with Federal Law

Crop spraying and dusting services shall not be permitted to take place using the Livingston County Airport as a base of operations, until operator has demonstrated to the board compliance with all applicable federal, state, and local laws and regulations or requirements. All requirements for this class of operation will be negotiated prior to the commencement of operation from the Livingston County Airport. This restriction shall not apply to insect/pest control aerial spraying by a bonafide governmental unit or agency undertaken for the protection of the public. Such governmental units or agencies shall obtain the permission of the Airport Manager prior to initiating these activities.

ARTICLE TEN

SPECIALIZED COMMERCIAL FLIGHT SERVICES

Services desiring to engage in specialized commercial air activities such as, but not limited to the following: Banner towing and aerial advertising; aerial photography or survey; fire fighting or fire patrol; power line or pipeline patrol; any other operations specifically excluded from Part 135 of the FAA Regulations, shall comply with the following minimums.

10.01 Minimum Area.

The Operator shall construct a building or lease a portion of a building to provide suitable facilities for office space, flight planning, aircraft parking, and auto parking for customers and employees. The Operator shall provide properly lighted and heated restrooms for customers and employees.

10.02 Personnel.

The Operator shall provide at least one (1) person having a current commercial certificate with appropriate ratings for the aircraft to be flown.

10.03 Aircraft.

The Operator shall provide at least one (1) properly certificated aircraft owned or leased by written agreement.

10.04 Hours of Operation.

The Operator shall post and maintain hours of operation convenient to customers.

10.05 Insurance.

The Operator shall provide insurance coverage for all operations performed in amounts as defined from time to time by the Board. As a member of Michigan Municipal Risk, the Board will follow their recommendations as to coverage required to be provided by Operator

ARTICLE ELEVEN

ADOPTION AND AMENDMENT TO MINIMUM STANDARDS

11.01 Adoption

These Minimum Standards shall become effective as of November 1, 1998.

11.02 Amendment

The Board reserves the right to amend these Minimum Standards at its own discretion. Prior to all amendments, a written comment period of sixty (60) days will transpire for all proposed amendments. Proposed amendments will be distributed by certified mail to all Operators at the Airport affected by the Minimum Standards, for comment on proposed amendment(s). Written comments will be discussed at the next regularly scheduled meeting of the Board. The proposed amendment(s) to the Minimum Standards will be adopted at the following regularly scheduled meeting of the Board.

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Sample Minimum Standards for Commercial Aeronautical Activities

Example 2

KNOX COUNTY REGIONAL AIRPORT, Maine

PREAMBLE

The Knox County Commissioners, recognizing the need to protect the public health, safety, and to foster the economic health and orderly development of Commercial, Aeronautical and Nonaeronautical Operators at the Knox County Regional Airport, hereby promulgates and adopts the following procedures and minimum standards for the use of any land or facility on said Airport.

CANCELLATION

Rates and Minimum Standards for Commercial Activities and Leasing of Land and Facilities at Knox County Regional Airport, Effective September 1, 1979, and as amended June 1, 2001.

RELATED READING MATERIAL

A. Federal Aviation Agency Policy Statement *Exclusive Rights at Airports* as published in the *Federal Register* (30 Fed. Reg. 13661), October 27, 1965.

B. Order 5190.6B, Airport Compliance Manual.

C. Advisory Circular (AC) 150/5190-6, *Exclusive Rights at Federally Obligated Airports*.

D. Aircraft Owners and Pilots Association (AOPA) Handbook for Pilots, 1989.

THE FOLLOWING PROCEDURES AND MINIMUM STANDARDS ARE APPROVED AND ACCEPTED WITH ALL CURRENT CHANGES, EFFECTIVE JANUARY 1, 1992, and as amended June 1, 2001.

I. APPLICATION

Any person wishing to acquire the use of land or establish or use any facility on the Airport for an aeronautical or any other activity shall be furnished a copy of these standards and procedures, as amended from time to time, and shall make an application in writing, filed with the Airport Manager, setting forth in detail the following:

A. The name and address of the applicant;

B. The proposed land use and/or services to be offered;

C. The requested or proposed date for commencement of the activity and the term of conducting same;

D. The amount of land to be leased;

E. The financial responsibility and ability of applicant or operator to carry out the activity sought.

II. NOTICE AND HEARING

Upon the filing of such an application with the Airport Manager's Office, it shall be immediately referred to the Airport Advisory Committee for review at their next meeting. After review by the committee, any recommendations shall be forwarded to the County Commissioners with recommendations of the Airport Manager and considered at the next scheduled meeting of the County Commissioners. If no meeting is scheduled within thirty (30) days from the filing of such application, a special meeting shall be called for considering the same and notice thereof given to the applicant. Upon the consideration of the application, the County Commissioners shall determine whether or not the applicant meets the standards and qualifications as herein set out and whether or not such application should be granted in whole or in part, and if so, upon what terms and conditions.

III. LEASE OR CONTRACT

Upon the approval of any such applications submitted or modified, the County Commissioners shall cause to be prepared a suitable lease or contract agreement setting forth the terms and conditions of the land and/or facility use, which lease or contract shall in every instance be conditional upon or contain language assuring:

A. That the minimum standards be incorporated into the Lease or Contract Reference; and

B. That there be original and continued compliance with the standards required for each particular aeronautical or other activity approved; and

C. That any structure or facility to be constructed or placed upon said Airport shall be constructed in a manner to conform to all safety regulations of the Sate of Maine and the County, and shall be in compliance with the requirements of current building codes and fire regulations of the County; and that any construction once commenced will be diligently prosecuted to completion.

IV. STANDARDS FOR SPECIFIC ACTIVITIES

In addition to meeting the requirements of paragraph I, every person conducting the following specific activities shall meet the additional requirements as hereinafter set forth:

A. Aircraft Charter, Air Taxi and Fixed-Base Operator (FBO).

1. Definition

An Aircraft Charter and an Air Taxi Operator is a person or persons, firm, or corporation engaged in the business of providing air transportation persons or property to the general public for hire, either on a charter basis (Commercial Operation) or as an Air Taxi Operator, as defined in the Federal Aviation Act.

2. Minimum Standards

a. The Operator shall lease from the Knox County Regional Airport an area not less than one half acre of ground space on which shall be erected a building to provide at lease 2,000 square feet of floor space for aircraft storage. At least 500 square feet of floor space for office, customer lounge and rest rooms, shall be properly heated and lighted; and shall provide telephone facilities for customers use. The Operator shall provide auto-parking space within the leased area to accommodate at least six (6) automobiles. The Operator shall provide a paved walkway within the leased area to accommodate pedestrian access to the Operator's office. The Operator shall provide a paved aircraft apron within the leased area to accommodate aircraft movement from the Operator's building to the taxiway or the access to the taxiway.

b. Operator shall have his premises open and services available eight (8) Hours daily, six (6) days per week minimum on a year round basis.

c. The Operator shall have in his employ and on duty during the appropriate business hours, trained personnel in such numbers as are required to meet the minimum standards set forth in this category in an efficient manner but never less than at least one (1) Federal Aviation Administration certificated commercial pilot and otherwise appropriately rated to permit the flight activity offered by Operator.

The Operator shall make provision for someone to be in attendance in the office at all times during the required operating hours.

d. The Operator performing the services under this category will be required to carry insurance necessary to adequately protect the customers and the County.

B. Aircraft Rental or Sales, (Fixed-base Operator)

1. Definition

An Aircraft Rental or Sales Operator is a person or persons, firm, or corporation engaged in the rental or sale of new or used aircraft through franchises, licensed dealerships or distributorships (either on a retail or wholesale basis), or otherwise; provides such repair, services, and parts as necessary to meet any guarantee or warranty on new or used aircraft sold by him.

2. Minimum Standards

a. The Operator shall lease from Knox County Regional Airport an area of not less than one (1) acre of ground space to provide for outside display and storage of aircraft, on which shall be erected a building to provide at least 2,000 square feet of floor space for aircraft storage. At least 500 square fee of floor space for office, customer lounge, and rest rooms shall be properly heated and lighted; and shall provide telephone facilities for customers use.

b. The Operator shall provide auto-parking space within the leased area to accommodate at least six (6) automobiles. The Operator shall provide a paved walkway within the leased area to accommodate pedestrian access to the Operator's office. The Operator shall provide a paved aircraft apron within the leased area to accommodate aircraft movement from the Operator's building to the taxiway or the access to the taxiway.

c. The Operator shall have available for rental, either owned or under written lease to Operator, not less than two (2) certified and currently airworthy aircraft.

d. For sales activity of a new aircraft, a sales or distributorship franchise from a recognized aircraft manufacturer of new aircraft, and at least one demonstrator model of such aircraft.

e. The Operator shall provide necessary and satisfactory arrangement for the duration of any sales guarantee or warranty period. Servicing facilities may be provided through written agreement with a Repair Shop Operator at Knox County Regional Airport. The Operator shall provide an adequate inventory of spare parts for the type of aircraft for which sales privileges are granted.

f. The Operator shall have his premises open and services available eight (8) hours daily, six (6) days a week on a year round basis.

g. The Operator shall have in his employ, and on duty during the appropriate business hours, trained personnel in such numbers as are required to meet the minimum standards set forth in an efficient manner, set standards being never less than one (1) person having a current, effective commercial pilot certificate with a single engine rating and instructor rating. The Operator shall make provision for someone to be in attendance in the office at all times during the required operating hours.

h. The Operator performing the service under this category will be required to carry the types of insurance necessary to adequately protect the customers and the County.

C. Flight Training, (Fixed-base Operator)

1. Definition

A Flight Training Operator is a person or persons, firm, or corporation engaged in instructing pilots in dual and solo flight training, in fixed or rotary wing aircraft, and provides such

related ground school instruction as is necessary preparatory to taking written examination, and flight check ride for the category or categories of pilots' licenses and ratings involved.

2. Minimum Standards

a. The Operator shall lease from the Knox County Regional Airport an area of not less than one half (1/2) acre of ground space on which shall be erected a building to provide at least 2,000 square feet of floor space for aircraft storage. At least 500 square feet of floor space for office, classrooms, briefing room, pilot lounge and rest rooms shall be properly heated and lighted; and shall provide telephone facilities for customer use. The Operator shall provide auto-parking space within the leased area to accommodate at least six (6) automobiles. The Operator shall provide a paved walkway within the leased area to accommodate pedestrian access to the Operator's office. The Operator shall provide a paved aircraft apron within the leased area to accommodate aircraft movement from the Operator's building to the taxiway or the access to the taxiway.

b. The Operator shall have available for use in flight training, either owned or under written lease to Operator, not less than two (2) properly certificated aircraft.

c. The Operator shall provide adequate pictures, slides, filmstrips and other visual aides necessary to provide proper ground school instruction.

d. The Operator shall have his premises open and services available eight (8) hours daily, six (6) days a week on a year round basis.

e. The Operator shall have on a full-time basis at least one flight instructor who has been properly certificated by the Federal Aviation Administration to provide the type of training offered.

f. The Operator performing the service under this category will be required to carry the types of insurance necessary to adequately protect the customers and the County.

D. Aircraft Service Facilities

1. Definition

An Aircraft Service Facility is a person or persons, firm, or corporation engaged in the business of providing line service to the more popular demands of the general aviation users of the Airport, to include the sale or interplane delivery of recognized brands of aviation fuels, lubricants and other related aviation petroleum products. This fixed-base operator function shall include, in addition to the above, the necessary ramp assistance in parking/tie-down assignments, "follow-me" vehicle operation and collection of transit parking fees.

2. Minimum Standards

a. The Operator shall lease from the Knox County Regional Airport an area of not less than one half (1/2) acre of ground space on which shall be erected a building to provide at

least 2,000 square feet of floor space for repair services. At least 300 square feet of flow space for office, customer lounge, and rest rooms shall be properly heated and lights. The Operator shall provide auto-parking space "within" the leased area to accommodate all of operations employees. The Operator shall provide a paved walkway within the leased area to accommodate pedestrian access to the Operator's office. The Operator shall provide a paved aircraft apron within the leased area to accommodate aircraft awaiting repair of maintenance or delivery after repairs have been completed, and aircraft movement from the Operator's building to the taxiway.

b. The Operator shall provide at least two (2) fuel storage tanks at the Knox County Regional Airport and maintain an adequate supply of fuel on hand at all times of at least two (2) grades of fuel as closely related as possible to the demands. The Operator shall provide at lease two (2) metered filter-equipped dispensers, fixed or mobile, for dispensing pumps and meters are required for each grade of fuel. All EPA/DEP standards and requirements will be complied with. The Operator shall provide such minor repair service that does not require a certificated mechanical rating, and cabin services, to general aviation aircraft as can be performed efficiently on the ramp or apron parking area, but only within the premises leased to the Operator. The Operator shall procure and maintain tools, jacks, and such equipment as necessary to provide for the repairing of items outlined in FAF Part 43 for noncommercial purposes. All equipment shall be maintained and operated in accordance with local and state industrial codes.

c. In conducting refueling operations, every Operator shall install and use adequate grounding facilities at fueling locations to eliminate the hazards of static electricity, and shall also provide approved types of fire extinguishers or other equipment commensurate with the hazards involved in refueling and servicing aircraft.

d. The Operator shall provide for the adequate, sanitary handling and disposal, away from the Airport, of all trash, waste, and other materials, including but not limited to used oil, solvents, and other waste. The piling or storage of crates, boxes, barrels, and other containers will not be permitted within the leased premises.

e. The Operator shall have his premises open for aircraft fueling and oil dispensing service during daylight hours six (6) days a week, (Mon. – Sat). The Operator shall make provisions for such service during hours of darkness and Sunday with an "on-call" basis. The Operator shall post in a conspicuous location, a sign explaining the procedures to be followed in obtaining after hour service to include Sundays.

f. The Operator shall have in his employ, and on duty during the appropriated business hours, trained personnel in such numbers as are required to meet the minimum standards set forth in this category of services in an efficient manner. Said personnel shall be trained in operating fire-fighting equipment specified in 2. C. seen above.

g. The Operator performing the services under this category will be required to carry the types of insurance necessary to protect the customers and the County from loss.

E. Airframe and Power-plant Repair Facilities

1. Definition

An Aircraft Engine, Airframe Maintenance, and Repair Operator is a person or persons, firm or corporation providing one or a combination of airframe and power plant repair service, but, with at least one person currently certified by the Federal Aviation Administration with ratings appropriate to the work being performed. This category of aeronautical services shall also include the sale of aircraft parts and accessories, but such is not an exclusive right.

2. Minimum Standards

a. The Operator shall lease from the Knox County Regional Airport an area of not less than one half acre of ground space and on which shall be erected a building to provide at lease 2000 square feet of floor space for airframe and power plant repair services, including sufficient hanger space to provide housing for any aircraft being services, and at least 300 square feet of floor space for office, customer lounge and rest rooms, which shall be properly heated and lighted. The Operator shall provide auto-parking space within the leases area to accommodate at least six (6) automobiles. The Operator shall provide a paved walkway within the leased area to accommodate pedestrian access to the Operator's office.

The Operator shall provide a paved aircraft apron within the leased area to accommodate aircraft awaiting repair or maintenance or delivery after repairs have been completed and aircraft movement from the Operator's building to the taxiway.

b. The Operator shall have his premises open and services available eight (8) hours daily, five (5) days each week on a year round basis.

c. The Operator shall have in his employ, and on duty during the appropriate business hours, trained personnel in such numbers as are required to meet the minimum standards set forth in this category of services in an efficient manner. Never less than one (1) person currently certificated by the Federal Aviation Administration with ratings appropriate to the work being performed and who holds an airframe, power plant or an aircraft inspector rating. The Operator shall make provision for someone to be in attendance at all times during the required operating hours.

d. The Operator performing the services under this category will be required to carry the types of insurance necessary for the protection of customers and the County.

F. Radio, Instrument, or Propeller Repair Station

1. Definition

A Radio, Instrument, or Propeller Repair Station Operator is a person or persons, firm or corporation engaged in the business of and providing a shop for the repair of aircraft radios, propellers, instruments, and accessories for the general aviation aircraft. This category shall

include the sale of new or used aircraft radios, propellers, instruments, and accessories, but such is not an exclusive right.

2. Minimum Standards

a. The Operator shall lease from the Knox County Regional Airport an area of not less than one half (1/2) acre of ground space and on which shall be erected a building to provide at least 2,000 square feet of floor space to hanger at least one (1) aircraft, to house all equipment, and to provide an office, shop, customer lounge and rest rooms, all of which to be properly heated and lights. The Operator shall provide auto-parking space within the leased area and shall provide a paved walkway within the leased area to accommodate pedestrian access to the Operator’s office. The Operator shall provide a paved aircraft apron within the leased area to accommodate aircraft and aircraft movement from the Operator’s building to the taxiway.

b. The Operator shall have his premises open and services available eight (8) hours daily, five (5) days each week on a year round basis.

c. The Operator shall have in his employ and on duty during the appropriated business hours trained personnel in such numbers as are required to meet the minimum standards set forth in this category in an efficient manner, but never less than one (1) person who is a Federal Aviation Administration Rated Radio, Instrument or Propeller Repairman.

d. The Operator performing the services under this category will be required to carry the types of insurance necessary to protect the customers and County.

G. Specialized Commercial Flying Services

1. Definition

A specialized Commercial Flying Services Operator is a person or persons, firm, or corporation engaged in Air Transportation for Hire for the purpose of providing the use of aircraft for activities listed below:

a. Nonstop sightseeing flights that begin and end at the same airport;

b. Crop dusting, fish spotting, seeding, spraying and bird chasing;

c. Banner towing and aerial advertising;

d. Fire fighting;

e. Power line or pipeline patrol

f. Any other operations specifically excluded from Part 135 of the Federal Aviation Regulations.

2. Minimum Standards

a. The Operator shall lease from the Knox County Regional Airport an area of not less than one half (1/2) acre of ground space and on which shall be erected a building to provide at lease 2,000 square feet of floor space for airframe and power plant repair services, including sufficient hanger space to provide housing for any aircraft being services. At least 300 square feet of floor space for office, customer lounge and rest rooms shall be properly heated and lighted. In the Case of crop dusting, aerial application, or other commercial use of chemicals, Operator shall provide a centrally drained, paved area of not less than 2,500 square feet for aircraft loading, washing and servicing. Operator shall also provide for the safe storage and containment of noxious chemical materials. Such facilities will be in a location on the Knox County Regional Airport, which will provide the greatest safeguard to the public. The Operator will comply with all EPA/DEP requirements. The Operator shall provide auto-parking space within the leased area to accommodate at least six (6) automobiles. The Operator shall provide a paved walkway within the leased area to accommodate pedestrian access to the Operator's office. The Operator shall provide a paved aircraft apron within the leased area to accommodate aircraft awaiting repair or maintenance or delivery after repairs have been completed and aircraft movement from the Operator's building to the taxiway.

b. The Operator shall provide and have based on his leasehold, either owned or under written lease to Operator, not less than one (1) aircraft which will be airworthy, meeting all the requirements of the Federal Aviation Administration and applicable regulations of the State of Maine with respect to the type of operations to be performed. In the Case of crop dusting or aerial application, Operator shall provide tank trucks for the handling of liquid spray and mixing liquids. Operator shall also provide adequate ground equipment for the safe handling and safe loading of dusting materials.

c. The Operator shall have in his employ, and on duty during appropriate business hours, trained personnel in such numbers as may be required to meet minimum standards herein set forth in an efficient manner, but never less than one (1) person holding a current Federal Aviation Administration commercial certificate, properly rated for the aircraft to be used and the type of operation to be performed.

d. The Operator performing the services under this category will be required to carry the insurance necessary to adequately protect customers and the County.

H. Multiple Services

1. Definition

A Multiple Service Operator shall be one who engages in any two (2) or more of the aeronautical services for which minimum standards have been herein before provided.

2. Minimum Standards

a. The Operator shall lease from the Knox County Regional Airport an area of not less than one (1) acre of ground space for aircraft storage, parking and other use in accordance with the services to be offered, and on which shall be erected a building to provide at least 2,500 square feet of floor space for aircraft storage and parking. At least 500 square feet of floor space for office, customer lounge and rest rooms, which shall be properly heated and lighted; and shall provide telephone facilities for customer use. If Flight Training is one of the multiple services offered, the Operator shall provide classroom and briefing room facilities in the aforementioned building. If crop dusting, aerial application, or other commercial use of chemicals are part of the multiple services offered, the Operator shall provide a centrally drained, paved area of not less than 2,500 square feet for aircraft loading, washing and servicing. Operator shall also provide for the safe storage and containment of noxious chemical matters. Such facilities will be in a location of the Knox County Regional Airport, which will provide the greatest safeguard to the public. The Operator shall provide auto-parking space within the leased area to accommodate at least ten (10) automobiles. The Operator shall provide a paved walkway within the leased area to accommodate pedestrian access to the Operator's office The Operator shall provide a paved aircraft apron within the leased area to accommodate aircraft movement from the Operator's building to the taxiway.

b. The Operator shall comply with the aircraft requirements, including the equipment thereon, for each aeronautical service to be performed except as hereinafter provided. Multiple uses can be made of all aircraft except aircraft used for crop dusting, aerial application, or other commercial use of chemicals. The Operator, except if he is performing Aircraft, Radio, Instrument, or Propeller Repair Station only, as the multiple service, shall have available and based at Knox County Regional Airport, either owned by Operator or under written lease to Operator, not less than two (2) certified and currently airworthy aircraft. These aircraft shall be equipped and capable of flight to meet the minimum standards as herein before provided for each aeronautical service to be performed. The Operator shall provide the equipment and services required to meet the minimum standards as herein before provided for each aeronautical service the Operator is performing.

c. The Operator shall adhere to the hours of operation required for each aeronautical service being performed.

d. The Operator shall have in his employ, and on duty during the appropriate business hours, trained personnel in such numbers as are required to meet the minimum standards for each Aeronautical Service Operator is performing as herein before provided. Multiple responsibilities may be assigned to meet the personnel requirements for each aeronautical service being performed by the Operator.

e. The Operator shall obtain, as a minimum, that insurance coverage which is equal to the highest individual insurance requirement of all the aeronautical services being performed by the Operator.

I. Flying Clubs

The following requirements apply to all Flying Clubs desiring to base their aircraft on the Airport and be exempt from minimum standards:

1. Flying Club Organizations

Each Club must be a nonprofit Maine Corporation, Partnership, or demonstrable affiliated with same. Each member must be a bona fide owner of the aircraft; a stockholder in the corporation, or, in the case of a Parent Corporation or institution, each member must be currently employed by or enrolled in same.

2. Aircraft

The club's aircraft will not be used by other than bona fide members for rental and by anyone for hire, charter or air taxi.

3. Violations

In the event that the club fails to comply with these conditions, the Airport Manager will notify the club in writing of such violations. If the club fails to correct the violation in fifteen (15) days, the Knox County Commissioners may take any action deemed advisable.

4. Insurance

Each aircraft owned by the Flying Club must have the aircraft liability insurance coverage necessary to adequately protect the club members and the County.

5. Student Instruction

Student instruction may be given in club aircraft.

V. BASIC LEASE TERMS AND CONDITIONS:

(All operations open to the public)

A. Premises To Be Operated For Use And Benefit Of Public

Lessee agrees to operate the premises for the use and benefit of the public.

1. To furnish good, prompt, and efficient service adequate to meet all the demands for its service at the Airport.

2. To furnish said service on a fair, equal, and nondiscriminatory basis to all users thereof.

3. To charge fair, reasonable, and nondiscriminatory prices for each unit of sale or service, provided that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

B. Nondiscrimination Clause

The Lessee, his agents, and employees will not discriminate against any person or class of persons by reason of race, color, creed or national origin in providing any services or in the use of any of its facilities provided for the public, in a manner prohibited by Part 15 of the Federal Aviation Regulations. The Lessee further agrees to comply with such enforcement procedures as the United States might demand that the Lessor take in order to comply with the sponsor’s assurances.

C. Aircraft Service By Owner Or Operator Of Aircraft

It is clearly understood by the Lessee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform.

D. Nonexclusive Rights Clause

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right.

E. Development of the Knox County Regional Airport

Lessor reserves the right to further develop or improve the airfield as it sees fit, regardless of the desires of view of the Lessee, and without interference or hindrance.

F. Lessor’s Rights Clause

Lessor reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the airfield and all publicly owned facilities on the Airport, together with the right to direct and control all activities of Lessee in this regard.

G. Obstructions at Knox County Regional Airport

Lessor reserves the right to take any action it consider necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of the Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

H. Subordination Clause

This lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States, relative to the operation or maintenance of the Airport, the

execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

I. Ground Fees

Ground rent shall be negotiated or escalated each year by an amount equal to the federal consumer price index.

J. Rent-A-Car

The concession fee for all Airport tenants engaged in the Rent-A-Car business shall be a percentage of gross receipts for time, mileage and insurance, plus such ground rent as is mutually agreeable. Percentage to be negotiated at time of lease and updated at each renewal date.

K. Waste Removal

Each tenant shall provide for the adequate and sanitary handling and disposal, away from the Airport, of all trash, waste, and other materials, including, but not limited to used oil, solvents, and other waste. The piling or storage of crates, boxes, barrels, and other containers will not be permitted within the leased premises.

L. Landscaping

Landscaping of facilities is required. Each Operator will be required to provide a plan for landscaping his area, to be approved by the Knox County Commissioners and maintained by the Operator in a neat, clean, and aesthetically pleasing manner.

M. Improvements.

Any improvements to the leased premises must be approved by the Knox County Commissioners and will become the property of the County or will be removed from the premises at the Lessee's expense, upon expiration of the lease, at the option of the County.

IV. AMENDMENT OF STANDARDS

The Knox County Commissioners shall review the standards for conducting aeronautical or other activities at least bi-annually and shall recommend such revisions or amendments as shall be deemed necessary under the use circumstances surrounding the Airport to properly protect the health, safety and interest of the County and the health, safety and interest of the County and Public. Upon approval of any such amendments, the Operators of aeronautical activities secured hereunder shall be required to conform to such amended standards.

ADDITIONAL PROVISIONS

1. Basis lease payments shall be paid monthly in advance on or before the first of the month due.

2. Percentage payments shall be paid quarterly and shall not be over 30 days in arrears,

3. All tenants shall provide the Airport Manager or the County Commissioners with a report of operations and sales with any percentage payments as may be required by them. The County reserves the right to audit these reports and or statements as necessary for its purposes, unless otherwise agreed to in writing.

4. In the Case of leases located where minimum guarantees are required, the sales of new and used aircraft shall be exempt from percentage fees after minimum guarantees are reached.

5. These standards as published are minimum standards only. Additional standards may be required of any tenant as conditions may dictate at the time of the lease being reached.

6. The County reserves the right to waive any of these minimum standards if, in the opinion of the Commissioners, the existing conditions should warrant such waiver, and may at their discretion, apply such waiver to any other tenants as they may see fit.

7. Industrial or other nonaeronautical leases on land belonging to Knox County will be negotiated on its own merits and charged for at rates considered at the time of the negotiations.

8. PRIVATE PROPERTY OPERATIONS AT KCRA. There will be no approval of access ways/taxiways etc., to private property operations at KCRA, beyond what is currently allowed by previous agreement.

Appendix P ► Sample Airport Rules and Regulations

Example 1
CASA GRANDE, Arizona

Article I. General Provisions

13.04.010 Definitions.

All words and phrases used in this chapter shall have the following meaning, unless its context requires otherwise. All definitions contained within the Federal Aviation Act of 1958 (FAA Act) and all amendments thereto are incorporated herein. All definitions shall be interpreted consistently with the Federal Aviation Act and amendments thereto.

"Aircraft" means a device that is used or intended to be used for flight in the air, including helicopters and ultralight vehicles.

"Airport" means all of the areas comprising the Casa Grande Municipal Airport, as now existing or as the same may hereafter be expanded and developed and shall include all of its facilities. "Airport" includes all airports owned or operated by the city.

"Airport authority" means the duly appointed five-member airport advisory board of the city.

"Airport director" or "director" means the city manager of Casa Grande or his/her designee.

"Airport manager" means the city manager of Casa Grande or his/her designee.

"Commercial activity" means the conduct of any aspect of a business or concession on the airport for revenue.

"City" means the city of Casa Grande.

"Council" means the mayor and city council.

"Field area" means that area used for aircraft taxiing, run up, takeoff, landing, tie-downs, loading and unloading of passengers and baggage. Field area shall include all areas used by vehicles or pedestrians to gain access to any of the above, and shall include all additional areas designated by the director as a field area.

"General fixed-base operator" means a person, firm or corporation subject to the provisions of a lease and nonexclusive license engaging in the following: the sales, service, renting, or leasing of new or used aircraft, parts, aircraft accessories and hardware, custom repair, overhauling, and modification of general aviation aircraft and/or aircraft equipment, including the conduct of charter flight service, aerial photography and flight schools.

"Operator" means the person, firm or corporation in possession of an aircraft or vehicle or any person who has rented such for the purpose of operation by him/herself or an agent.

"Owner" means a person who holds the legal title of an aircraft or a vehicle, or in the event that the aircraft or vehicle is the subject of a conditional sale or lease thereof within the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the conditional vendee or lessee or anyone in possession of an aircraft or vehicle on the airport or in the event of a mortgagor of an aircraft or vehicle is entitled to the possession, then the conditional vendee, lessee or mortgagor shall be deemed the owner for the purpose of these rules and regulations.

"Public area" means all other airport areas not field areas, except those areas designated by a tenant or the director as nonpublic areas. The director shall have the power to overrule a tenant's designation of an area as a nonpublic area and may designate the area to be public.

"Park" or "parking" means the standing of an aircraft or vehicle whether occupied or not.

"Pedestrian" means any person afoot.

"Permission" or "permit" means permission granted by the airport director unless otherwise specifically provided herein.

"Special fixed-base operator" means a person, firm, or corporation subject to the provisions of a lease and nonexclusive license engaging in some but not all of the activities of a general fixed-base operator.

"Vehicle" means a device in, upon or by which a person or property is or may be propelled, moved, or drawn upon a highway excepting a device moved by human power. (Prior code § 22-1-1)

13.04.020 Administration authority--Operation-- City held harmless.

A. In addition to the requirements of the Federal Aviation Administration, the Civil Aeronautics Board, and the Arizona State Department of Aeronautics, the director may promulgate such rules and regulations, orders and instructions as are necessary in the administration of this chapter. The director may post signs at the airport which state or apply the rules, regulations, orders or instructions. Each person on the airport shall comply with all rules, regulations and signs posted by the director pursuant to this chapter. Each member of the staff of the director, as a representative of the director, is empowered to require compliance with the provisions of this chapter and all rules and regulations issued by the director.

B. The airport shall be conducted as a public air facility for the promotion and accommodation of civil aviation and associated activities.

C. The privilege of using the airport and its facilities shall be conditioned on the assumption by the user thereof of full responsibility and risk for such use, and the user thereof releases and agrees to hold the city and its officers and employees harmless, and to indemnify them from any

liability or loss resulting from the use. The owners and operators of all aircraft based on or operating from the airport shall comply with all of the applicable provisions of Title 28, chapter 25, Arizona Revised Statutes. The city reserves the right to deny use of the airport to any person who is judged by the director to be endangering the public's safety, health or welfare. (Prior code § 22-1-2) (Ord. 1397.02.05 § 3, 1998)

Article II. Property Regulations

13.04.030 City not liable.

The city assumes no responsibility or liability for loss, injury or damage to persons or property on the airport or using airport facilities, including but not limited to fire, vandalism, wind, flood, earthquake, or collision damage, nor does it assume any liability by reason of injury to person or property while using the facilities of same. (Prior code § 22-3-1)

13.04.040 Damage to airport property--Responsible party to comply with rules for compensation.

Any person causing, or liable for, any damage to airport property, shall be required to pay the city on demand the full cost of repairs to the damaged property. Any person failing to comply with these rules may be refused the use of the airport. (Prior code § 22-3-2)

13.04.050 Damage, injurious activities and abandonment prohibited.

A. No person shall destroy, injure, deface or disturb in any way any building, sign, equipment, marker or other structure, tree, shrub, flower, lawn or seeded area on the airport, except as authorized by the director.

B. No person shall conduct on or at the airport, activities that are injurious, detrimental or damaging to the airport property business of the airport or persons.

C. No person shall abandon any personal property at the airport. (Prior code § 22-3-3)

13.04.060 Explosives prohibited.

No person shall carry any unauthorized explosives on the airport. (Prior code § 22-3-4)

13.04.070 Unauthorized aircraft or vehicles removed.

Any unauthorized aircraft or vehicle which has been parked in any unauthorized space may be removed or caused to be removed by the airport director. (Prior code § 22-3-5)

13.04.080 Authority to eject.

The airport manager shall have the right to cause to be ejected from the airport premises, any vehicle or aircraft operator guilty of violation of any provisions of this chapter. Such persons shall have the right to appeal the ejection to the airport authority. (Prior code § 22-3-6)

Article III. Aircraft Operations

13.04.090 Aircraft operations regulations.

A. No person shall conduct any aircraft operation to, or from or over the airport except in conformity with all Federal Aviation Administration regulations, the applicable provisions of Arizona Revised Statutes, this chapter, and the rules and regulations promulgated by the director of airport authority.

B. No person shall park an aircraft on any runway or taxiway at the airport.

C. No person shall park or store an aircraft at the airport except in areas designated by the director.

D. Preventive maintenance work, as defined in Title 14, Part 43, Appendix A(c), Code of Federal Regulations, may be performed at the airport tie-down areas by the owner or operator of the aircraft. Aircraft owners who possess current mechanic ratings such as A&P and A&I may do additional work in the tie-down areas subject to the approval of the director. All other aircraft maintenance, rebuilding, and alterations shall be performed only in those areas designated by the director.

E. No person shall take any aircraft from the airfield or hangers or operate such aircraft while under the influence of intoxicating liquor or dangerous drug.

F. Persons parking transient aircraft overnight on terminal transient areas shall register their aircraft with the director or his/her representative as soon as possible after landing at the airport and pay appropriate tie-down fees.

G. All owners and operators who desire to base their aircraft at the airport shall register their aircraft with the director or his/her representative prior to beginning operations. Any change in ownership of the aircraft shall be reported as soon as possible.

H. If the director believes the conditions at the airport, or any portion thereof, are unfavorable for aircraft operations, he/she may close the airport, or portions thereof, using applicable Federal Aviation Administration procedures, as appropriate.

I. No aircraft shall be permitted to remain on any part of the landing or takeoff areas for the purpose of repairs.

J. No person shall, without the owner's permission, interfere or tamper with an aircraft parked or stored at the airport.

K. No person shall move an aircraft on the airport in a negligent or reckless manner.

L. No person shall start or taxi any aircraft in a place where the air or exhaust blast is likely to cause injuries to persons or property. If the aircraft cannot be taxied without violating this paragraph, the operator must have it towed to the desirable destination.

M. No agricultural flying may take place at the airport and no storage of any chemicals, pesticides or herbicides will be allowed except as may otherwise be provided in this chapter. Agricultural aircraft must be washed of all chemicals before tying down at the airport, at a wash area approved by the director. All such aircraft may be restricted to a specific tie-down area as designated by the director.

N. All air traffic should avoid flight over populated or noise sensitive areas whenever possible, consistent with safety. (Prior code § 22-4-1)

13.04.100 Accident procedures.

A. Persons involved in aircraft accidents occurring at the airport shall make a full report thereof to the director or his/her representative as soon as is possible after the accident. The report must include all pertinent information. For the purposes of this section, an aircraft accident shall include any event involving an aircraft and a motor vehicle, other aircraft, person or stationary object with results in property damage, personal injury or death.

B. Any person damaging property on the airport by means of contact with aircraft shall report the damages to the airport office immediately and shall be fully responsible to the city for the cost of repairs.

C. Every pilot and aircraft owner shall be responsible for the prompt removal of any disabled aircraft or parts hereof, as directed by the director or his/her representative, subject to accident investigation requirements. (Prior code § 22-4-2)

Article IV. Motor Vehicles

13.04.110 General regulations.

A. No motor vehicle shall be operated on the airport if it is so constructed, equipped or loaded as to endanger persons or property.

B. Each operator of a motor vehicle involved in any accident on the airport that results in personal injury or property damage, shall make a full report to the director or his/her representative as soon as possible after the accident.

C. No person shall operate any motor vehicle on the airport in violation of this chapter, or rules and regulations promulgated by the director or the laws of the state.

D. No person shall operate a motor vehicle on the airport in a negligent or reckless manner, or in excess of posted speed limits.

E. No person shall park or stand a motor vehicle at any place on the airport in violation of any sign posted by the director, or within fifteen feet of a fire hydrant, or in a manner as to block any fire gate or entrance, road or taxiway.

F. The director or his/her agent may remove, at the owner's expense, any motor vehicle which is parked on the airport in violation of this chapter. The vehicle shall be subject to a lien for the cost of removal. (Prior code § 22-5-1)

Article V. Roads and Walks

13.04.120 Unauthorized travel unlawful.

It is unlawful for any person to travel on the airport except on a road, walk or other place provided for the kind of travel the person is doing. (Prior code § 22-7-1)

13.04.130 Obstructions unlawful.

It is unlawful for any person to occupy or place an object on a road or walk on the airport in a manner that hinders or obstructs its proper use. (Prior code § 22-7-2)

Article VI. Fire Hazards and Fueling Operations

13.04.140 Unauthorized fuel delivery and dispensing unlawful.

It is unlawful for any person to transport or deliver aviation fuels on the airport or dispense fuels into aircraft unless authorized to conduct such activity, except if a person is providing fuel for his/her own aircraft. (Prior code § 22-8-1)

13.04.150 Flammable cleaning fluids unlawful.

It is unlawful for any person to use a flammable or volatile liquid having a flash point of less than ninety-six degrees Fahrenheit to clean an aircraft, aircraft engine, propeller or appliance in an aircraft hangar or similar type building, nor within fifty feet of another aircraft, building or hangar. (Prior code § 22-8-2)

13.04.160 Open flame operations unlawful.

It is unlawful for any person to have in his possession an open flame, flame-producing device or other source of ignition (except cigarette lighters or matches for that purpose) in any hangar or similar type of building, except in locations approved by the director. (Prior code § 22-8-3)

13.04.170 Smoking prohibited.

It is unlawful for any person to smoke in any areas during any times when smoking may be a hazard. (Prior code § 22-8-4)

13.04.180 Storage unlawful when fire hazard.

A. It is unlawful for any person to store or stock material or equipment on the airport in a manner that constitutes a fire hazard.

B. It is unlawful for any person to store any combustible materials, flammable liquids or other hazardous materials in an unsafe manner. (Prior code § 22-8-5)

13.04.190 Surface areas to be kept clean.

Each person to whom space on the airport is leased, assigned or made available for use shall keep the space free and clear of oil, grease, or other foreign materials that could cause a fire hazard or slippery or other unsafe condition. (Prior code § 22-8-6)

13.04.200 Doping unlawful except under certain conditions.

It is unlawful for any person to conduct a doping process on the airport except in a properly designed fire-resistive and ventilated room or building in which all lights, wiring, heating, ventilating equipment, switches, outlets and fixtures are approved for such use in hazardous areas, and in which all exit facilities are approved and maintained for such use, or except in an open area as designated by the director. No person shall enter or work in a dope room while doping processes are being conducted unless wearing spark proof shoes. (Prior code § 22-8-7)

13.04.210 Fueling unlawful when.

A. It is unlawful for any person to fuel or defuel an aircraft in the airport while:

1. Its engine is running or is being warmed by applying external heat;

2. It is in a hangar or enclosed space;

3. Passengers are in the aircraft unless a passenger loading ramp is in place at the cabin door, and a "no smoking" sign is displayed and the rule enforced.

B. It is unlawful for any person to knowingly start the engine of an aircraft on the airport if there is any gasoline or other volatile flammable liquid on the ground beneath it of sufficient quantity to cause a hazard.

C. It is unlawful for any person to operate a radio transmitter or receiver, or to switch electrical appliances on or off, in an aircraft on the airport while it is being fueled or defueled.

D. During the fueling of an aircraft on the airport, the dispensing apparatus and the aircraft shall both be grounded in accordance with orders and instructions of the director.

E. Each person engaged in fueling or defueling on the airport shall exercise care to prevent the overflow of fuel, and shall have readily accessible and adequate fire extinguishers.

F. During the fueling or defueling of13. an aircraft on the airport, no person shall, within fifty feet of that aircraft, smoke or use any material that is likely to cause a spark or be a source of ignition.

G. Each hose, funnel or appurtenance used in fueling or defueling an aircraft on the airport shall be maintained in safe, sound and nonleaking condition and must be properly grounded to prevent ignition of volatile liquids. (Prior code § 22-8-8)

13.04.220 Compliance with Uniform Fire Code required.

All persons shall comply with the provisions of the most recently adopted Uniform Fire Code of the City. (Prior code § 22-8-9)

13.04.230 Authority to inspect--Compliance required.

The city fire chief or duly authorized representatives shall inspect as often as necessary all buildings and premises for the purpose of ascertaining and causing to be corrected any conditions which would reasonably tend to cause fire or contribute to its spread or endanger life or property from fire. All orders, notices or recommendations shall be complied with by all persons without delay. (Prior code § 22-8-10)

Article VII. Tenants Regulated

13.04.240 Uses to be in conformance.

No lessee or sub lessee of airport property shall knowingly allow that property to be used or occupied for any purpose prohibited by this chapter. (Prior code § 22-9-1)

13.04.250 Trash requirements.

A. It is unlawful for any tenant, lessee, sub lessee, concessionaires or agent of any of them, doing business on the airport, to keep uncovered trash containers on the sidewalk or road or in a public area of the airport.

B. It is unlawful for any person to operate a vehicle for hauling trash, dirt or other material on the airport unless it is built to prevent its contents from dropping, sifting, leaking or otherwise escaping.

C. It is unlawful for any person to spill, pour or otherwise discharge any pesticide, herbicide or any hazardous material on any airport property. (Prior code § 22-9-2)

13.04.260 Hazardous storage unlawful.

It is unlawful for any person to store or stack equipment or material in a manner to be a hazard to persons or property. (Prior code § 22-9-3)

13.04.270 Authority to inspect at any time.

The director or authorized representative shall have the right at all reasonable times to inspect all areas under lease to or occupied by tenants. (Prior code § 22-9-4)

13.04.280 Provisions incorporated into lease.

The provisions of this chapter shall be deemed incorporated into every lease and sublease and violations of the provisions of this chapter or any rule or regulation pursuant to this chapter may result in termination of the lease or sublease. (Prior code § 22-9-5)

Article VIII. Commercial Operations

13.04.290 Definitions.

For the purpose of this article, a "business or commercial activity" means and includes the following types of activities when done for hire, compensation or reward:

A. Retail sales of goods, wares, merchandise or services;

B. Pilot training and flight instruction;

C. Sale, rental or charter of aircraft;

D. Air carrier and air taxi operations;

E. Sale of aviation petroleum products;

F. Sale or service of aircraft parts, avionics, instruments or other aircraft equipment;

G. Repair, maintenance, rebuilding, alteration or exchange of aircraft engines, components or other parts;

H. Flying clubs. (Prior code § 22-10-3)

13.04.300 Operating Policy.

As the operator and proprietor of the airport, on behalf of the citizens of the city, it is the intent of the airport authority and the city council:

A. To operate the airport in a business-like manner with as little cost as possible to the taxpayers through the imposition of fair and reasonable rentals, fees and charges;

B. To provide for both private and commercial aviation at the airport to the extent practicable within physical, economic and environmental constraints;

C. To provide for the full range of on-base aeronautical support consistent with the need for the service and the availability of space and physical facilities;
D. To protect the airport patrons and users from unsafe and inadequate aeronautical service and to maintain and preserve all airport facilities in a safe, secure and orderly condition;

E. To promote fair competition and not expose those who have lawfully undertaken to provide commodities and services at the airport to irresponsible or unethical business or commercial activity on the airport;

F. To permit and provide adequate facilities for owners of general aviation aircraft to work on and service their own aircraft within the limits as may be imposed by this chapter or airport regulation for purposes of safety, preservation of airport facilities, and protection of the public interest;

G. To promote the utility, educational and recreational aspects of general aviation. (Prior code § 22-10-1)

13.04.310 Prohibited acts.

It is unlawful for any person to engage in any business or commercial activity on the airport without a lease approved by the council, or a sublease from a duly authorized master lessee which is approved by the city. For the purposes of this article a "person" means an individual or group of individuals, including a company, partnership, corporation or other association. This prohibition shall also apply to persons who use the airport as a base for conducting their activity but whose office or other place of business is not situated at the airport. This prohibition does not apply to:

A. Aircraft operations in which the flight originates and terminates elsewhere and the airport is used as a temporary stopping place for such purposes as landings, refueling, or other aeronautical service, or the embarking or debarking of passengers, except in the case of charter or air taxi airlines;

B. Company or corporate-owned aircraft where personnel or products are transported free of charge, the trip being merely incidental to the company's principal business and not, in itself, a major enterprise for profit;

C. Casual or isolated transactions such as sales by the owner, an owner/pilot giving occasional flight instruction, or the like;

D. No lease or license for the exclusive right to provide an aeronautical service, operation or activity on the airport shall be issued or approved. (Prior code §§ 22-10-2, 22-10-4)

13.04.320 Appropriate allocation of ground space--Structures to comply with building regulations.

Leases for aeronautical and commercial activities on the airport shall be issued and approved contingent on the lessor constructing or providing a structure or structures on the leased property appropriate to the type of aeronautical or commercial activity to be conducted. Ground space allocations under lease agreements shall be made in accordance with a master plan and land use plan adopted by the city for development of the airport. All structures erected on the airport shall comply with all building regulations. Structural and architectural design of all structures shall be subject to approval by the city. Termination of a ground lease without other satisfactory arrangements having been made with the city shall automatically revoke the permission to conduct an aeronautical or commercial activity on the airport. (Prior code § 22-10-5)

13.04.330 Procedures for acquiring lease.

When a person, corporation or other entity desires to enter into a lease with the city for land on the airport, the person must contact the director and make the request known. The city shall negotiate with the interested party to arrive at lease provisions and costs which reflect fair market values and include provisions to increase lease amounts in future years based on appropriate economic factors. Prior to entering into any lease for property at the airport, the prospective lessee must present to the city satisfactory evidence that it meets the minimum standards established herein for engaging in business at the airport. (Prior code § 22-10-6)

13.04.340 Fixed-base operator's license issued subject to compliance.

A. A general fixed-base operator's license will be issued subject to the compliance with all conditions hereinafter imposed and upon proper application, to a person or company providing the following services:

1. Fuel and oil sales;
2. Flight training services;
3. Aircraft charter and taxi services;
4. Aircraft rental and sales;
5. Sale of aircraft parts, accessories and hardware;
6. Repair, overhauling and modification of aircraft or equipment.

B. A special fixed-base operator's license will be issued subject to the compliance with all conditions hereinafter imposed and upon proper application, to a person or company providing some but not all of the services required of a general fixed-base operator.

C. Aviation fuel will be sold on the airport only by the city or by a duly licensed fixed-base operator. Nothing in this section shall be construed so as to limit the right of any person to provide fuel for his/her own aircraft. However, such self-service fueling shall meet all applicable city, state and federal safety regulations.

D. All fixed-base operators shall individually or in cooperation with other entities at the airport, maintain such hours and/or call-out arrangements so as to adequately service the public demand for such products/services as may be provided.

E. Nothing herein is intended to prevent persons from selling goods or services during a special event on the airport approved by the director. (Prior code § 22-10-7)

13.04.350 Agricultural chemical application--Requirements to engage in.

Except for those persons or firms authorized by lease agreement to conduct agricultural spraying operations from the airport at the time the ordinance codified in this chapter was approved no lease shall be approved allowing the conduct of an agricultural spraying operation from the airport unless the potential lessee agrees to construct a facility for the mixing, loading and storing of chemicals and pesticides which would prevent chemicals or contaminated water from entering the ground, septic or sewer system of the facility. Approval may be given after reviewing facility plans with appropriate agencies to determine the safety and effective working of the facility. Those lessees authorized to conduct agricultural spraying operations from the airport shall keep all leased property in a clean and orderly condition at all times, and the area shall be free from chemical odors, as much as possible. All chemicals shall be handled, loaded and stored safely. Persons engaged in this activity shall be in compliance with all city, state and federal rules and regulations regarding agricultural chemical handling and application, and shall be correctly permitted and/or licensed to conduct such activity. (Prior code § 22-10-8)

13.04.360 Insurance coverage required.

All lessees on the airport property shall obtain and maintain insurance coverage for liability, with the city being named in the policies as an additional insured. Amounts of coverage shall be set at appropriate levels by the director, or as otherwise established in a lease agreement. (Prior code § 22-10-9)

13.04.370 Rates and charges established by council.

A schedule of rates and charges for use of the airport and its facilities shall be established by the council, and each person or organization subject to the rates and charges shall promptly pay the amounts due. A copy of the schedule shall be available at the airport office. (Prior code Art. 22-11)

Article IX. Offenses--Violation--Penalty

13.04.380 Nuisances, littering, vandalism unlawful.

A. It is unlawful to commit any act or to omit to act in such a way as to create a nuisance on the airport.

B. It is unlawful for any person to dispose of garbage, papers, refuse or other material on the airport except in receptacles provided for that purpose.

C. It is unlawful for any person to vandalize any public property on the airport.

D. It is unlawful for any person to alter, make additions to, or erect any building or sign or make any excavations on the airport without the permission of the director, subject to lease provisions.

E. It is unlawful for any person to willfully abandon any personal property on the airport. A person has abandoned personal property when it remains unattended and without written permission of the director for a period of thirty days or more. (Prior code § 22-6-1)

13.04.390 Unauthorized hunting prohibited.

No person shall hunt, pursue, trap, catch injure or kill any bird or animal on the airport without authorization of the director. (Prior code § 22-6-2)

13.04.400 Unauthorized solicitation and advertising unlawful.

A. It is unlawful for any person to solicit fares, alms or funds for any purpose on the airport without permission of the director.

B. It is unlawful for any person to post, distribute or display signs, advertisements, circulars or other printed or written matter in a public area of the airport except in locations designated by the director. (Prior code § 22-6-3)

13.04.410 Animals to be restrained.

It is unlawful for any person to enter the airport with a dog or other domestic animal unless that animal is kept restrained by a leash or is confined so as to be completely under control. (Prior code § 22-6-4)

13.04.420 Unauthorized flying of model aircraft prohibited.

The flying of model aircraft within the airport is prohibited unless authorized by the director. (Prior code § 22-6-6)

Article X. Miscellaneous

13.04.430 Council authority to establish additional standards.

The city council reserves the right to establish additional standards for any and all categories of aeronautical related businesses or specialized services operating on the airport property. (Prior code § 22-13-1)

13.04.440 Federal Authority.

All lease agreements and permits shall be subordinate to the provisions of any existing or future agreement between the city and the United States relative to the operation and maintenance of

the airport, execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport. (Prior code § 22-13-2)

13.04.450 Violation--Penalty.

It is unlawful for any person to violate any of the provisions of this chapter or any lawful rule or regulations promulgated by the city under the authority of this chapter. Penalties for violations shall be determined under the provisions of this code. (Prior code Art. 22-12)

13.04.460 Conflicting regulations.

Where there exists a conflict between any regulation or limitation prescribed in this regulation and any other regulations applicable to the same area, the more stringent limitations or requirements shall govern and prevail. (Prior code § 22-13-3).

Example 2

FARMINGTON, Minnesota

ARTICLE 1. IN GENERAL

Sec. 3-1-1. Purpose of airport.

The Four Corners Regional Airport--Farmington (FMN) shall be conducted as a terminal facility for the promotion and accommodation of air commerce and shall be operated as a public air terminal without discrimination against any person because of race, color, creed, age, sex, religious or political affiliation or national origin. (Code 1969, § 20-1)

State law reference(s)--Authority to purchase, establish, construct, maintain and operate an airport, NMSA 1978, § 3-39-4.

Sec. 3-1-2. Appointment and authority of airport manager.

(a) The operation of the airport shall be under the direction of the airport manager who shall be appointed by the city manager and who shall be a person professionally competent by experience and training to manage the airport.

(b) The airport manager is delegated authority to take reasonable steps for handling, policing and protecting the public while present at the airport, subject to review by the city manager. (Code 1969,§20-4) Cross reference(s)--Officers and employees, § 2-3-1 et seq.

Sec. 3-1-3. Penalty for violation.

It shall be unlawful for any person to violate this chapter. Any person convicted of violating this chapter shall be punished in the manner specified in Section 1-1-10. (Code 1969, § 20-16)

Sec. 3-1-4. Hours of use.

The airport shall be open for public use at all hours of the day, subject to reasonable restrictions for security, inclement weather, conditions of the airfield and other reasonable restraints. (Code 1969, § 20-2)

Sec. 3-1-5. Obedience to regulations.

The use or occupancy of the airport or any of its facilities in any manner creates an obligation on the part of the user to obey all lawful regulations promulgated with reference thereto. (Code 1969, § 20-3)

Sec. 3-1-6. Airport rules generally.

At the airport, no person shall:

(1) Solicit funds, alms or fares at the airport for any purpose unless a permit has been issued by the city manager.

(2) Post, distribute or display signs, advertising circulars, printed or written matter on the airport unless a permit has been received from the city manager.

(3) Take any still, motion or sound pictures on the airport for commercial purposes unless a permit has been received from the city manager.

(4) Commence any construction, improvement or remodeling activity at or upon the airport without prior approval of the city manager.

(5) Fail to report as soon as possible any damage, injury or destruction caused by any such person to any property on the airport, including real property, personal property, improvements, fixtures or equipment owned or controlled by the city or owned or controlled by any other person or governmental agency and used in connection with the landing, takeoff, control or safety of aircraft. (Code 1969, § 20-12)

Sec. 3-1-7. Sanitation.

At the airport, no person shall:

(1) Release, deposit, blow or spread any bodily discharge on the floor, wall, partition, furniture or any part of a public toilet, comfort station, terminal building, hangar or other building or place on the airport, other than directly into a fixture provided for that purpose.

(2) Place any foreign object in any plumbing fixture of a public toilet, comfort station, terminal building, hangar or other building on the airport.

(3) Dispose of any sewage, garbage, refuse, paper or other material at the airport, except in a container provided for such purpose. (Code 1969, § 20-13)

Cross reference(s)--Solid waste management, ch. 23; utilities, ch. 26.

Sec. 3-1-8. Unauthorized use of property.

No person shall take or use any aircraft or any part or accessory thereof or any tools or other equipment owned or controlled by any other person or stored or otherwise left at the airport without the consent of the owner or operator thereof or other satisfactory evidence of his right to do so. (Code 1969, § 20-14)

Sec. 3-1-9. Unauthorized entrance into restricted areas.

No person shall enter upon the field area, the control tower area, the airline service area, the airport utilities service area, the fire department control area or any other area of the airport which has been designated and posted as restricted to the public unless such person has been duly authorized to enter such area or place. (Code 1969, § 20-15)

ARTICLE 3. AIRCRAFT

Sec. 3-3-1. Operator's conduct when tower in operation.

No person shall, while the federal aviation tower located at the Four Corners Regional Airport is in operation:

(1) Navigate any aircraft over, land upon, takeoff from or service, repair or maintain any aircraft other than in conformity with the rules and regulations of the Federal Aviation Administration of the United States.

(2) Fail to taxi while under full control and at reasonable speeds while the aircraft is being operated. Following a landing or prior to takeoff and while taxiing, every pilot shall ensure that there is no danger of collision with other aircraft.

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Appendix Q ► Reserved

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Appendix R ► Airport Layout Plan (ALP)

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I. FAA Leadership in Airport Planning

A. Airports Division's challenge in the 21st Century is to provide leadership in airport planning. FAA leadership at the planning stage of a project can reduce the level of effort needed in the later phases of project development and implementation by identifying and resolving potential problems before they occur. The ALP review and approval process is a primary means for ADO Program Managers to provide leadership in airport planning.

B. Role of the ADO Program Manager (PM) in the Airport Planning Process:

1. Identify airports of federal interest needing planning studies to address capacity, safety, security, or other issues, and encourage airport owners to initiate these studies. Ensure these projects are in the ACIP.

2. Provide guidance to the airport owner in tailoring the scope of the planning project to fit the needs of the airport. Generally, the PM should encourage ALP updates, not full master plans, at airports with less than 50 based aircraft. When master plans are appropriate, they should be tailored to include only those elements necessary. For example, consider using a state system plan forecast for small airports. Also, a detailed airport capacity analysis is generally not necessary for small airports.

3. Educate airport owners on the importance of the ALP in the FAA's and airport owner's decision making processes regarding the operation and development of the airport. (ex. ACIP formulation, airspace reviews, etc.)

4. Share with airport owners innovative solutions to problems that have been used elsewhere. (We have knowledge of, and experience with similar problems/solutions at other airports.)

5. Take every opportunity to meet with airport owners and engage in "brainstorming" sessions regarding their planning.

6. Organize and conduct airport planning meetings prior to and during the master plan/ALP update process for large and medium hub airports. The purpose of these meetings is to identify issues that need to be addressed during the master plan/ALP update. Include the airport owner, their consultant, and all appropriate FAA personnel in the meeting.

II. What is an ALP?

A. Definition:

"An Airport Layout Plan (ALP) is a scaled drawing of existing and proposed land and facilities necessary for the operation and development of the airport…." (Ref. 2, par. 5)

B. Airport Layout Plan Components. The ALP is actually a set of drawings composed of the following (Ref. 2, Appendix 7):

1. *Narrative Report* – Aviation activity forecast, design aircraft (Airport Reference Code), and supporting documentation for modifications of standards, runway safety area determinations, proposed development, etc.

2. *Cover Sheet* - Not mentioned in the AC, but may be present on large airports.

3. *Airport Layout Drawing* - What we normally think of as the ALP. See definition above.

4. *Airport Airspace Drawing* - Part 77 surfaces; note that these should be based on ultimate runway lengths and approaches in order to protect for ultimate development; used to identify obstructions, particularly in the approaches.

5. *Inner Portion of the Approach Surface Drawing* - Formerly Runway Protection Zone Drawing; larger scale drawing of the inner portion of the approaches; used to identify in more detail close-in obstructions and other noncompatible objects.

6. *Terminal Area Drawing* - Usually only needed at large airports where detail on the Airport Layout Drawing is too small; generally used to show dimensions and elevations of structures, and to show access roads.

7. *Land Use Drawing* - Depicts recommended use of land within the airport boundary and in the vicinity of the airport; primary purposes are to provide

airport owner with a plan for leasing revenue-producing areas and to provide guidance for establishing appropriate zoning.

8. *Airport Property Map* - Not necessarily the Exhibit "A;" indicates how various tracts of airport property were acquired, i.e., funding source; primary purpose is to provide information on the use of land acquired with federal funds and/or the use of surplus property; important for determining land needed for airport purposes and the proper use of land sale proceeds.

Note: Not all ALP sets require all of these drawings. It depends on the size and level of complexity of the airport. Smaller airports may get by with only the Airport Layout Drawing, while large hubs may need all of the drawings. Also, some drawings may be combined, such as the land use drawing and property map.

C. Significance of the ALP. The ALP is a key "communication" and "agreement" document between the airport owner and the FAA. It represents an understanding between the airport owner and the FAA regarding the current and future development and operation of the airport.

1. FAA Uses of the ALP:

   a) Aeronautical studies of proposals for the development of nearby airports and objects that may affect the navigable airspace, and proposals for on-airport development. (obstruction evaluation/airport airspace analysis (OE/AAA) and NRA cases)

   b) Siting of new and relocated FAA facilities and equipment (ATCTs, ASRs, NAVAIDs, etc.).

   c) Analysis of operational changes (ex. the occasional use of the airport by aircraft larger than the design aircraft.).

   d) Development of new standard instrument approach procedures.

   e) Determination of land needed for aeronautical purposes, and the proper use of land sale proceeds.

2. Because the ALP will be relied upon for these uses, it is imperative that each FAA Division devote sufficient time and resources in reviewing the draft ALP to assure that their interests are addressed and any issues with planned airport development are identified and resolved.

3. Because the approved Airport Layout Plan (ALP) represents an agreement between the airport owner and the FAA regarding how the airport will develop, it is also imperative that the airport owner develop the airport in accordance with the ALP. Federal Grant Assurance 29, *Airport Layout Plan*, states in part that:

> "The sponsor [airport owner] will not make or permit any changes or alterations in the airport or in any of its facilities which are not in conformity with the Airport Layout Plan as approved by the Secretary…" (ref. 7, Appendix 1)

III. Whose Airport Layout Plan (ALP) is it anyway?

A. The ALP is the airport owner's plan for development of their airport. Although we have a significant interest in it, the FAA does not own the airport and the ADO Program Manager should not attempt to dictate what development is shown on the ALP.

B. However, because of our interest, the ADO Program Manager should provide leadership and guidance to the airport owner through the ALP review and approval process in order to ensure that the FAA's interests are taken into account in the development of the airport.

C. Also, ADO Program Managers should encourage airport owners and their consultants to be realistic in their planning. The FAA cannot prohibit the depiction of any future development on the ALP; however, if the airport owner persists in showing particularly ambitious items of development, the ALP approval letter should point out that the development must be fully justified to be eligible for AIP or PFC funding.

IV. When should an ALP be updated?

A. As stated previously, the ALP is a key document representing an understanding between the airport owner and the FAA regarding the current and future development of the airport, and will be used by the FAA, the airport owner, and other parties for planning and decision making activities. Therefore, it should be kept current, reflecting changes in the physical features on the airport and critical land use changes in the vicinity of the airport that may affect the navigable airspace or the airport's expansion capability. (ref. 1, par.9-2)

B. For obligated airports, Federal Grant Assurance 29, *Airport Layout Plan*, states in part that the airport owner will: "…keep up to date at all times an Airport Layout Plan of the airport…" (ref. 7, Appendix 1)

C. ADO Program Managers should show leadership in this area and provide guidance to airport owners. ALP's should be reviewed and validated at least every two to seven years, depending on the size of the airport. If the review indicates an ALP should be updated, the ADO Program Manager should write the airport owner, asking them to update the ALP. (12)

D. Use judgment in determining when an ALP needs updating. Things to Consider in determining whether an ALP needs updating (12):

1. Does the existing ALP still accommodate the forecast aeronautical need?

2. Do the existing facilities and proposed development still meet FAA design standards? (i.e., has the design aircraft changed?)

3. Have FAA design standards significantly changed? AC 150/5300-13 states in part that:

   > "When FAA upgrades a standard, airport owners should, to the extent practicable, include the upgrade in the ALP before starting future development." (ref. 2, par. 5a)

4. Have there been many physical changes to the airport (new construction, etc.) since the existing ALP was approved?

5. Have there been numerous interim "pen-and-ink" changes to the existing ALP?

   a) Notices of Proposed Construction or Alteration on airport property (Form 7460-1). If the construction is minor in scope (ex. a new T-hangar), after coordination and approval of the 7460-1, the ADO may make a "pen-and-ink" change to the approved ALP, showing the new construction and noting the NRA case number and date approved.

   b) As-built ALPs:

      1) If the As-built ALP is only for the purpose of changing proposed development to existing development (as constructed), it may be treated as a "pen-and-ink" change to the ALP. In this case, the As-built ALP should be attached to the top of the current approved ALP drawing set. Any previous As-built ALPs attached to the ALP drawing set may be discarded.

      2) If in addition to changing proposed development to existing development (as constructed), the As-built ALP shows new proposed development or changes to the proposed development, and it should be treated as an ALP update. In this case, the As-built ALP should be reviewed, coordinated, and approved, and will become the new "current approved ALP." The previous approved ALP drawing set may be discarded.

6. When preparing the current year ACIP for an airport, the Program Manager should review the ALP to determine whether it is up-to-date and contains the

projects proposed in the ACIP. If the ALP needs updating, the airport owner should be advised to accomplish the update immediately. The projects must be shown on the approved ALP before a grant may be issued. The cost of the update can be reimbursed as a project formulation cost. (ref. 7, par. 300.c)

V. Why does the FAA approve ALPs?

A. ALPs for "obligated" airports:

1. AIP Handbook, paragraph 300.c. states in part that: "A current Airport Layout Plan (ALP) which has FAA approval from the standpoint of safety, utility, and efficiency of the airport shall be required before a development project is approved." [emphasis added] (7) So, we approve ALPs because FAA approval is required for AIP (and PFC) funding. The reason FAA approved ALPs are required is to ensure that federally funded airport development will be safe, useful, and efficient.

2. Safety

Airport development must be safe:

a) Section 103 of the Federal Aviation Act of 1958 (FAA Act) states in part that: "…the Secretary of Transportation shall consider the following, among other things, as being in the public interest: The regulation of air commerce in such manner as to best promote its development and safety…." [emphasis added]

b) Order 1000.1A, Policy Statement of the FAA, paragraph 20 states in part that:

> "It is the statutory responsibility, and primary mission, of the Federal Aviation Administration to promote safety and to provide for the safe use of airspace." [emphasis added]

c) Therefore, safety is our primary mission. It is in the public interest for the FAA to ensure that airport development meets federal design standards and provides for the safe operation of aircraft. For Airports Division, ALP review and approval is a principal way we fulfill our primary mission.

3. Utility (usefulness)

Airport development should be as useful as possible for airport purposes, such as:

a) Make the best use of available land (runway layout, etc.).

b) Minimize impact of off-airport structures and land uses (ex. tall towers and residential areas) on airport operations.
c) Adequately provide for future users.

4. Efficiency

Airport development should provide for maximum airport efficiency, such as:

a) Adequate capacity to meet forecast demand (with minimum delays)

b) Efficient flow of traffic on the airfield (shortest possible taxi distances, no bottlenecks, etc.)

c) Adequate runway spacing to provide needed capacity (ex. allow for simultaneous, independent Instrument Flight Rules (IFR) approaches).

B. ALPs for "nonobligated" airports

1. ALPs are not required for nonobligated airports, but can be very useful. AC 150/5300-13 says in part that: "…Any airport will benefit from a carefully developed plan that reflects current FAA design standards and planning criteria." (ref. 2, par. 5)

2. ALPs for nonobligated airports support the FAA's mission and policy of promoting aviation safety. Order 1000.1A, Policy Statement of the FAA, paragraph 20.b states in part that: "The FAA recognizes the existence of a strong federal interest in promoting aviation safety… Therefore, it will actively seek to encourage the use…of aviation/airport standards that will both maintain and improve the current level of aviation safety." (4)

3. So, ADO Program Managers should encourage the preparation of ALPs at nonobligated airports. If submitted, review and coordinate the ALP, and provide comments to the airport owner regarding the safety, efficiency, and utility of the airport.

4. But, an ALP for a nonobligated airport should not be FAA "approved". Per FAA Order 5050.4A, *Airport Environmental Handbook*, FAA approval is a "federal action" triggering the NEPA review process for any development shown on the ALP.[60]

VI. What does FAA approval of an ALP mean?

A. Our standard ALP approval letter states in part that:

[60] Now refer to FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*

"FAA approval of your ALP means that all existing and proposed airport development shown on the plan meets current FAA Airport Design Standards or a current FAA approved Modification of Airport Design Standards. It also means that we find the proposed airport development shown on the plan useful and efficient." [emphasis added]

1. Therefore, the FAA's approval means we have found the airport layout **safe** (meets design standards or modified design standards and provides for the safe operation of aircraft), **useful** (for airport purposes), and **efficient** (planned capacity is sufficient for forecast demand, taxiway layout prevents congestion, etc.). (Refer back to why we approve the ALP.)

2. IMPORTANT!!! FAA approval should mean that we found the existing and proposed airport development safe for use by the "design" aircraft. The flying public should be able to count on the FAA's "seal of approval" meaning that the airport is safe for their use as long as they are in the "design" aircraft or a smaller aircraft. Therefore, we must review both the existing and proposed development and ensure that it meets our airport design standards, or that modifications of design standards are approved that provide an acceptable level of safety. We should not approve an ALP that does not meet these conditions.

B. Unconditional vs. Conditional ALP Approvals (5)

1. "Unconditional Approval" means all items of proposed development requiring environmental processing have received environmental approval.

2. "Conditional Approval" means environmental processing has not been completed for all of the items of proposed development requiring it.

These are explained more fully in Section XII.

VII. What does FAA approval of an ALP not mean?

A. Our standard ALP approval letter states in part that: "Our approval does not represent a commitment to provide federal financial assistance to implement any development or air navigation facilities shown on the plan. Nor does it mean that we find funding of the proposed airport development justified." [emphasis added] Therefore, our approval does not imply that the proposed airport development is eligible or justified for AIP or PFC funding, or that FAA agrees with all of the development shown on the plan. Justification for federal funding must be based on aeronautical need.

B. A 1996 legislative revision to Section 47110 of Title 49 U.S.C. says in part that project costs are reimbursable with entitlement funds if the cost is incurred "in accordance with an Airport Layout Plan approved by the Secretary…" (ref. 15, par. 47110(b)(2)(C)(iii))

1. This does not mean that as long as a project is shown on the ALP it is eligible for reimbursement with entitlements. The legislation goes on to say that costs incurred must be in accordance with: "…all statutory and administrative requirements that would have been applicable to the project if the project had been carried out after the grant agreement had been executed." (ref. 15, par. 47110(b)(2)(C)(iii))

2. Therefore, development must still be eligible and justified based on aeronautical need.

3. The intent of the legislation was that for project costs to be reimbursed, development must be shown on an approved ALP, not that just because development is shown on the ALP, its costs may be reimbursed.

VIII. ALP Review:

A. General: focus on items relating to safety, utility, and efficiency.

1. ADO Program Managers are encouraged to use Southern Region's ALP Checklist (available in the Airports Reference System and on ASO-600's public web site) to review the ALP. It is also desirable to give the airport's consultant a copy of the checklist prior to their beginning preparation of the ALP.

B. Narrative Report

1. A Narrative Report should be submitted along with the draft ALP if the ALP is not being prepared as part of a Master Plan project and there are changes to the "design" aircraft or proposed runway length, any proposed development or modifications of standards are being shown for the first time on the ALP, and/or runway safety area determinations are needed.

2. The Narrative Report provides the basis for proposed development shown on the ALP. It includes:

   a) Airport activity forecast that supports the need for the proposed development.

   b) Airport reference code ("design" aircraft) on which the proposed development is based.

   c) Rationale for the proposed development (ex. runway length).

   d) Rationale for any modifications of standards (including an alternatives analysis).

e) Rationale for any nonstandard runway safety areas, including an alternatives analysis.

f) Development schedule for each stage of development, i.e., 5, 10 and 20-year plan. (This schedule should be based on activity levels, not just the years these levels are forecast to occur.)

3. Airport Activity Forecasts: (a) The ADO Program Manager should not approve the ALP unless the activity forecast is within 10 percent of the current Terminal Area Forecast (TAF), or the forecast has been coordinated with APP-110 and accepted for inclusion in the TAF. (13); (b) If the activity forecast differs from the TAF by more than 10 percent and the difference cannot be resolved (APP-110 does not accept the forecast and the airport owner will not revise it), the ALP approval letter should indicate that FAA approval is based on the TAF and AIP and PFC funding decisions will likewise be based on the TAF.(13)

4. Airport Reference Code (ARC); (a) Every airport is designed for a specific Airport Reference Code (ARC), which relates the design criteria to the operational and physical characteristics of the aircraft using the airport; (b) There are two components to the ARC (Approach Category (approach speed). Ex. A, B, C, etc. and Design Group (wingspan). Ex. I, II, etc.); (c) The ARC is based on the "design" aircraft (or group of aircraft), which is the largest aircraft having (or forecast to have) a significant number (500 or more) of annual operations at the airport. (ref. 3, par. 2, as amended by 5/30/90 memo); (d) The ALP should list the current and future ARC. Usually these will be different (future often being larger) and (e) In some cases, there may be two "design" aircraft…one for geometric standards (the basis for the ARC) and another for pavement strength. In such cases, the "design" aircraft for pavement strength should be listed on the ALP as well as the ARC.

C. Airport Design Standards

1. These are related to safety and should be the focus of our review.

2. AC 150/5300-13, Airport Design, contains our airport design standards.

3. Includes runway and taxiway separations, RSAs, RPZs, OFZs, OFAs, etc.

4. The "Airport Design v. 4.2" computer program is very helpful for quickly determining the appropriate standards (see Ref. 2, Appendix 11)

5. ALP review checklist (Ref. 2, Appendix 7)

a) Southern Region has an ALP Checklist (available in the Airports Reference System) that was developed from the checklist in Appendix 7. This checklist should be used in reviewing ALPs to help ensure consistency in our reviews.

b) Use judgment - some ALP components may not be applicable to all ALPs (ex. Property map)

c) The ALP Checklist should be given to consultants at the beginning of ALP update and airport master plan update projects. (The checklist is available on the ASO-600 web site.) It will help ensure consistency in ALPs and will let consultants know what we expect with regard to the ALP.

d) We do not accept certification of ALPs! The airport owner or consultant should be encouraged to complete the ALP checklist to help ensure the ALP will meet FAA expectations. The ADO Program Manager may request that the airport owner or consultant submit a copy of the completed checklist along with the draft ALP; however, this is not a certification and does not preclude the ADO Program Manager from reviewing the ALP. Because the ALP is a key document that is relied upon for many things and sets the foundation for future airport development, and because we must ensure that the airport layout provides for safe aircraft operations, it is imperative that we review the ALP.

6. AC 150/5300-13 says in part that: "The FAA approved ALP, to the extent practicable, should conform to the FAA airport design standards existing <u>at the time</u> of its approval." [emphasis added] (ref. 2, par. 5a)

Therefore, general policy is that airport development (existing and proposed) shown on the ALP must conform to current FAA airport design standards. However, except for runway safety areas, we will consider modifications of airport design standards where it is not practicable to meet current standards. If an airport design standard is not met for any <u>existing</u> <u>or</u> <u>proposed</u> development, and a modification of standards has not been previously approved, the airport owner should submit a request for a modification of standards along with the draft ALP to be processed during ALP coordination.

D. Modifications to Airport Design Standards

1. AC 150/5300-13 says in part that:

"Due to unique site, environmental, or other constraints, the FAA may approve an ALP not fully complying with design standards. Such approval requires an FAA study and finding that the proposed modification is safe [provides an acceptable level of safety] for the specific site and conditions." [Clarification added] (ref. 2, par 5a)

2. Southern Region Policy (11)

a) ALPs shall not be approved unless all existing and proposed airport development, except for runway safety areas, meets current airport design standards, or modifications of design standards have been approved that provide an "acceptable level of safety". (6 and 11)

b) Existing development, except for runway safety areas, that does not meet standards for the current "design" aircraft (ARC): (1) If the analysis of the proposed modification of standards indicates that an acceptable level of safety is not provided, operational restrictions or special operating procedures may be necessary to provide an acceptable level of safety; (2) If operational restrictions are required, ADO Program Managers should encourage airport owners to plan, to the extent practical, future development that will meet standards, or that provides an acceptable level of safety without operational restrictions.

c) Existing development, except for runway safety areas, that does not meet standards for the future "design" aircraft (ARC): If the analysis of the proposed modification of standards indicates that an acceptable level of safety will not be provided, future development must be shown on the ALP that meets standards, or that provides an acceptable level of safety without operational restrictions.

d) Proposed development, except for runway safety areas, that does not meet standards for the current and/or future "design" aircraft (ARC): (1) If the analysis of the proposed modification of standards indicates that an acceptable level of safety is not provided, the design of the proposed development must be revised so that it meets airport design standards or so that the modification of standards will provide an acceptable level of safety without operational restrictions; (2) Keep in mind…our goal is for all proposed development to meet current airport design standards. Modifications of standards should only be approved if the airport owner's analysis indicates there is no practical alternative that meets standards (including the use of declared distances).

e) IMPORTANT!!! A modification may only be approved if, after coordination, the ADO determines it provides an acceptable level of safety. The ADO's determination will normally be based on an operational safety review by Flight Standards.

3. Note that the policy with regard to existing development only requires a review to ensure an acceptable level of safety is provided, and if not, that appropriate operational restrictions are implemented. It does not require the immediate correction of the nonstandard condition.

4. When modifications of standards are proposed on the ALP, the airport owner should submit a discussion of the rationale for how the modification provides an acceptable level of safety. They should also discuss the alternatives considered (ref. 6). This information should be submitted in the narrative report or master plan report.

5. Order 5300.1F (Modifications of Design Standards) and AC 150/5300-13 (Change 5) require a table on the ALP listing approved and proposed modifications of design standards. (ref. 6 and 2)

6. If a larger ("more critical") aircraft than the current "design" aircraft (ARC) occasionally uses the airport (less than 500 annual operations), the ADO Program Manager should conduct an aeronautical study (NRA study) to determine whether the airport can accommodate this aircraft with an acceptable level of safety. This study should include a thorough review of all airport design standards related to operational safety. The review may indicate that operating restrictions or special operating procedures are necessary when this aircraft is using the airport in order to ensure an acceptable level of safety.

    a) The NRA study, including any proposed operating restrictions or special operating procedures must be coordinated with Flight Standards and Air Traffic, similar to a modification of standards.

    b) Preferably, Air Traffic and the airport owner should develop and sign a memorandum of understanding regarding any approved operating restrictions and/or special operating procedures. However, as a minimum, the airport owner should send the air traffic control tower manager a letter clearly stating the operating restrictions in terms of specific airplanes that use the airport.

    c) The ADO Program Manager should see that the FAA Form 5010 is updated to include any approved operating restrictions so that they will be published in the Airport Facility Directory (AFD). These restrictions should be stated in terms of airplane wingspans, tail heights, etc.

    d) Since the airport is not designed for this "critical" aircraft, modifications of airport design standards are not appropriate.

    e) However, if it is likely the "critical" aircraft may become the future "design" aircraft, the ADO Program Manager should encourage the airport owner to update the ALP to incorporate the "critical" aircraft as the future "design" aircraft (ARC) and propose development to accommodate this aircraft without operating restrictions. The proposed development should meet airport design standards or approved modifications of airport design standards.

f) If the NRA study indicates that operational restrictions are not feasible and the airport cannot accommodate the “critical” aircraft with an acceptable level of safety, the airport owner should be advised that the airport cannot accommodate the “critical” aircraft with an acceptable level of safety and they should not allow it to operate on the airport.

E. Runway Safety Area Determinations (10)

1. Modifications to airport design standards are not allowed for runway safety areas (RSAs).

2. RSAs must meet airport design standards to the extent practicable.

3. ALPs shall not be approved unless a Runway Safety Area Determination has been made on all runway safety areas.

4. Existing RSAs:

a) Each RSA at federally obligated airports must be subject to a “determination” as to whether it meets current standards, or if not, whether it is practicable to meet current standards. (10)

b) If this “determination” has not been made previously, it should be made during review of the draft ALP.

c) Even if the RSA “determination” has been made previously, the ALP should be reviewed to determine whether conditions have changed or new information is available that would indicate the need to revise the previous “determination”.

d) The format and documentation requirements for RSA “determinations” is contained in FAA Order 5200.8 (10)

e) If the RSA “determination” reveals that it is practicable to improve the RSA to meet standards, or at least to enhance safety, the ALP should show the required improvements.

f) ADO Program Managers should not approve an ALP unless a RSA “determination” has been completed for all existing RSAs.

5. Future RSAs:

a) The ALP should show future RSAs meeting current standards.

b) While a RSA “determination” as defined by Order 5200.8 is not required for future RSAs, if it appears that meeting current standards

for the future RSA is not practicable, a similar alternatives analysis should be performed during preparation of the ALP to support whatever RSA is shown on the ALP.

c) The ADO Program Manager should review the airport owner's alternatives analysis during review of the ALP and determine whether it seems reasonable, and whether the proposed RSAs meet current standards to the extent practicable.

d) ADO Program Managers should not approve an ALP unless the proposed future RSAs meet current standards or the airport owner has reasonably shown that the proposed future RSAs will meet current standards to the extent practicable.

The ALP should show the actual existing and proposed RSA dimensions on the drawing or in the runway data table, not just the standard dimensions. (Change 5 to AC 150/5300-13 added requirements on this as well as OFAs, OFZs, RPZs, etc.)

F. Declared Distances

1. Refer to Appendix 14 of AC 150/5300-13 (Ref. 2)

2. What are Declared Distances? (a) Runway operational distances that pilots use to calculate their maximum allowable airplane operating weights; (b) Declared distances may shorten runway lengths available for landings and/or takeoffs, thus may reduce the allowable operating weights of aircraft, and as a result, may negatively impact capacity.

3. Purpose of Declared Distances:

a) To increase takeoff runway length at constrained airport sites while still meeting design standards. (ex. increase runway takeoff length in one direction while maintaining standard RSAs, ROFAs and RPZs.)

b) To enhance safety (improve RSAs, ROFAs, and RPZs) at constrained airport sites. (ex. existing runway safety area does not meet standards, but declared distances are used to effectively lengthen the runway safety area beyond the stop end of the runway.)

4. Guidelines for use:

a) AC 150/5300-13, Appendix 14 says in part that: "The use of declared distances for airport design shall be limited to cases of existing constrained airports where it is impracticable to provide the RSA, ROFA, or RPZ in accordance with the design standards…" (emphasis added) (2)

b) Therefore declared distances shall not be used for new airports. The intent is that new airports be designed to meet standards.

c) Except for runway safety areas (RSAs), declared distances may be used in combination with modifications of standards to achieve an acceptable level of safety and minimize negative capacity impact. (ex. if the use of declared distances to achieve a standard runway object free area (ROFA) would severely limit allowable takeoff weights, a less than standard ROFA might be approved.)

d) For runway safety areas, declared distances may be used to obtain a standard RSA if the RSA Determination finds this to be practical. However, declared distance criteria should only be used after a thorough analysis determines that it is not practical to use more traditional methods to meet RSA standards. (ex. extend the opposite end and shift the entire runway.)

e) Application of declared distance criteria may not be appropriate at some GA airports, depending on the "design" aircraft (ARC). Pilots of small GA aircraft do not have a requirement to use declared distances to calculate allowable operating weights; therefore, use of declared distances would not be appropriate at airports serving these aircraft only. However, pilots of larger corporate or cargo aircraft do have a requirement to use declared distances to calculate allowable operating weights; therefore, declared distances would be appropriate at airports serving these aircraft.

5. Remember!!! Declared distance information is for pilots. The information must get to NFDC for publication in the Airport Facility Directory for it to be useful. While showing the information on the ALP is required, it is not enough. Pilots generally do not see the ALP.

G. Runway Protection Zones (RPZs)

1. Definition: an imaginary trapezoidal ground area beyond the end of the runway and centered about the extended runway centerline. The RPZ is <u>not</u> related to the Part 77 approach surface.

2. Purpose: to enhance the protection of people and property on the ground.

3. RPZ Dimensional Standards:

a) The RPZ begins 200 feet beyond the end of the runway length useable for takeoff <u>or</u> landing.

b) The departure RPZ coincides with the approach RPZ except where the runway threshold is displaced, such as with declared distances. In these cases, a separate approach and departure RPZ is required (see Appendix 14 of AC 150/5300-13).

c) Standard approach RPZ dimensions are in Table 2-4 of AC 150/5300-13. Note that they are particular to a runway end and are based on the specified approach visibility minimums associated with that runway end, as well as the design aircraft size.

d) Departure RPZ dimensions are as specified in Appendix 14 of AC 150/5300-13.

e) Note that the RPZ will not always coincide with the inner portion of the Part 77 approach surface. (Runway Clear Zones, which preceded the RPZ, were defined as a horizontal projection of the inner portion of the Part 77 approach surface. However, this is no longer the case with RPZs.)

4. RPZ Components:

   a) Runway Object Free Area (ROFA): a rectangular area surrounding the runway and extending into the RPZ (see par. 307 of AC 150/5300-13).

   b) Controlled Activity Area: the portion of the RPZ beyond and to the sides of the ROFA.

5. RPZ Clearing Standards:

   a) It is desirable to clear the entire RPZ of all above ground objects. Where this is impractical, as a minimum, airport owners must clear the RPZ of incompatible objects and activities.

   b) ROFA: must be cleared of all above ground objects protruding above the runway safety area edge elevation. (1) exceptions: objects that need to be located in the ROFA for air navigation or aircraft ground maneuvering purposes. Also, it is permissible to taxi and hold aircraft in the ROFA; (2) parked airplanes and agricultural operations are not allowed in the ROFA.

   c) Controlled Activity Area (CAA): while it is desirable to clear the RPZ of all objects, some uses are permitted in the CAA, provided they do not attract wildlife, are outside of the ROFA, and do not interfere with navigational aids. Although discouraged, automobile parking facilities are permitted provided they are outside of the extended ROFA.

   d) Land uses not permitted in the RPZ include:

1) fuel handling and storage facilities (except that underground fuel tanks are allowed in the CAA);

2) facilities that generate smoke or dust;

3) facilities with misleading lights or that create glare;

4) uses that may attract wildlife; and,

5) residences and places of public assembly (churches, schools, hospitals, office buildings, shopping centers, etc.).

6) RPZ Land Interest; (a) Land use control is preferably exercised through the acquisition of the RPZs. (ref. 7, par. 602.b(1)) In this case the clearing standards are requirements; (b) where it is impractical for the airport owner to acquire and control the land uses in the entire RPZ, they should as a minimum acquire the ROFA and obtain navigation easements over the remaining portion of the RPZ. (ref. 7, par. 602.b(1)) In this case, the RPZ clearing standards have a recommendation status for the portion of the RPZ not controlled by the airport owner.

H. Airport Airspace Drawing

1. REMEMBER!!! FAR Part 77 IS <u>NOT</u> a design standard!!!

2. Part 77 contains standards for determining obstructions to air navigation.

3. Obstructions must be studied to determine if they are hazards and whether removal is necessary. Removal is required unless an FAA aeronautical study determines otherwise.

i. Although removal of obstructions may not be required, if removal will enhance operations, it is desirable to clear them if practicable. Tables on the “Airport Airspace Drawing” and the “Inner Portion of the Approach Surface Drawing” should indicate the airport owner’s planned disposition of obstructions, including “no action”.

4. Note that for runways with a displaced threshold, the approach surface begins 200 feet from the runway end, not the displaced threshold, in order to protect departures from the opposite direction (ref. 2, par. 211b).

5. For threshold siting, the threshold siting surfaces in Appendix 2 of AC 150/5300-13 are used, not the Part 77 surfaces.

I. Other Safety Related Items to Review:

1. Look for opportunities to enhance safety, such as reducing runway crossings (ex. adding perimeter service roads, parallel taxiways, etc., or reducing the number of connecting taxiways and runway exits.)

2. Pay close attention to line-of-sight between intersecting runways (watch for hangars, trees, parked aircraft, etc. that may block line-of-sight in the runway visibility zone.)

3. Check runway longitudinal profile to ensure it provides adequate line-of-sight.

4. Consider whether the location of aircraft rescue and fire fighting (ARFF) station(s) will provide adequate response times.

J. Building Dimensions/Heights

1. Consider having the airport owner show maximum building dimensions and heights for use in line-of-sight and airspace reviews.

2. Consider recommending an "envelope" on the ALP within which buildings may be constructed without impacting FAA facilities or obstructing airspace. The 3D-Airspace Analysis Program is a great tool for determining this "envelope" when it is available.

K. Runway End Coordinates and Elevations.

1. FAA Order 5010.4, Airport Safety Data Program, states in part that:

   > "The National Ocean Service (NOS) is considered the final authority for the latitude, longitude, and elevation of an airport." (ref. 9, Appendix 1, par. 18)

2. All runways with an existing published approach should have been surveyed by the NOS and their end coordinates and elevations are listed in the Aircraft Management Information System (AMIS).

3. Consultants should be advised at the beginning of the master plan study or ALP update process to use the AMIS coordinates unless they are proven to be incorrect. If survey data, charts, maps, or other factual data substantiate that the NOS data are incorrect, a copy of these should be provided to the NFDC for submittal to NOS to be considered in recomputing or reconciling its records.

4. The 1983 North American Datum should be used for all coordinates.

L. New Instrument Approach Procedures

1. See AC 150/5300-13, Appendix 16.

2. The appendix identifies airport landing surface requirements to support new instrument approach procedures (i.e., the facilities required and standards that must be met.)

3. These standards should be checked closely if new instrument approaches are proposed on the ALP.

M. Runway Ends/Thresholds

1. Change 5 to AC 150/5300-13 eliminated the term "relocated threshold".

2. "Threshold" refers to the beginning of that portion of the pavement available for landing.

    a) Normally, this corresponds to the runway end.

    b) "Displaced Threshold" means the threshold does not correspond to the runway end.

    c) The pavement behind a displaced threshold may still be available for takeoffs in either direction and landing roll-outs from the opposite direction.

    d) Displaced thresholds should only be used as a last resort, particularly on Category II/III runways, because they can negatively impact capacity by causing a need to hold departing aircraft further from the runway end to keep them out of the approach surfaces.

3. "Runway End" refers to the beginning of that portion of the pavement available for takeoff and landing roll-out.

    a) Normally, it corresponds to the end of the physical pavement.

    b) Any pavement behind the runway end is unavailable for takeoff or landing from either direction.

    c) Any pavement behind the runway end must be marked as unusable ("chevroned") or as a taxiway.

N. Utility (Usefulness) of the Airport

1. Does the proposed airport layout make the best use of available land? (ex. runway layout, terminal facilities, etc.)

2. Does the proposed runway orientation consider off-airport structures and land uses (ex. tall towers, residential areas, etc.)?

3. Are adequate provisions being made for future fixed-base operator facilities? (compliance issues)

4. Watch for “through –the-fence” operations. (ex. taxiways leading off airport property.) This may be a compliance issue.

5. Are there adequate facilities for helicopters (if applicable)?

O. Efficiency of the Airport (capacity related items):

1. Are adequate facilities (runways, taxiways, etc.) provided to accommodate forecast demand?

2. Do taxiways provide for efficient movement of traffic on the airfield? (The air traffic control tower should also review this.)

3. Are proposed runway separations adequate to meet capacity needs? (The purpose of the proposed new runway should be considered, i.e., additional IFR arrival capacity vs. additional departure capacity)

IX. Coordination of ALPs Within the FAA

A. Southern Region Airports Division’s “Coordination Guide for Program Managers” in the Airports Reference System establishes ALP coordination procedures and responsibilities.

B. Purpose of Coordination

1. Determining the safety, utility, and efficiency of the airport is a team effort. No single FAA division has all the expertise required. (ex. ARP-design standards, AT-efficient use of airspace, FS-operational safety.)

2. Allows early identification and resolution of potential problems, and early identification of impacts to FAA facilities. (ex. obstruction of ATCT line-of-sight, affects on instrument approach procedures, required relocation of FAA cables or NAVAIDs, etc.)

C. Primary ALP Review Responsibilities of Various FAA Offices:

1. Airports (ADOs): conformance with airport design standards; modifications to design standards; runway safety area determinations, etc.

2. Flight Procedures (ATL-FPO): impacts on existing and proposed instrument approach and departure procedures; feasibility of proposed instrument procedures.

3. Flight Standards (FSESO-31): aircraft operational safety (including ground movements).

4. Airway Facilities (ASO-474): confirming location of existing and proposed FAA facilities, effects of proposed development on existing and planned FAA facilities, line-of-sight, etc.

5. Air Traffic (ASO-532): efficiency of airspace use; traffic pattern conflicts.

6. Local ATCT: effects on air traffic control procedures and facilities; efficiency of the airport, particularly taxiway layout and runway configuration.

7. Airports Division (ASO-620): airport safety; compliance with FAR Part 139 (certificated airports); declared distances at certificated airports.

8. Security (CASFO): assure all development is compatible with security requirements; protection of FAA facilities is adequate to deny access to unauthorized personnel. (Coordinate with Security only when controlled access, security fencing, or facilities planning decisions are necessary).

9. Regional Runway Safety Program Office (ASO-1R): comment on the safety of airport geometry in terms of preventing runway incursions. (Coordinate with ASO-1R only on large and medium hub airports and other airports with a complex geometric layout.)

D. ALP Coordination is required for:

1. Proposed development which could impact programs, resources, or functional responsibilities of other FAA divisions. (ex. New ATCT, NAVAID relocation/siting, new approach procedures, etc.)

2. ALP revisions involving safety, efficient use of airspace, or impacts on FAA facilities and equipment. (ex. aircraft operational safety, ATCT line-of-sight, new traffic patterns, etc.)

3. First time ALP approvals and major ALP updates for essentially all airports except those GA airports not having any existing or proposed instrument approach procedures.

E. ALP Coordination is not required for:

1. Insignificant changes that obviously do not involve questions of safety, efficient use of airspace, or impacts on FAA facilities or equipment.

2. Revisions that the ADO determines are in conformance with the previously approved ALP.

3. Caution! Any ALP revision showing construction of facilities on an airport with existing FAA facilities must be coordinated with ASO-474 for an impact determination (ex. a hangar may cause electronic interference even though it doesn't appear to directly impact any FAA facilities).

F. Items to include in the ALP Coordination Package (see ref. 16):

1. Copy of the ADO's review comments.

2. Identify major changes being made to the ALP.

3. Identify errors in the application of design standards so these are not confused with modifications to standards.

4. Identify modifications to standards for existing and/or proposed development and request comments on operational safety.

5. Be specific as to what type of response is needed and provide clear review instructions (ex. FS-review modifications to standards and comment on acceptable level of operational safety; ATCT-review efficiency of taxiway system, etc.)

6. If obstructions shown in the approaches have been cleared, include the airport owner's certification of clear approaches.

G. Regional Airport Planning Meeting

1. Consider holding a planning meeting after coordination of the ALP for new ALPs and major ALP updates at large and medium hub airports. Invite the airport owner and all appropriate FAA divisions.

2. The meeting provides a forum for the FAA and the airport owner to discuss potential solutions to problems identified during ALP coordination. These solutions can then be reflected on the final ALP.

H. Resolution of Coordination Comments

1. Items within Airports Division's authority or expertise (ex. modification of standards): ADO's should not approve the ALP until all comments from other divisions have been considered. The ADO should inform other divisions why any of their comments were not accepted.

2. Items within other divisions' authority or expertise (ex. impacts on FAA facilities): ADO's should not approve the ALP until all comments have been resolved.

3. ATCT or ASR relocation, a new ATCT or ASR, ATCT line-of-sight blockage, ASR derogation, or other FAA facility impacts: ADO's should not approve the ALP until the issue has been fully resolved within the FAA, including: (a) determination of location, (b) determination of responsibility for cost (note: if cost is to be borne by airport owner, a letter should be obtained from the airport owner stating that they will pay for all costs), or (c) determination of acceptable alternative.

4. Airspace conflict: ADO's should not approve the ALP until the conflict is resolved.

I. Keep in mind...we are separate divisions, but "One FAA". In the ALP review and approval process, we represent all FAA Divisions. Airport owners expect us to be "One FAA". Our communications (letters, conversations, etc.) should reflect this.

X. Coordination of ALP's Outside the FAA

A. ADO's should coordinate with other federal agencies (ex. Federal Highway Administration for a proposed relocation of a federal highway, or Federal Transit Administration for a rail access project).

B. Airport owners should coordinate with appropriate state and local agencies such as MPOs (ex. proposed relocation of a state highway or proposed Intermodal facilities). They should provide evidence of this coordination.

C. Public road relocations: We should not approve ALP's involving near-term public road relocations until the appropriate federal/state agency has concurred. ALP's involving future road relocations should be conditionally approved until the appropriate agency has concurred.

XI. How long should the FAA's ALP review take?

A. Southern Region's "Airports Division Customer Response Standards" dictate that our standard ALP review response time (total turn-around time including coordination) is 60 working days (twelve weeks) for all airports.

B. This standard may be tough to meet at times given the current coordination process, but from the customer's perspective this is reasonable to expect. ADO Program Managers should make every effort to meet this goal.

XII. ALP Approval

A. Summary of actions required before approval:

1. Review ALP.
2. Coordinate with other divisions and other agencies (if required).
3. Resolve all coordination comments.
4. Approve all modifications to standards.

B. General:

1. According to Order 5050.4A, *Airport Environmental Handbook*, Airport Layout Plan (ALP) approval is a "federal action", which requires environmental processing.[61]

2. Environmental processing (environmental assessment and issuance of an EIS or FONSI) may or may not be accomplished during preparation of the ALP.

3. ALP approval is either "conditional" or "unconditional" depending upon whether required environmental processing has occurred for all development shown on the ALP.

C. Unconditional Approval

1. May only be given when all items of development requiring an environmental impact statement or environmental assessment (see paragraphs 21 and 22a of FAA Order 5050.4A, *Airport Environmental Handbook*, (5)) have been environmentally approved (i.e., EIS or FONSI issued). [62]

   a) Par. 21: EIS required for first time ALP approval or new air carrier runway at commercial service airport in an SMSA.

   b) Par 22a: EA required for new runway, major runway extension, etc., etc.
2. Shall be indicated on the face of the ALP by use of the term "Approved".

D. Conditional Approval

1. When all items of development covered by paragraphs 21 and 22a have not been environmentally approved (EIS or FONSI not issued), the ALP must be "conditionally approved".

2. Shall be indicated on the face of the ALP by use of the term "Conditionally Approved", with a cross-reference to the ALP approval letter.

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[61] Now refer to FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*
[62] Now refer to FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*

3. FAA Order 5050.4A, *Airport Environmental Handbook*, requires that the ALP approval letter contain the following condition: "The approval indicated by my signature is given subject to the condition that the proposed airport development identified by item herein as requiring environmental processing shall not be undertaken without prior written environmental approval by the FAA." (ref. 5, par. 30.c.(2)) [63]

4. FAA Order 5050.4A, *Airport Environmental Handbook*, also requires that the approval letter identify, by item, those items shown on the ALP which are covered by paragraphs 21 and 22a and have not yet been environmentally approved by the FAA. (ref. 5, par. 30.c.(3)) [64]

E. Updating the Obstruction Evaluation (OE) Database

1. After approving the ALP, review the information in the OE database to confirm that it is correct and update it as necessary.

2. It is particularly important that the OE database reflect proposed runway extensions, etc. to ensure protection for future approaches and airspace requirements.

[63] Now refer to FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*

[64] Now refer to FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*

APPENDIX

Airport Layout Plan (ALP)
Review & Approval

References

(1) AC 150/5070-6A, Airport Master Plans (6/85)

(2) AC 150/5300-13, Airport Design, including changes 1-6 (9/00)

(3) AC 150/5325-4A, Runway Length Requirements for Airport Design (1/90)

(4) Order 1000.1A, Policy Statement of the FAA (4/85)

(5) Order 5050.4A, *Airport Environmental Handbook* (October 8, 1985)[65]

(6) Order 5300.1F, Modifications To Agency Airport Design, Construction, and Equipment Standards (6/00)

(7) Order 5100.38C, Airport Improvement Program (AIP) Handbook (June 28, 2005)

(8) Order 5010.4, Airport Safety Data

(9) Order 5200.8, Runway Safety Area Program (10/99)

(10) RGL 97-8, Airport Layout Plan Approvals – Modification of Airport Design Standards Policy (8/97)

(11) RGL 97-9, Validation of Airport Layout Plans (9/97)

(12) RGL 98-1, Policy on … Review of Airport Master Plan Forecasts (10/97)

(13) FAR Part 139, Certification and Operation: Land Airports Serving Certain Air Carriers (1/88)

(14) 49 U.S.C. §§ 47110 and 47107

(15) Coordination Guide for Program Managers

[65] FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*

Sample Airport Layout Plan (ALP)

(Diagram: Watsonville Airport)

Appendix S ► FAA Weight-Based Restrictions at Airports

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determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: June 23, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–16591 Filed 6–30–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4388]

Culturally Significant Objects Imported for Exhibition; Determinations: "The Crau at Ales: Peach Trees in Flower"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the object to be included in the exhibition, "The Crau at Ales: Peach Trees in Flower," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit object at the J. Paul Getty Museum, Los Angeles, California, from on or about August 5, 2003, to on or about January 13, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: June 23, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–16590 Filed 6–30–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–15495]

Weight-Based Restrictions at Airports: Proposed Policy

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed policy; request for comments.

SUMMARY: This notice requests comments on a proposed statement of policy on the use of weight-based airport access restrictions as a means of protectign airfield pavement. In grant agreements between an airport operator and the FAA for Federal airport development grants, the airport operator makes certain assurances to the FAA. These assurances include an obligation to provide access to the airport on reasonable, not unjustly discriminatory terms to aeronautical users of the airport. Some airport operators have implemented restrictions on use of the airport by aircraft above a certain weight, to protect pavement not designed for aircraft of that weight. These actions have raised the question of when such an action is a reasonable restriction on use of the airport. In the interest of applyng a uniform national policy to such actions, the FAA is publishing for comment a draft policy on weight-based access restrictions at federally obligated airports.

DATES: Comments must be received by August 15, 2003. Comments that are received after that date will be considered only to the extent possible.

ADDRESSES: The proposed policy is available for public review in the Dockets Office, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. The documents have been filed under FAA Docket Number FAA–2003–15495. The Dockets Office is open between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you, may review public dockets on the Internet at *http://dms.dot.gov.* Comments on the proposed policy must be delivered on mailed, in duplicate, to: the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number "FAA Docket No FAA–2003–15495" at the beginning of your comments. Commenters wishing to FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2003–15495." The postcard will be date stamped and mailed to the commenter. You may also submit comments through the Internet to *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James White, Deputy Director, Office of Airport Safety and Standards, AAS–2, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267–3053.

SUPPLEMENTARY INFORMATION: Airport operators that accept federal airport development grants under the Airport Improvement Program (AIP), 49 U.S.C. 47101 *et seq.*, enter into a standard grant agreement with the FAA. That agreement contains certain assurances, including assurance no. 22, based on the requirement in 49 U.S.C. 47107(a)(1). Grant assurance no. 22 reads, in part:

> a. [The sponsor] will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

At the same time, the FAA expects that airport sponsors will protect airfield pavement from damage or early deterioration. Many airport projects funded with the AIP grants involve pavement. As a result, both the FAA and airport sponsors have a significant investment in airfield pavement, and an interest in assuring that pavement remains in acceptable condition for its design life, normally at least 20 years. The policy of assuring reasonable access to the airport and the interest in protecting the investment in airfield pavement are both extremely important, but is clear that they can potentially work against each other in a particular case.

In February 2002, the Airports Division in an FAA regional office issued a preliminary determination on the ability of a particular airport operator to limit use of the airport according to aircraft weight. In that case the weight limit effectively prohibited operation by aircraft heavier than the

aircraft considered in the design of the airport's pavement. The FAA found, in summary, that the airport operator could limit use above the design weight of the pavement, but that some operations above that weight could and should be permitted, because they would have no measurable effect on the pavement. The FAA has received several questions relating to the policy underlying that determination.

In view of the importance of the policies at stake, we believe it is appropriate to issue more specific guidance on the specific issue of weight-based access restrictions.

The policy proposed in this notice provides more detailed guidance on how the FAA will interpret Grant Assurance No. 22, in cases in which an airport sponsor limits operation by aircraft above a certain weight in order to preserve the integrity of airport pavement. The FAA requests comment on the following statement of policy, and may modify the policy in accordance with comments received on this notice. For any cases presented before a final policy is issued, the FAA will apply the policy as proposed in this notice.

For the above reasons, the FAA proposes to adopt the following policy:

Operating Limitations to Protect Airport Pavements From the Effects of Operations in Excess of Design Weight-Bearing Capacity

1. When designing new airport pavement or rehabilitating existing pavement, airport operators design the pavement to accommodate the loads and frequencies of the aircraft expected to use the airport over the period of expected pavement life. A load-bearing capacity is then assigned to the pavement based upon the most demanding aircraft. Once that pavement is constructed, airport operators have a responsibility to protect the local and Federal investment in the pavement. At the same time, airport operators are encouraged to upgrade airport pavements for forecast increases in aircraft size or operations, or if the number of operations and size of aircraft increase over time beyond what was forecast.

2. Airport pavements are designed to accommodate a finite number of aircraft operations, based on planning forecasts and experience. In most cases it should not be necessary or appropriate to impose aircraft operating restrictions to protect pavement from occasional operations of aircraft which exceed the published pavement strength. Even in the exceptional case in which the mix of aircraft types using the pavement becomes heavier over time, a limitation on maximum weight of aircraft may not be warranted. It is the nature of airport pavement to begin a gradual deterioration process as soon as it is opened to traffic. A pavement designed for a specified number of operations by an aircraft type of a particular weight will not be immediately affected by some number of operations by heavier aircraft, up to a point. In general, each 10% increase in weight of the most demanding aircraft will decrease the number of design operations by 20–25%. The original load-bearing capacity of pavement may be increased by surface overlays or other pavement rehabilitation techniques. Therefore, some number of operations by aircraft exceeding the design load-bearing capacity of airport pavement by some degree will ordinarily not have a sufficient impact to shorten its useful life. (The Airport/Facility Directory introductory language notes that "[m]any airport pavements are capable of supporting limited operations with gross weights of 25–50% in excess of the published figures.").

3. However, where the airport operator reasonably believes that actual damage or excessive wear has resulted or would result from operation of aircraft of a particular weight (and particular gear configurations), then the airport operator can limit those operations to the extent necessary to prevent that damage or excessive wear.

4. The design load-bearing capacity of pavement is a guide to the probability of adverse effects on pavement life. Design load-bearing capacity is demonstrated by planning and engineering documents created at the time the pavement was designed, constructed, rehabilitated or improved. Testing to determine actual load-bearing capacity may be appropriate or necessary where design information is unavailable or does not appear to represent actual current condition of the pavement.

5. Any action by the airport operator to limit operations above the design load-bearing capacity must be reasonable and unjustly discriminatory, and would require evidence of the effect of operations at certain weights on the pavement. Such limitations, if determined to be necessary, could include:

- Requiring particular taxi routes and parking areas for aircraft above a certain weight, to avoid weaker areas;
- Requiring prior permission for operation by aircraft above the design load-bearing capacity of the pavement (see examples in Exhibit 1);
- Permitting operations of such aircraft only up to a certain weight;
- Prohibiting all operations by aircraft exceeding a weight at which even a small number of operations would significantly reduce pavement life.
- Assigning heavy aircraft a particular runway (through agreement with Air Traffic Control) if operationally feasible.

Operating procedures, such as requiring use of designated taxiways and ramp parking areas, are preferable to an outright ban or limit on the number of operations. A limit on the number of operations and/or weight of operations must be based on an analysis of pavement life using known pavement design capacity, actual load-bearing capacity, and actual condition. That analysis can be performed with the AAS–100 Pavement Design Software, based on Advisory Circular (AC) 150/5320–6D, available on the FAA Airports web site. An analysis is also required to assess the load-carrying capacity of existing bridges, culverts, in-pavement light fixtures, and other structures affected by the proposed traffic. Such structures are generally not capable of supporting a single load application above design limits, and may preclude any operations by heavier aircraft unless other taxi routes can be specified. Guidance for those evaluations is stated in AC 150/5320–6D.

6. The airport operator may avoid any issue of reasonable, nondiscriminatory access to the airport by accommodating current operations and bringing pavement up to the standard for the current use of the airport as the condition of the pavement requires.

7. This policy applies only to pavement weight-bearing capacity and pavement condition, and does not apply to geometric airport design standards.

8. This policy applies only to the purpose of protecting an airport operator's investment in pavement, and is not a substitute for noise restrictions. If there is no showing of need to protect pavement life, or the limit on airport use appears motivated by interest in mitigating noise without going through processes that exist for such restrictions, an attempt to limit aircraft by weight will be considered unreasonable. The FAA notes that there are a few existing noise rules that include weight categories, generally adopted before ANCA and the AAIA were enacted. Issues arising under those rules will be addressed on a case-by-case basis.

Examples

Airport operators may experience demand for use of the airport by aircraft that weigh more than the design load-bearing capacity of the airport

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pavement. In some cases that demand can adversely affect pavement condition. Ideally the airport operator should accommodate demand by upgrading facilities. If that option is not practical, the airport operator can permit reasonable access by these aircraft, while avoiding adverse effects on existing pavement, by regulating the number and maximum weight of operations on a prior-permission-required basis. The number and maximum weight of operations permitted would vary according to the specific circumstances at each airport, including:

- Pavement load-bearing capacity.
- The mix of aircraft operating at the airport. The heavier the aircraft, the fewer operations it takes to have an effect on pavement life.
- Seasonal effects on pavement strength, for example wet or dry subgrade conditions or very low or high pavement temperatures.

The following scenarios are not recommendations but simply examples of limitations that might be appropriate in particular circumstances. Local conditions may require more complex solutions. An engineering analysis will be required in each case.

Scenario 1

The airport pavement is designed to 60,000 lb. dual-wheel load. Pavement design and soil support conditions are known. Operations up to 60,000 lb. are unrestricted, and the issue is how many flights should be permitted above that weight.

The airport receives frequent operations by several aircraft types at 70,000 lb., and occasional operations at 105,000 lb., but very few operations by other aircraft types in between those weights.

Reference to AC 150/5320–6D shows that on an annual basis up to xxxx operations at 70,000 lb. and xx operations at 105,000 lb. together would have no measurable effect on the life of the pavement, but more operations at either weight would begin to shorten pavement life.

The operator could require prior permission for operations above 60,000 lb. Permission would be granted on a first-come first-served basis, for xx (xxxx/52) operations per week up to 70,000 lb. and for x (xx/52) operations per week up to 110,000 lb.

Scenario 2

The airport pavement is designed to 100,000 lb., with dual-wheel gear configuration. Pavement design and soil support conditions are known.

Most operations at the airport are well under 100,000 lb., but the airport receives regular operations by various types of aircraft at weights from 100,000 lb. up to 135,000 lb. Operations up to 100,000 lb. are unrestricted, and the issue is how many flights should be permitted above that weight.

Reference to AC 150/5320–6D shows that on an annual basis various assortments of operations above 100,000 lb. can operate without measurable effect on the life of the pavement. However, there is no single "right" combination, because more operations at one weight will reduce the number that can be permitted at another weight. Also, each flight at the heavier end of the scale, e.g., 135,000 lb., has a disproportionately adverse effect equal to several flights at the lower end of the scale, e.g., just above 100,000 lb.

There may be many ways to allocate limited operating rights for the various types of aircraft that would use the airport over time, while controlling the maximum cumulative stress on the airport's pavement. One way would be to allocate operating permission by "points" rather than by number of operations. While the numbers actually used would need to be validated using AC 150/5320–6D, something like the following could be used:

Each operation 100,001 lb. to 110,000 lb.; 1 point.

Each operation 110,001 lb. to 120,000 lb.; 2 points.

Each operation 120,001 lb. to 130,000 lb.; 4 points.

Each operation 130,001 lb. to 140,000 lb.; 6 points.

If AC 150/5320–6D indicated that no combination of operations equal to an annual usage of 1200 points would have an adverse effect on pavement life, then the airport operator could allocate 23 points a week with no adverse effects.

The operator would require prior permission for operations above 100,000 lb. Permission would be granted on a first-come first-served basis, until the weekly allocation of points was assigned.

Issued in Washington, DC on June 20, 2003.

David L. Bennett,

Director, Airport Safety and Standards.

[FR Doc. 03–16462 Filed 6–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

DEPARTMENT OF INTERIOR

National Park Service

Membership in the National Parks Overflights Advisory Group

AGENCIES: National Park Service and Federal Aviation Administration.

ACTION: Notice.

SUMMARY: By **Federal Register** notice published on April 28, 2003, the National Park Service (NPS) and the Federal Aviation Administration (FAA), asked interested persons to apply to fill a vacant position representing aviation interests on the National Parks Overflights Advisory Group (NPOAG). This notice informs the public of the person selected to fill that vacancy on the NPOAG.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Executive Resource Staff, Western Pacific Region Headquarters, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, Email: *Barry.Brayer@faa.gov*, or Howie Thompson, Natural Sounds Program, National Park Service, 12795 W. Alameda Parkway, Denver, Colorado, 80225, telephone: (303) 969–2461; Email: *Howie_Thompson@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator and the Director (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The advisory group provides "advice, information, and recommendations to the Administrator and the Director—

(1) on the implementation of this title [the Act] and the amendments made by this title;

(2) on commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

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Appendix T ► Sample FAA Letter on Replacement Airport

U.S. Department
of Transportation
Federal Aviation Administration

Office of the Associate Administrator
for Airports

800 Independence Ave., S'
Washington, DC 20591

SEP 28 2004

The Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Administrator Blakey has asked me to respond to your letter of September 10 about your request for Federal Aviation Administration (FAA) guidance on replacement airports. Specifically, you asked the FAA to provide clear guidance on what would constitute a replacement airport for Buchanan Field Airport (CCR) by Contra Costa County (county).

As we have mentioned before, the FAA considers CCR to play a critical reliever airport role that benefits aviation in the county, the Bay area, and the national aviation system. With more than 580 based aircraft, CCR is one of the largest and most important reliever airports in the United States. The FAA would not consider a county request to close the airport unless we had first approved a replacement airport of equal or greater value to the aviation system, and that airport was completed and operating. In answer to your question, we would consider at least the following characteristics of a proposed replacement airport in determining whether the proposed site could replace CCR.

1. Sufficient airport property for airfield, aeronautical services, and landside public area: CCR is located on a site of 495 acres, and we would consider this size to be acceptabl for a replacement site.

2. Design and construction of the new airport to current FAA airport design standards.

3. Capacity for more than 600 based aircraft and at least 300,000 operations yearly. (CCR currently has 580 based aircraft, but that number has been higher in the past.)

4. Air traffic control tower.

5. Runway system to provide capacity for 300,000 or more operations yearly, with alignment to cover locally encountered wind directions. Runway and other pavement strength and airfield design meeting standards for the largest aircraft using Buchanan Field. Runway configuration would be in accordance with then-current FAA design standards and would not duplicate the current CCR airfield layout. A configuration that met the capacity requirements would be as follows:

.

Two runways with the following characteristics:

- 150 x 5,000 feet;
- runway geometry suitable for Airport Reference Code C-II aircraft. The runway/taxiway centerline separation distances need evaluation for Airplane Design Group III standards;
- pavement strength: 60,000 pound single wheel, 90,000 pound dual wheel, and 140,000 pound tandem wheel;
- stopways;
- 50:1 slope, precision instrument approach, Instrument Landing System/Medium Intensity Approach Lighting System;
- Visual Approach Slope Indicator (VASI) at both ends; and
- runway to taxiway centerline separation distances, runway safety areas (RSA), obstacle free zones (OFZ), and object free areas (OFA) to be approved by the FAA's Airport District Office (ADO) for compliance with FAA standards.

One or two crosswind runways with the following characteristics and standards:

- 75 x 3,000 feet;
- runway geometry is suitable for Airport Reference Code B-II aircraft;
- pavement strength: 17,000 lb. single wheel;
- 20:1 slope;
- VASI at both ends; and
- runway to taxiway centerline separation distances, RSA, OFZ, and OFA to be approved by the FAA's ADO for compliance with FAA standards.

6. No obstacle penetration of any FAR part 77 surfaces for any runway or traffic pattern.

7. Qualification for an FAA airport operating certificate under 14 C.F.R. part 139.

8. Availability of published instrument approach procedures to the same or lower minimums as current CCR approaches. The airfield would need to meet terminal instrument approach procedures (TERPS) criteria for the published instrument approach procedures, as well as airport design, marking, and lighting requirements for instrument approach procedures.

9. Equal or better facilities than CCR to accommodate aircraft repair, storage, fueling, and related aviation services.

10. Location within Contra Costa County with the same utility as CCR to serve as a reliever airport for San Francisco International Airport (SFO) and Oakland International (OAK) as CCR. (CCR is within 25 nautical miles of SFO and 15 nautical miles of OAK.)

11. Equal or better access to local transportation services and infrastructure (including freeway access, rapid transit and bus service).

An FAA decision on a proposal to open a new airport would also trigger Federal environmental review and could require preparation of an environmental impact statement. In the review of an actual proposal, we may find other factors that affect the suitability of a replacement airport site. Therefore, the above list should be considered representative only and not a "checklist" for approval. Because we have not received a formal request for release from the county, we are unable to speculate on all of the considerations that might ultimately affect the Federal decision on a request to accept a particular replacement airport. Again, based on the current status of CCR, we continue to consider it highly unlikely that the FAA would concur in closing CCR.

If you or your staff need further help, please contact Mr. David Balloff, Assistant Administrator for Government and Industry Affairs, at (202) 267-3277.

Sincerely,

Woodie Woodward
Associate Administrator
for Airports

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Appendix U ► Sample Joint-Use Agreement

SAMPLE JOINT-USE AGREEMENT

**JOINT-USE AGREEMENT
BETWEEN
AN AIRPORT SPONSOR
AND
THE UNITED STATES AIR FORCE**

This Joint Use Agreement is made and entered into this _________day of _________________19__, by and between the Secretary of the Air Force, for and on behalf of the United States of America ("Air Force") and an airport sponsor ("Sponsor"), a public body eligible to sponsor a public airport.

WHEREAS, the Air Force owns and operates the runways and associated flight facilities (collectively "flying facilities") located at Warbucks Air Force Base, USA ("WAFB"); and

WHEREAS, Sponsor desires to use the flying facilities at WAFB to permit operations by general aviation aircraft and commercial air carriers (scheduled and nonscheduled) jointly with military aircraft; and

WHEREAS, the Air Force considers that this Agreement will be in the public interest, and is agreeable to joint use of the flying facilities at WAFB; and

WHEREAS, this Agreement neither addresses nor commits any Air Force real property or other facilities that may be required for exclusive use by Sponsor to support either present or future civil aviation operations and activities in connection with joint use; and

WHEREAS, the real property and other facilities needed to support civil aviation operations are either already available to or will be diligently pursued by the Sponsor;

NOW, THEREFORE, it is agreed:

1. **JOINT USE**

a. The Air Force hereby authorizes Sponsor to permit aircraft equipped with two-way radios capable of communicating with the WAFB Control Tower to use the flying facilities at WAFB, subject to the terms and conditions set forth in this Agreement and those *Federal Aviation Regulations (FAR)* applicable to civil aircraft operations. Civil aircraft operations are limited to 20,000 per calendar year. An operation is a landing or a takeoff. Civil aircraft using the flying facilities of WAFB on official Government business as provided in Air Force Instruction (AFI) 10-1001, *Civil Aircraft Landing Permits*, are not subject to this Agreement.

b. Aircraft using the flying facilities of WAFB under the authority granted to Sponsor by this Agreement shall be entitled to use those for landings, takeoffs, and movement of aircraft and will normally park only in the area made available to Sponsor and designated by them for that purpose.

c. Government aircraft taking off and landing at WAFB will have priority over all civil aircraft at all times.

d. All ground and air movements of civil aircraft using the flying facilities of WAFB under this Agreement, and movements of all other vehicles across Air Force taxiways, will be controlled by the WAFB Control Tower. Civil aircraft activity will coincide with the WAFB Control Tower hours of operation. Any additional hours of the WAFB Control Tower or other essential airfield management, or operational requirements beyond those needed by the Air Force, shall be arranged and funded (or reimbursed) by Sponsor. These charges, if any, shall be in addition to the annual charge in paragraph 2 and payable not less frequently than quarterly.

e. No civil aircraft may use the flying facilities for training.

f. Air Force-owned airfield pavements made available for use under this Agreement shall be for use on an "as is, where is" basis. The Air Force will be responsible for snow removal only as required for Government mission accomplishment.

g. Dust or any other erosion or nuisance that is created by, or arises out of, activities or operations by civil aircraft authorized use of the flying facilities under this Agreement will be corrected by Sponsor at no expense to the Air Force, using standard engineering methods and procedures.

h. All phases of planning and construction of new runways and primary taxiways on Sponsor property must be coordinated with the WAFB Base Civil Engineer. Those intended to be jointly used by Air Force aircraft will be designed to support the type of military aircraft assigned to or commonly transient through WAFB.

i. Coordination with the WAFB Base Civil Engineer is required for planning and construction of new structures or exterior alteration of existing structures that are owned or leased by Sponsor.

j. Sponsor shall comply with the procedural and substantive requirements established by the Air Force, and Federal, State, interstate, and local laws, for the flying facilities of WAFB and any runway and flight facilities on Sponsor

property with respect to the control of air and water pollution; noise; hazardous and solid waste management and disposal; and hazardous materials management.

k. Sponsor shall implement civil aircraft noise mitigation plans and controls at no expense to and as directed by the Air Force, pursuant to the requirements of the *WAFB Air Installation Compatible Use Zone (AICUZ) study; the FAA Part 150 study*; and environmental impact statements and environmental assessments, including supplements, applicable to aircraft operations at WAFB.

l. Sponsor shall comply, at no expense to the Air Force, with all applicable FAA security measures and procedures as described in the *Airport Security Program for WAFB.*

m. Sponsor shall not post any notices or erect any billboards or signs, nor authorize the posting of any notices or the erection of any billboards or signs at the airfield of any nature whatsoever, other than identification signs attached to buildings, without prior written approval from the WAFB Base Civil Engineer.

n. Sponsor shall neither transfer nor assign this Agreement without the prior written consent of the Air Force.

2. **PAYMENT**

a. For the purpose of reimbursing the Air Force for Sponsor's share of the cost of maintaining and operating the flying facilities of WAFB as provided in this Agreement, Sponsor shall pay, with respect to civil aircraft authorized to use those facilities under this Agreement, the sum of (specify sum) annually. Payment shall be made quarterly, in equal installments.

b. All payments due pursuant to this Agreement shall be payable to the order of the Treasurer of the United States of America, and shall be made to the Accounting and Finance Officer, WAFB, within thirty (30) days after each quarter. Quarters are deemed to end on December 31, March 31, June 30, and September 30. Payment shall be made promptly when due, without any deduction or setoff. Interest at the rate prescribed by the Secretary of the Treasury of the United States shall be due and payable on any payment required to be made under this Agreement that is not paid within ten (10) days after the date on which such payment is due and end on the day payment is received by the Air Force.

3. **SERVICES**

Sponsor shall be responsible for providing services, maintenance, and emergency repairs for civil aircraft authorized to use the flying facilities of WAFB under this Agreement at no cost to the Air Force. If Air Force assistance is required to repair an aircraft, Sponsor shall reimburse the Air Force for all expenses of such services. Any required reimbursement shall be paid not less frequently than quarterly. These charges are in addition to the annual charge specified in paragraph 2.

4. **FIRE PROTECTION AND CRASH RESCUE**

a. The Air Force maintains the level of fire fighting, crash, and rescue capability required to support the military mission at WAFB. The Air Force agrees to respond to fire, crash, and rescue emergencies involving civil aircraft outside the hangars or other structures within the limits of its existing capabilities, equipment, and available personnel, only at the request of Sponsor, and subject to subparagraphs b, c, and d below. Air Force fire fighting, crash, and rescue equipment and personnel shall not be routinely located in the airfield movement area during nonemergency landings by civil aircraft.

b. Sponsor shall be responsible for installing, operating, and maintaining, at no cost to the Air Force, the equipment and safety devices required for all aspects of handling and support for aircraft on the ground as specified in the FARs and National Fire Protection Association procedures and standards.

c. Sponsor agrees to release, acquit, and forever discharge the Air Force, its officers, agents, and employees from all liability arising out of or connected with the use of or failure to supply in individual cases, Air Force fire fighting and or crash and rescue equipment or personnel for fire control and crash and rescue activities pursuant to this Agreement. Sponsor further agrees to indemnify, defend, and hold harmless the Air Force, its officers, agents, and employees against any and all claims, of whatever description, arising out of or connected with such use of, or failure to supply Air Force fire fighting and or crash and rescue equipment or personnel.

d. Sponsor will reimburse the Air Force for expenses incurred by the Air Force for fire fighting and or crash and rescue materials expended in connection with providing such service to civil aircraft. The Air Force may, at its option, with concurrence of the National Transportation Safety Board, remove crashed civil aircraft from Air Force-owned pavements or property and shall follow existing Air Force directives and or instructions in recovering the cost of such removal.

e. Failure to comply with the above conditions upon reasonable notice to cure or termination of this Agreement under the provisions of paragraph 7 may result in termination of fire protection and crash and rescue response by the Air Force.

f. The Air Force commitment to assist Sponsor with fire protection shall continue only so long as a fire fighting and crash and rescue organization is authorized for military operations at WAFB. The Air Force shall have no obligation to

maintain or provide a fire fighting, and crash and rescue organization or fire fighting and crash and rescue equipment; or to provide any increase in fire fighting and crash and rescue equipment or personnel; or to conduct training or inspections for purposes of assisting Sponsor with fire protection.

5. **LIABILITY AND INSURANCE**

a. Sponsor will assume all risk of loss and or damage to property or injury to or death of persons by reason of civil aviation use of the flying facilities of WAFB under this Agreement, including, but not limited to, risks connected with the provision of services or goods by the Air Force to Sponsor or to any user under this Agreement. Sponsor further agrees to indemnify and hold harmless the Air Force against, and to defend at Sponsor expense, all claims for loss, damage, injury, or death sustained by any individual or corporation or other entity and arising out of the use of the flying facilities of WAFB and or the provision of services or goods by the Air Force to Sponsor or to any user, whether the claims be based in whole, or in part, on the negligence or fault of the Air Force or its contractors or any of their officers, agents, and employees, or based on any concept of strict or absolute liability, or otherwise.

b. Sponsor will carry a policy of liability and indemnity insurance satisfactory to the Air Force, naming the United States of America as an additional insured party, to protect the Government against any of the aforesaid losses and or liability, in the sum of not less than (specify sum) bodily injury and property damage combined for any one accident. Sponsor shall provide the Air Force with a certificate of insurance evidencing such coverage. A new certificate must be provided on the occasion of policy renewal or change in coverage. All policies shall provide that: (1) no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt of notice of such cancellation, reduction, or change by the installation commander at WAFB, (2) any losses shall be payable notwithstanding any act or failure to act or negligence of Sponsor or the Air Force or any other person, and (3) the insurer shall have no right of subrogation against the United States.

6. **TERM OF AGREEMENT**

This Agreement shall become effective immediately and shall remain in force and effect for a term of 25 years, unless otherwise renegotiated or terminated under the provisions of paragraph 7, but in no event shall the Agreement survive the termination or expiration of Sponsor's right to use, by license, lease, or transfer of ownership, of the land areas used in connection with joint use of the flying facilities of WAFB.

7. **RENEGOTIATION AND TERMINATION**

a. If significant change in circumstances or conditions relevant to this Agreement should occur, the Air Force and Sponsor may enter into negotiations to revise the provisions of this Agreement, including financial and insurance provisions, upon sixty (60) days written notice to the other party. Any such revision or modification of this Agreement shall require the written mutual agreement and signatures of both parties. Unless such agreement is reached, the existing agreement shall continue in full force and effect, subject to termination or suspension under this section.

b. Notwithstanding any other provision of this Agreement, the Air Force may terminate this Agreement: (1) at any time by the Secretary of the Air Force, giving ninety (90) days written notice to Sponsor, provided that the Secretary of the Air Force determines, in writing, that paramount military necessity requires that joint use be terminated, or (2) at any time during any national emergency, present or future, declared by the President or the Congress of the United States, or (3) in the event that Sponsor ceases operation of the civil activities at WAFB for a period of one (1) year, or (4) in the event Sponsor violates any of the terms and conditions of this Agreement and continues and persists therein for thirty (30) days after written notification to cure such violation. In addition to the above rights, the Air Force may at any time suspend this agreement if violations of its terms and conditions by the Sponsor create a significant danger to safety, public health, or the environment at WAFB.

c. The failure of either the Air Force or Sponsor to insist, in any one or more instances, upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of the right to the future performance of any such terms, conditions, or provisions. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by such party.

8. **NOTICES**

a. No notice, order, direction, determination, requirement, consent, or approval under this Agreement shall be of any effect unless it is in writing and addressed as provided herein.

b. Written communication to Sponsor shall be delivered or mailed to Sponsor addressed:

The Sponsor
9000 Airport Blvd
USA USA

c. Written communication to the Air Force shall be delivered or mailed to the Air Force addressed:
Commander
WAFB, USA USA

9. **OTHER AGREEMENTS NOT AFFECTED**

This Agreement does not affect the WAFB-Sponsor Fire Mutual Aid Agreement.

IN WITNESS WHEREOF, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth below opposite their respective signatures.

UNITED STATES AIR FORCE

Date:________________
By:_________________________________

Deputy Assistant Secretary of the Air Force

(Installations)

Date:________________
By:_________________________________

Sponsor Representative

Appendix V ► Sample Deed of Conveyance

FORMER BERGSTROM AIR FORCE BASE, TRAVIS COUNTY, TEXAS

I. PARTIES

This Deed made this _____ day of _______________, 2004, by and between the United States of America, acting by and through the Secretary of the Air Force whose address is Washington, D.C., under and pursuant to the Federal Property and Administrative Services Act of 1949, approved June 30, 1949, (63 Stat. 377), 40 U.S.C. § 101, et seq., as amended, and regulations and orders promulgated there under; the Defense Base Closure and Realignment Act of 1990, P.L. No. 101-510, as amended, and regulations and orders promulgated there under; and a delegation from the Administrator of General Services to the Secretary of Defense, and a subsequent delegation from the Secretary of Defense to the Secretary of the Air Force, party of the first part, as Grantor, and the City of Austin, Texas, a body politic created, operating, and existing under and by virtue of the laws of the State of Texas, party of the second part, as Grantee.

WITNESSETH THAT:

WHEREAS, the Grantor is the owner of the real property described herein, located within the former Bergstrom Air Force Base, situated in Travis County, Texas; and

WHEREAS, the Grantee provided to the United States the money to purchase the real property described herein, under the condition that the United States retain title until such property was abandoned as a permanent Air Base, at which time the Grantee could elect to require the Grantor to convey such land and the improvements thereon to the Grantee; and

WHEREAS, the real property described herein was duly declared surplus and available for disposal pursuant to the powers and authority contained in the provisions of the Defense Base Closure and Realignment Act of 1990, P.L. No. 101-510, as amended, and orders and regulations promulgated there under; and

WHEREAS, pursuant to the resolution passed by the City Council of the Grantee dated February 27, 1947, the Grantee requests full legal title to such real property be conveyed to the Grantee.

II. CONSIDERATION AND CONVEYANCE

NOW, THEREFORE, in consideration of the sum of ONE DOLLAR ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the

Grantor does hereby REMISE, RELEASE and FOREVER QUITCLAIM, Without Warranty or representation, express or implied except as expressly stated herein, and excluding all warranties that might arise by common law and the warranties under Section 5.023 of the Texas Property Code (or its successor) unto the Grantee, its successors and assigns forever, all such right and title as the Grantor has or ought to have, in and to the real property described in Exhibit "A" and depicted on the survey drawing attached as Exhibit "B" of this Deed Without Warranty ("Deed") and situated in Travis County, Texas.

III. APPURTENANCES AND HABENDUM

TO HAVE AND TO HOLD, together with all the buildings and improvements erected thereon, except for monitoring wells, treatment wells, and treatment facilities and related piping, and all and singular the tenements, hereditaments, appurtenances, and improvements hereunto belonging, or in any wise appertaining, (which, together with the real property described herein, known as Parcel H called the "Property" in this Deed) the Property to the Grantee.

IV. RESERVATIONS

A. RESERVING UNTO THE GRANTOR, including the State of Texas (the "State"), and its and their respective officials, agents, employees, contractors, and subcontractors, the right of access to the Property (including the right of access to, and use of, utilities at reasonable cost to the Grantor), for the following purposes and for such other purposes as are necessary to ensure that a response or corrective action found to be necessary, either on the Property or on adjoining lands, after the date of transfer by this Deed will be conducted:

1. To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other activities relating to any such response or corrective action.

2. To inspect field activities of the Grantor and its contractors and subcontractors in implementing any such response or corrective action.

3. To conduct any test or survey required by the state relating to any such response or corrective action, or to verify any data submitted to the EPA or the state by the Grantor relating to any such actions.

4. To conduct, operate, maintain, or undertake any other response, corrective action as required or necessary under applicable law or regulation, or the covenant of the Grantor in Section VI of this Deed, but not limited to, the installation, closing, or removal of monitoring wells, pumping wells, and treatment facilities that will be owned or operated by the Grantor and its officials, agents, employees, contractors, and subcontractors.

B. PROVIDED, HOWEVER, this Deed is expressly made subject to the following restrictions, covenants, and agreements of the parties affecting the aforesaid Property, which shall run with the land.

V. CONDITIONS

A. The Grantee acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed, "as is," "where is," without any representation, promise, agreement, or warranty on the part of the Grantor regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs, or additions. The Grantee further acknowledges that the Grantor shall not be liable for any latent or patent defects in the Property, except to the extent required by applicable law.

B. The Grantee and its successors and assigns hereby understand and agree that all costs associated with removing any restrictions of any kind whatsoever contained in this deed, whether necessitated by an environmental or other law or regulation, shall be the sole responsibility of Grantee, its successors and assigns, without any cost whatsoever to the United States.

VI. NOTICES AND COVENANTS RELATED TO SECTION 120(h)(3) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), AS AMENDED, (42 U.S.C. §9620(h)(3).

A. Pursuant to Section 120(h)(3) of CERCLA of 1980, as amended (42 U.S.C. § 9620(h)(3)), the following is notice of hazardous substances on the Property and the description of remedial action taken concerning the Property:

1. The Grantor has made a complete search of its files and records. Exhibits C and D contain tables with the names of hazardous substances stored for one year or more, or known to have been released or disposed of, on the Property; the quantity in kilograms or pounds of the hazardous substance stored for one year or more, or known to have been released, or disposed of, on the Property; and the date(s) on which such storage, release, or disposal took place.

2. Pursuant to Section 120(h)(3)(A)(ii) of CERCLA, the United States covenants and warrants:

(a) That all remedial action necessary to protect human health and the environment with respect to hazardous substances remaining on the Property has been taken before the date of this Deed: and

(b) Any additional remedial action found to be necessary after the date of this Deed for contamination on the Property existing prior to the date of this Deed will be conducted by the United States. This covenant will not apply in any case in which any grantee of the Property, or any part thereof, is a potentially responsible

party with respect to the Property before the date on which any grantee acquired an interest in the Property, or is a potentially responsible party as a result of an act of omission affecting the Property. For the purposes of this covenant, the phrase "remedial action necessary" does not include any performance by the United States, or payment to the Grantee from the United States, for additional remedial action that is required to facilitate use of the Property for uses and activities prohibited by those environmental use restrictive covenants set forth in Section VII below.

3. The United States has reserved access to the Property in the Reservation Section of this deed in order to perform any remedial or corrective action as required by CERCLA Section 120(h)3(A)(ii).

VII. Other Covenants and Notices

A. General Lead-Based Paint and Lead-Based Paint-Containing Materials and Debris (collectively "LBP")

1. Lead-based paint was commonly used prior to 1978 and may be located on the Property. The Grantee is advised to exercise caution during any use of the Property that may result in exposure to LBP.

2. The Grantee agrees that in its use and occupancy of the Property, the Grantee is solely responsible for managing LBP, including LBP in soils, in accordance with all applicable federal, state, and local laws and regulations. The Grantee acknowledges that the Grantor assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, contact, disposition, or other activity involving LBP on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured. The Grantee further agrees to notify the Grantor promptly of any discovery of LBP in soils that appears to be the result of Grantor activities and that is found at concentrations that may require remediation. The Grantor hereby reserves the right, in its sole discretion, to undertake an investigation and conduct any remedial action that it determines is necessary.

B. Asbestos-Containing Materials ("ACM"). The Grantee is warned that the Property may contain current and former improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground that may contain ACM. The Grantee covenants and agrees that in its use and occupancy of the Property, it will comply with all applicable federal, state, and local laws relating to asbestos. The Grantee is cautioned to use due care during property development activities that may uncover pipelines or other buried ACM. The Grantee covenants and agrees that it will notify the Grantor promptly of any potentially friable ACM that constitutes a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.). The Grantor's responsibility under this deed for friable ACM is limited to friable ACM in

demolition debris associated with past Air Force activities and is limited to the actions, if any, to be taken in accordance with the covenant contained in Section VI herein.

The Grantee is warned that the Grantor will not be responsible for removing or responding to ACM in or on utility pipelines. The Grantee acknowledges that the Grantor assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured.

C. Soils and Groundwater Access. The Grantee covenants for itself, its successors and assigns and every successor in the interest to the property herein described, or any part thereof as follows:

1. Conducting any type of surface or subsurface activity on the Property, such as, but not limited to, the excavation of soils, use of soils, installation of groundwater wells, or other access to groundwater, installation or repair of utilities, installation of foundation piers, because such actions may cause an exposure to the contaminants or waste left in place. Performance of any type of access to the Property that would interfere with or damage the remedies in place or the conducting of intrusive activity on the Property is prohibited unless the following requirements are adhered to:

   The current owner or future owner of the Property, in instances when surface or subsurface construction activities must be taken; any such owner must comply with all the applicable environmental, worker protection and other laws, rules and regulation. The owner must prepare a Work Plan describing the activities proposed within the Property. The owner of the Property must also develop and adhere to a Health and Safety Plan that addresses worker protection and contingencies for possible potential releases of contaminants from the affected media that may be encountered when conducting the aforementioned activities. The Work Plan and Health and Safety Plan must be approved by the Air Force prior to initiating any such activities within the Property.

2. Due to the presence of contamination and waste left in place, exposure to the soil and groundwater within the Property may pose an increased risk to human health and environment; therefore, residential use of the property is prohibited.

D. Access to Fenced Area. The Grantee covenants for itself, its successors and assigns and every successor in the interest to the property herein described, or any part thereof not to enter the fenced area located on the parcel, depicted in Exhibit B, without the express, written permission of the Air Force. This area is restricted in order to protect the remedy selected and to minimize risk to human health and environment.

E. Nondiscrimination. The Grantee covenants not to discriminate upon the basis of race, color, religion, national origin, sex, age, or handicap in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit, nor shall it apply with respect to religion if the Property is on premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property.

F. Hazards to Air Navigation. Prior to commencing any construction on, or alteration of, the Property, the Grantee covenants to comply with 14 CFR Part 77 entitled "Objects Affecting Navigable Airspace", under the authority of the Federal Aviation Act of 1958 (FAA Act), as amended.

NOTICE ONLY:

G. Energy/ Infrastructure Lines.

The Grantee is hereby notified that areas within the Parcel have the potential for containing buried utility lines not indicated on maps used for locating subsurface utilities, with an increasing likelihood for such unidentified locations on the Property near the former industrial areas of the Former Bergstrom AFB. Hazards associated with these unmapped utility lines include contact with materials of construction, as well as contact with materials conveyed such as pressurized natural gas, petroleum fuel products, and high voltage electricity.

Note, if the transfer is to a private party, meaning any person or entity other than the City of Austin, the utility company owns an easement that may not be included in the transfer. In such a case, the utility company should be consulted prior to any excavation or drilling into the subsurface. Any activity conducted on the Property, which will include excavation, or drilling into the subsurface should be conducted in accordance with all appropriate industry safety precautions in consideration of the potential presence of such unmarked utility lines.

H. Radon. The Grantee is hereby informed and does acknowledge that currently the Property contains a natural occurrence of radon at levels that require no action. The base was considered a medium-risk area due to radon concentrations between 4-20 pCi/l.

VIII. AIRPORT COVENANTS:

A. Grantee covenants and agrees, on behalf of itself and its successors and assigns, with regard to use of the Property, that the following covenants, conditions and restrictions will run with the land and be enforceable by Grantor acting through the Administrator of the Federal Aviation Administration (FAA) against the Grantee, and each successor,

assign, or transferee of the Grantee, including without limitation, any tenant or licensee of the Grantee who may claim a possessory interest in any portion of the Property.

1. Except as provided in Section VIII.A.4 of this Quitclaim Deed, the Property shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for the use of the Property within the meaning of the term "exclusive right" as used in Section VIII.A.6.

2. Except as provided in Section VIII.A.4 hereof, the entire airfield, as defined in 49 United States Code (U.S.C.) Section 40102(a)(28), as amended, and Federal Aviation Regulations pertaining thereto, and all structures, improvements, facilities and equipment in which any interest is transferred, shall be maintained for the use and benefit of the public at all times in safe and serviceable condition so as to assure its efficient operation and use; provided, however, that such maintenance shall be required to structures, improvements, facilities, and equipment only during the useful life thereof as determined by the Administrator of the FAA or his or her successor in function. In the event materials are required to rehabilitate or repair certain of the aforementioned structures, improvements, facilities, or equipment, they may be procured by demolition of other structures, improvements, facilities, or equipment transferred as a result of this Quitclaim Deed and located on the Property, which have outlived their use as a public airport in the opinion of the Administrator of the FAA or his or her successor in function. Notwithstanding any other provision of this Quitclaim Deed:

a. With the prior written approval of the FAA, the Grantee may close or otherwise limit use or access to any portion of the Property that it deems appropriate if such closure or use limitation is related to airport operating considerations or is based upon insufficient demand for such portion of the Property; and

b. With respect to any such portion of the Property, the Grantee shall be under no obligation to maintain the same other than as may be required to maintain adequate public safety conditions.

3. Insofar as it is within its power and to the extent reasonable, the Grantee shall adequately clear and protect the aerial approaches to the Property. The Grantee will, either by the acquisition and retention of easements or other interest in or rights for the use of land airspace, or by seeking the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways on the Property which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Part 77 of the Federal Aviation Administration regulations or 14 CFR Part 77, as applicable, according to the currently approved Airport Layout Plan. In addition, the Grantee will not erect, or permit the erection of, any permanent structure or facility which would interfere materially with the

use, operation, or future development of the Property, in any portion of a runway approach area in which the Grantee has acquired, or may hereafter acquire, a property interest permitting it to so control the use made of the surface of the land. Insofar as it is within its power to the extent reasonable, the Grantee will take action to restrict the use of the land adjacent to or in the immediate operations, including landing and takeoff of aircraft.

4. No land or improvements included in the Property shall be used, leased, sold, salvaged, or disposed of by the Grantee for other than airport purposes without the written consent of the Administrator of the FAA or his or her successor in function. This consent shall be granted only if the Administrator of the FAA or his or her successor in function determines that the land or improvements can be used, leased, sold, salvaged, or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the Property. The term "Property" as used in this deed, is deemed to include revenues or proceeds (including any insurance proceeds) derived from the Property.

5. Land and improvements transferred for the development, improvement, operation or maintenance of the Property as an airport shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without unjust discrimination. In furtherance of this covenant (but without limiting its general applicability and effect), the Grantee specifically agrees:

a. That it will keep the Property open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes. However, the Grantee may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Property as may be necessary for the safe and efficient operation of the Property; and provided, that the Grantee may prohibit or limit any given type, kind, or class of aeronautical use of the Property if such action is necessary for the safe operation of the Property or necessary to serve the civil aviation needs of the public;

b. That, in its operation and the operation of the Property, neither it nor any person or organization occupying space or facilities thereupon, will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public at the Property;

c. That, in any agreement, contract, lease, or other arrangement under which a right or privilege at the Property is granted to any person, firm or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Property, the Grantee will insert and enforce provisions requiring the contractor:

(1) To furnish such service on a fair, equal and not unjustly discriminatory basis to all users thereof, and

(2) To charge fair, reasonable, and not unjustly discriminatory prices for each unit for service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers;

d. That, the GRANTEE will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Property from performing any services on its own aircraft with its own employees (including, but not limited to maintenance and repair) that it may choose to perform; and

e. That, in the event the Grantee, itself exercises any of the rights and privileges referred to in Section VIII.A.5.c., above, the services involved will be provided on the same conditions as would apply to the furnishing of such Section X.A.5.c.

6. The Grantee will not grant or permit any exclusive right for the use of the Property which is forbidden by 49 U.S.C. § 47107(a)(4) by any person or applicable laws. In furtherance of this covenant (but without limiting its general applicability and effect), the Grantee specifically agrees that, unless authorized by the Administrator of FAA or his or her successor in function, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right to conduct any aeronautical activity on the Property, including but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising, and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products, whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity. The Grantee further agrees that it will terminate as soon as possible and no later than the earliest renewal, cancellation, or expiration date applicable thereof, any exclusive right existing at any airport owned or controlled by the Grantee or hereinafter acquired, and that, thereafter, no such right shall be granted. However, nothing contained in this deed shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any services of a nonaeronautical nature, or to obligate the Grantee to furnish any particular nonaeronautical service at the Property.

7. The Grantee will operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by the Administrator of the FAA or his or her successor in function, the Property and all facilities thereon and connected therewith which are necessary to service the aeronautical users of the airport other than facilities owned or controlled by the United States, and the Grantee shall not permit any activity thereon which would interfere with its use for airport purposes. Nothing contained herein shall be construed to require:

a. That the Property be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance; or

b. The repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstances beyond the control of the Grantee.

8. The Grantee will:

a. Furnish the FAA with annual or special airport financial and operational reports as may be reasonably requested using either forms furnished by the FAA or in such manner as it elects so long as the essential data are furnished; and

b. Upon reasonable request of the FAA, make available for inspection by any duly authorized representative of the FAA the Property and all airport records and documents affecting the Property, including deeds, leases, operation and use agreements, regulations, and other instruments, and will furnish to the FAA a true copy of any such document which may be reasonably requested.

9. The Grantee will not enter into any action which would operate to deprive it of any of the rights and powers necessary to perform or comply with any or all of the covenants and conditions set forth in this deed unless by such transaction the obligation to perform or comply with all such covenants and conditions is assumed by another public agency found by the FAA to be eligible as a public agency, as defined in 49 U.S.C. § 47102(15), to assume such obligations and have the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the Property by any agency or person other than the Grantee, the Grantee shall reserve sufficient rights and authority to insure that such airport will be operated and maintained in accordance with these covenants and conditions, applicable federal statutes, and applicable provisions of the Federal Aviation Regulations.

10. The Grantee will at all times keep an up-to-date Airport Layout Plan of the airport operated by it on the Property, showing:

a. The boundaries of the airport and all proposed additions thereto, together with the boundaries of all off-site areas owned or controlled by the Grantee for airport purposes and proposed additions thereto;

b. The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and

c. The location of all existing and proposed nonaviation areas and all existing improvements and uses. The Airport Layout Plan and each amendment shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the Airport Layout Plan. The Grantee will not make, or permit the making of, any changes or alternations in the airport or any of its facilities other than in conformity with the Airport Layout Plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the airport.

11. If at any time it is determined by the FAA that there is any outstanding right, or claim of right, in or to the Property described herein, the existence of which creates an undue risk of interference with the operation of the Property as an airport or the Grantee will, to the extent practicable, acquire, extinguish, or modify such right or claim of right in a manner acceptable to the FAA.

12. The Grantee covenants and agrees for itself, its successors and assigns that:

a. The program for or in connection with which this deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to, the regulations of the United States Department of Transportation ("DOT") in effect on the date of the transfer (49 CFR Part 21) issued under the provisions of Title VI of the Civil Rights Act of 1964, as amended;

b. This covenant shall be subject in all respects to the provisions of such regulations;

c. The Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant;

d. The United States shall have the right to seek judicial enforcement of this covenant; and

e. The Grantee, its successors and assigns, will:

(i) Obtain from any person, including any legal entity, who, through contractual or other arrangement with the Grantee, its successors and assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other person shall, with respect to the service or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant;

(ii) Furnish the original of such agreement to the Administrator of the FAA or his or her successor in function, upon his or her request therefore; and that this covenant shall run with the land hereby conveyed, and shall in any event,

without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor against the Grantee, its successors, and assigns.

13. Grantee covenants for itself, its successors and assigns, that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with 14 CFR Part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958 (FAA Act), as amended.

B. Grantee covenants and agrees, on behalf of itself and its successors and assigns, that it will with regard to future use of the property by the United States:

1. Whenever so requested by the FAA, furnish without cost to the United States, for construction, operation and maintenance of facilities for air traffic control, weather reporting activities, or communication activities related to air traffic control, such areas of the Property or rights in buildings on the Property, as the FAA may consider necessary or desirable for construction at federal expense of space or facilities for such purposes, and the Grantee will make available such areas or any portion thereof for the purposes provided in this deed within four (4) months after receipt of written request from the FAA, if such are or will be available.

2. Make available all facilities at the Property developed with federal aid, and all those usable for the landing and taking off of aircraft, to the United States at all times, without charge, and for use by aircraft of any agency of the United States in common with other aircraft, except that if the use by aircraft of any agency of the United States in common with other aircraft, is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Grantee and the using federal agency, substantial use of an airport by United States aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the authorized aircraft or, that during any calendar month:

a. Either five (5) or more aircraft of any agency of the United States are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement and each takeoff as a movement) of aircraft of any agency of the United States is three hundred (300) or more; or

c. The gross accumulative weight of aircraft of any agency of the United States using the Airport (total movement of such federal aircraft multiplied by gross certified weights thereof) is in excess of five million pounds "5,000,000 lbs".

2. During any national emergency declared by the President of the United States, or the Congress thereof, including any existing national emergency, the United States shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the Property and its improvements, as it then exists, or of such portion thereof as it may desire. However, the United States shall be responsible for the entire cost of maintaining such part of the Property as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession or control and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of the Property as it may use nonexclusively or over which it may have nonexclusive control and possession. The United States shall also pay a fair rental for use, control or possession, exclusively or nonexclusively, of any improvements to the property made without United States aid and never owned by the United States.

C. Release from Airport Liability Claims. The Grantee does hereby release the Grantor, and will take whatever action may be required by the Administrator of the FAA or his or her successor in function, to assure the complete release of the GRANTOR, from any and all liability the Grantor may be under for restoration or other damages under any lease or other agreement covering the use by the Grantor of any other airport, or part thereof, owned, controlled or operated by the Grantee, upon which, adjacent to which, or in connection with which, any property transferred by this instrument was located or used. However, no such release shall be construed as depriving the Grantee of any right it may otherwise have to receive reimbursement for the necessary rehabilitation or repair of public airports previously, or hereafter substantially damaged by any federal agency.

D. Reverter and Conveyance by Grantee of the Property.

1. In the event that any of the terms, conditions reservations, or restrictions in this deed are not met, observed, or complied with by the Grantee or any subsequent transferee, whether caused by the legal inability or the Grantee or subsequent transferee to perform any of the obligations herein set out or otherwise, the title, right of possession and all other rights transferred by this instrument to the Grantee, or any portion thereof, shall at the option of the Grantor revert to the Grantor in its then-existing condition sixty (60) days following the date upon which demand to this effect is made in writing by the Administrator of the FAA or his or her successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions, reservations and restrictions shall have been met, observed, or complied with, or if the Grantee shall have commenced the actions necessary to bring it into compliance with such terms, conditions, reservations and restrictions in accordance with a compliance schedule approved by the Administrator of the FAA or his or her successor in function, in which event said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the Grantee, its transferees, successors and assigns.

2. Any of the property included in the Property may be successively transferred to successors and assigns of the Grantee only with the approval of the Administrator of the FAA or his or her successor in function to the extent required-by the provisions of Section VIII, subsection A4 hereof, with the proviso that any such subsequent transferee assumes all the obligations imposed herein unless released in writing there from by the Administrator of the FAA or his or her successor in function.

E. Construction of Provisions of This Quitclaim Deed. If the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservation or restrictions in question shall be construed instead merely as conditions, the breach of which the United States may exercise its options to cause the title, interest, right of possession, and all other rights transferred to the Grantee, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

IX. MISCELLANEOUS

A. Each covenant of this Deed shall be deemed to touch and concern the land and shall run with the land.

B. It is the intent of the Grantor and the Grantee that the covenants in Section VIII are between the FAA and the Grantee to this Deed, and those covenants are not intended to run with the land or to bind the successors and assigns of the Grantee to this Deed.

X. **THE FOLLOWING EXHIBITS** are attached to and made a part of this document:

Exhibit A Legal Description of Property Conveyed
Exhibit B Survey Drawing
Exhibit C Notice of Hazardous Substance(s) Stored
Exhibit D Notice of Hazardous Substance(s) Released

IN WITNESS WHEREOF, the party of the first part has caused this Deed to be executed in its name and on its behalf the day and year first above written.

Appendix W ► Reserved

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Appendix X ► 14 CFR Part 161

PART 161 -- NOTICE AND APPROVAL OF AIRPORT NOISE AND ACCESS RESTRICTIONS

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Authority: 49 U.S.C. §§ 106(g), 47523-47527, 47533.
Source: Docket No. 26432, 56 FR 48698, Sept. 25, 1991, unless otherwise noted.

Subpart A -- General Provisions

§ 161.1 Purpose.

This part implements the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2153, 2154, 2155, and 2156). It prescribes:

(a) Notice requirements and procedures for airport operators implementing Stage 3 aircraft noise and access restrictions pursuant to agreements between airport operators and aircraft operators;

(b) Analysis and notice requirements for airport operators proposing Stage 2 aircraft noise and access restrictions;

(c) Notice, review, and approval requirements for airport operators proposing Stage 3 aircraft noise and access restrictions; and

(d) Procedures for Federal Aviation Administration reevaluation of agreements containing restrictions on Stage 3 aircraft operations and of aircraft noise and access restrictions affecting Stage 3 aircraft operations imposed by airport operators.

§ 161.3 Applicability.

(a) This part applies to airports imposing restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to airports imposing restrictions on Stage 3 aircraft operations that became effective after October 1, 1990.

(b) This part also applies to airports enacting amendments to airport noise and access restrictions in effect on October 1, 1990, but amended after that date, where the amendment reduces or limits aircraft operations or affects aircraft safety.

(c) The notice, review, and approval requirements set forth in this part apply to all airports imposing noise or access restrictions as defined in § 161.5 of this part.

§ 161.5 Definitions.

For the purposes of this part, the following definitions apply:

Agreement means a document in writing signed by the airport operator; those aircraft operators currently operating at the airport that would be affected by the noise or access restriction; and all affected new entrants planning to provide new air service within 180 days of the effective date of the restriction that have submitted to the airport operator a plan of operations and notice of agreement to the restriction.

Aircraft operator, for purposes of this part, means any owner of an aircraft that operates the aircraft, i.e., uses, causes to use, or authorizes the use of the aircraft; or in the case of a leased aircraft, any lessee that operates the aircraft pursuant to a lease. As used in this part, aircraft operator also means any representative of the aircraft owner, or in the case of a leased aircraft, any representative of the lessee empowered to enter into agreements with the airport operator regarding use of the airport by an aircraft.

Airport means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Airport noise study area means that area surrounding the airport within the noise contour selected by the applicant for study and must include the noise contours required to be developed for noise exposure maps specified in 14 CFR Part 150.

Airport operator means the airport proprietor.

Aviation user class means the following categories of aircraft operators: air carriers operating under Part 121 or Part 129 of this chapter; commuters and other air carriers operating under Part 135 of this chapter; general aviation, military, or federal government operations.

Day-night average sound level (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m. and midnight, local time, as defined in 14 CFR Part 150. (The scientific notation for DNL is Ldn).

Noise or access restrictions means restrictions (including but not limited to provisions of ordinances and leases) affecting access or noise that affect the operations of Stage 2 or Stage 3 aircraft, such as limits on the noise generated on either a single-event or cumulative basis; a limit, direct or indirect, on the total number of Stage 2 or Stage 3 aircraft operations; a noise budget or noise allocation program that includes Stage 2 or Stage 3 aircraft; a restriction imposing limits on hours of operations; a program of airport-use charges that has the direct or indirect effect of controlling airport noise; and any other limit on Stage 2 or Stage 3 aircraft that has the effect of controlling airport noise. This definition does not include peak-period pricing programs where the objective is to align the number of aircraft operations with airport capacity.

Stage 2 aircraft means an aircraft that has been shown to comply with the Stage 2 requirements under 14 CFR Part 36.

Stage 3 aircraft means an aircraft that has been shown to comply with the Stage 3 requirements under 14 CFR Part 36.

[Doc. No. 26432, 56 FR 48698, Sept. 25, 1991, as amended by Amdt. 161-2, 66 FR 21067, Apr. 27, 2001]

§ 161.7 Limitations.

(a) Aircraft operational procedures that must be submitted for adoption by the FAA, such as preferential runway use, noise abatement approach and departure procedures and profiles, and flight tracks, are not subject to this part. Other noise abatement procedures, such as taxiing and engine runups, are not subject to this part unless the procedures imposed limit the total number of Stage 2 or Stage 3 aircraft operations, or limit the hours of Stage 2 or Stage 3 aircraft operations, at the airport.

(b) The notice, review, and approval requirements set forth in this part do not apply to airports with restrictions as specified in 49 U.S.C. App. 2153(a)(2)(C):

(1) A local action to enforce a negotiated or executed airport aircraft noise or access agreement between the airport operator and the aircraft operator in effect on November 5, 1990.

(2) A local action to enforce a negotiated or executed airport aircraft noise or access restriction the airport operator and the aircraft operators agreed to before November 5, 1990.

(3) An intergovernmental agreement including airport aircraft noise or access restriction in effect on November 5, 1990.

(4) A subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on November 5, 1990, where the amendment does not reduce or limit aircraft operations or affect aircraft safety.

(5) A restriction that was adopted by an airport operator on or before October 1, 1990, and that was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction, or a part thereof, is subsequently allowed by a court to take effect.

(6) In any case in which a restriction described in paragraph (b)(5) of this section is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction, if such new restriction would not prohibit aircraft operations in effect on November 5, 1990.

(7) A local action that represents the adoption of the final portion of a program of a staged airport aircraft noise or access restriction, where the initial portion of such program was adopted during calendar year 1988 and was in effect on November 5, 1990.

(c) The notice, review, and approval requirements of subpart D of this part with regard to Stage 3 aircraft restrictions do not apply if the FAA has, prior to November 5, 1990, formed a working group (outside of the process established by 14 CFR Part 150) with a local airport operator to examine the noise impact of air traffic control procedure changes. In any case in which an agreement relating to noise reductions at such airport is then entered into between the airport proprietor and an air carrier or air carrier constituting a majority of the air carrier users of such airport, the requirements of subparts B and D of this part with respect to restrictions on Stage 3 aircraft operations do apply to local actions to enforce such agreements.

(d) Except to the extent required by the application of the provisions of the Act, nothing in this part eliminates, invalidates, or supersedes the following:

(1) Existing law with respect to airport noise or access restrictions by local authorities;

(2) Any proposed airport noise or access regulation at a general aviation airport where the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990; and

(3) The authority of the Secretary of Transportation to seek and obtain such legal remedies as the Secretary considers appropriate, including injunctive relief.

§ 161.9 Designation of noise description methods.

For purposes of this part, the following requirements apply:

(a) The sound level at an airport and surrounding areas, and the exposure of individuals to noise resulting from operations at an airport, must be established in accordance with the specifications and methods prescribed under appendix A of 14 CFR Part 150; and

(b) Use of computer models to create noise contours must be in accordance with the criteria prescribed under appendix A of 14 CFR Part 150.

§ 161.11 Identification of land uses in airport noise study area.

For the purposes of this part, uses of land that are normally compatible or noncompatible with various noise-exposure levels to individuals around airports must be identified in accordance with the criteria prescribed under appendix A of 14 CFR Part 150. Determination of land use must be based on professional planning, zoning, and building and site design information and expertise.

Subpart B -- Agreements

§ 161.101 Scope.

(a) This subpart applies to an airport operator's noise or access restriction on the operation of Stage 3 aircraft that is implemented pursuant to an agreement between an airport operator and all aircraft operators affected by the proposed restriction that are serving or will be serving such airport within 180 days of the date of the proposed restriction.

(b) For purposes of this subpart, an agreement shall be in writing and signed by:

(1) The airport operator;

(2) Those aircraft operators currently operating at the airport who would be affected by the noise or access restriction; and

(3) All new entrants that have submitted the information required under § 161.105(a) of this part.

(c) This subpart does not apply to restrictions exempted in § 161.7 of this part.

(d) This subpart does not limit the right of an airport operator to enter into an agreement with one or more aircraft operators that restricts the operation of Stage 2 or Stage 3 aircraft as long as the restriction is not enforced against aircraft operators that are not party to the agreement. Such an agreement is not covered by this subpart except that an aircraft operator may apply for sanctions pursuant to subpart F of this part for restrictions the airport operator seeks to impose other than those in the agreement.

§ 161.103 Notice of the proposed restriction.

(a) An airport operator may not implement a Stage 3 restriction pursuant to an agreement with all affected aircraft operators unless there has been public notice and an opportunity for comment as prescribed in this subpart.

(b) In order to establish a restriction in accordance with this subpart, the airport operator shall, at least 45 days before implementing the restriction, publish a notice of the proposed restriction in

an areawide newspaper or newspapers that either singly or together has general circulation throughout the airport vicinity or airport noise study area, if one has been delineated; post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; affected operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service;

(2) The Federal Aviation Administration;

(3) Each federal, state, and local agency with land use control jurisdiction within the vicinity of the airport, or the airport noise study area, if one has been delineated;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each direct notice provided in accordance with paragraph (b) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including sanctions for noncompliance and a statement that it will be implemented pursuant to a signed agreement;

(3) A brief discussion of the specific need for and goal of the proposed restriction;

(4) Identification of the operators and the types of aircraft expected to be affected;

(5) The proposed effective date of the restriction and any proposed enforcement mechanism;

(6) An invitation to comment on the proposed restriction, with a minimum 45-day comment period;

(7) Information on how to request copies of the restriction portion of the agreement, including any sanctions for noncompliance;

(8) A notice to potential new entrant aircraft operators that are known to be interested in serving the airport of the requirements set forth in § 161.105 of this part; and

(9) Information on how to submit a new entrant application, comments, and the address for submitting applications and comments to the airport operator, including identification of a contact person at the airport.

(d) The Federal Aviation Administration will publish an announcement of the proposed restriction in the *Federal Register*.

[Docket No. 26432, 56 FR 48698, Sept. 25, 1991; 56 FR 51258, Oct. 10, 1991]

§ 161.105 Requirements for new entrants.

(a) Within 45 days of the publication of the notice of a proposed restriction by the airport operator under § 161.103(b) of this part, any person intending to provide new air service to the airport within 180 days of the proposed date of implementation of the restriction (as evidenced by submission of a plan of operations to the airport operator) must notify the airport operator if it would be affected by the restriction contained in the proposed agreement, and either that it --

(1) Agrees to the restriction; or

(2) Objects to the restriction.

(b) Failure of any person described in § 161.105(a) of this part to notify the airport operator that it objects to the proposed restriction will constitute waiver of the right to claim that it did not consent to the agreement and render that person ineligible to use lack of signature as ground to apply for sanctions under subpart F of this part for two years following the effective date of the restriction. The signature of such a person need not be obtained by the airport operator in order to comply with § 161.107(a) of this part.

(c) All other new entrants are also ineligible to use lack of signature as ground to apply for sanctions under subpart F of this part for two years.

§ 161.107 Implementation of the restriction.

(a) To be eligible to implement a Stage 3 noise or access restriction under this subpart, an airport operator shall have the restriction contained in an agreement as defined in § 161.101(b) of this part.

(b) An airport operator may not implement a restriction pursuant to an agreement until the notice and comment requirements of § 161.103 of this part have been met.

(c) Each airport operator must notify the Federal Aviation Administration of the implementation of a restriction pursuant to an agreement and must include in the notice evidence of compliance with § 161.103 and a copy of the signed agreement.

§ 161.109 Notice of termination of restriction pursuant to an agreement.

An airport operator must notify the FAA within 10 days of the date of termination of a restriction pursuant to an agreement under this subpart.

§ 161.111 Availability of data and comments on a restriction implemented pursuant to an agreement.

The airport operator shall retain all relevant supporting data and all comments relating to a restriction implemented pursuant to an agreement for as long as the restriction is in effect. The airport operator shall make these materials available for inspection upon request by the FAA. The information shall be made available for inspection by any person during the pendency of any petition for reevaluation found justified by the FAA.

§ 161.113 Effect of agreements; limitation on reevaluation.

(a) Except as otherwise provided in this subpart, a restriction implemented by an airport operator pursuant to this subpart shall have the same force and effect as if it had been a restriction implemented in accordance with subpart D of this part.
(b) A restriction implemented by an airport operator pursuant to this subpart may be subject to reevaluation by the FAA under subpart E of this part.

Subpart C -- Notice Requirements for Stage 2 Restrictions

§ 161.201 Scope.

(a) This subpart applies to:

(1) An airport imposing a noise or access restriction on the operation of Stage 2 aircraft, but not Stage 3 aircraft, proposed after October 1, 1990.

(2) An airport imposing an amendment to a Stage 2 restriction, if the amendment is proposed after October 1, 1990, and reduces or limits Stage 2 aircraft operations (compared to the restriction that it amends) or affects aircraft safety.

(b) This subpart does not apply to an airport imposing a Stage 2 restriction specifically exempted in §161.7 or a Stage 2 restriction contained in an agreement as long as the restriction is not enforced against aircraft operators that are not parties to the agreement.

§ 161.203 Notice of proposed restriction.

(a) An airport operator may not implement a Stage 2 restriction within the scope of § 161.201 unless the airport operator provides an analysis of the proposed restriction, prepared in accordance with § 161.205, and a public notice and opportunity for comment as prescribed in this subpart. The notice and analysis required by this subpart shall be completed at least 180 days prior to the effective date of the restriction.

(b) Except as provided in § 161.211, an airport operator must publish a notice of the proposed restriction in an area wide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area; post a notice in the airport in a prominent

location accessible to airport users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction;

(2) The Federal Aviation Administration;

(3) Each federal, state, and local agency with land use control jurisdiction within the airport noise study area;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each notice provided in accordance with paragraph (b) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including a statement that it will be a mandatory Stage 2 restriction, and where the complete text of the restriction, and any sanctions for noncompliance, are available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the operators and the types of aircraft expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (e.g., city ordinance, airport rule, lease), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction, as required by § 161.205 of this subpart, or an announcement of where the analysis is available for public inspection;

(7) An invitation to comment on the proposed restriction and analysis, with a minimum 45-day comment period;

(8) Information on how to request copies of the complete text of the proposed restriction, including any sanctions for noncompliance, and the analysis (if not included with the notice); and

(9) The address for submitting comments to the airport operator, including identification of a contact person at the airport.

(d) At the time of notice, the airport operator shall provide the FAA with a full text of the proposed restriction, including any sanctions for noncompliance.

(e) The Federal Aviation Administration will publish an announcement of the proposed Stage 2 restriction in the *Federal Register*.

§ 161.205 Required analysis of proposed restriction and alternatives.

(a) Each airport operator proposing a noise or access restriction on Stage 2 aircraft operations shall prepare the following and make it available for public comment:

(1) An analysis of the anticipated or actual costs and benefits of the proposed noise or access restriction;

(2) A description of alternative restrictions; and

(3) A description of the alternative measures considered that do not involve aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to costs and benefits of the proposed noise or access restriction.

(b) In preparing the analyses required by this section, the airport operator shall use the noise measurement systems and identify the airport noise study area as specified in §§ 161.9 and 161.11, respectively; shall use currently accepted economic methodology; and shall provide separate detail on the costs and benefits of the proposed restriction with respect to the operations of Stage 2 aircraft weighing less than 75,000 pounds if the restriction applies to this class. The airport operator shall specify the methods used to analyze the costs and benefits of the proposed restriction and the alternatives.

(c) The kinds of information set forth in § 161.305 are useful elements of an adequate analysis of a noise or access restriction on Stage 2 aircraft operations.

§ 161.207 Comment by interested parties.

Each airport operator shall establish a public docket or similar method for receiving and considering comments, and shall make comments available for inspection by interested parties upon request. Comments must be retained as long as the restriction is in effect.

§ 161.209 Requirements for proposal changes.

(a) Each airport operator shall promptly advise interested parties of any changes to a proposed restriction, including changes that affect noncompatible land uses, and make available any changes to the proposed restriction and its analysis. Interested parties include those that received direct notice under § 161.203(b), or those that were required to be consulted in accordance with the procedures in § 161.211 of this part, and those that have commented on the proposed restriction.

(b) If there are substantial changes to the proposed restriction or the analysis during the 180-day notice period, the airport operator shall initiate new notice following the procedures in § 161.203 or, alternatively, the procedures in § 161.211. A substantial change includes, but is not limited to, a proposal that would increase the burden on any aviation user class.

(c) In addition to the information in § 161.203(c), new notice must indicate that the airport operator is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction. The effective date of the restriction must be at least 180 days after the date the new notice and revised analysis are made available for public comment.

§ 161.211 Optional use of 14 CFR Part 150 procedures.

(a) An airport operator may use the procedures in Part 150 of this chapter, instead of the procedures described in §§ 161.203(b) and 161.209(b), as a means of providing an adequate public notice and comment opportunity on a proposed Stage 2 restriction.

(b) If the airport operator elects to use 14 CFR Part 150 procedures to comply with this subpart, the operator shall:

(1) Ensure that all parties identified for direct notice under § 161.203(b) are notified that the airport's 14 CFR Part 150 program will include a proposed Stage 2 restriction under Part 161, and that these parties are offered the opportunity to participate as consulted parties during the development of the 14 CFR Part 150 program;

(2) Provide the FAA with a full text of the proposed restriction, including any sanctions for noncompliance, at the time of the notice;

(3) Include the information in § 161.203 (c)(2) through (c)(5) and 161.205 in the analysis of the proposed restriction for the Title 14 CFR Part 150 program;

(4) Wait 180 days following the availability of the above analysis for review by the consulted parties and compliance with the above notice requirements before implementing the Stage 2 restriction; and

(5) Include in its 14 CFR Part 150 submission to the FAA evidence of compliance with paragraphs (b)(1) and (b)(4) of this section, and the analysis in paragraph (b)(3) of this section, together with a clear identification that the 14 CFR Part 150 program includes a proposed Stage 2 restriction under Part 161.

(c) The FAA determination on the 14 CFR Part 150 submission does not constitute approval or disapproval of the proposed Stage 2 restriction under Part 161.

(d) An amendment of a restriction may also be processed under 14 CFR Part 150 procedures in accordance with this section.

§ 161.213 Notification of a decision not to implement a restriction.

If a proposed restriction has been through the procedures prescribed in this subpart and the restriction is not subsequently implemented, the airport operator shall so advise the interested parties. Interested parties are described in § 161.209(a).

Subpart D -- Notice, Review, and Approval Requirements for Stage 3 Restrictions

§ 161.301 Scope.

(a) This subpart applies to:

(1) An airport imposing a noise or access restriction on the operation of Stage 3 aircraft that first became effective after October 1, 1990.

(2) An airport imposing an amendment to a Stage 3 restriction, if the amendment becomes effective after October 1, 1990, and reduces or limits Stage 3 aircraft operations (compared to the restriction that it amends) or affects aircraft safety.

(b) This subpart does not apply to an airport imposing a Stage 3 restriction specifically exempted in § 161.7, or an agreement complying with subpart B of this part.

(c) A Stage 3 restriction within the scope of this subpart may not become effective unless it has been submitted to and approved by the FAA. The FAA will review only those Stage 3 restrictions that are proposed by, or on behalf of, an entity empowered to implement the restriction.

§ 161.303 Notice of proposed restrictions.

(a) Each airport operator or aircraft operator (hereinafter referred to as applicant) proposing a Stage 3 restriction shall provide public notice and an opportunity for public comment, as prescribed in this subpart, before submitting the restriction to the FAA for review and approval.

(b) Except as provided in § 161.321, an applicant shall publish a notice of the proposed restriction in an area wide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area; post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction;

(2) The Federal Aviation Administration;

(3) Each federal, state, and local agency with land use control jurisdiction within the airport noise study area;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each notice provided in accordance with paragraph (b) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction (and any alternatives, in order of preference), including a statement that it will be a mandatory Stage 3 restriction; and where the complete text of the restriction, and any sanctions for noncompliance, are available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the operators and types of aircraft expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (e.g., city ordinance, airport rule, lease, or other document), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction, in accordance with § 161.305 of this part, or an announcement regarding where the analysis is available for public inspection;

(7) An invitation to comment on the proposed restriction and the analysis, with a minimum 45-day comment period;

(8) Information on how to request a copy of the complete text of the restriction, including any sanctions for noncompliance, and the analysis (if not included with the notice); and

(9) The address for submitting comments to the airport operator or aircraft operator proposing the restriction, including identification of a contact person.

(d) Applicants may propose alternative restrictions, including partial implementation of any proposal, and indicate an order of preference. If alternative restriction proposals are submitted, the requirements listed in paragraphs (c)(2) through (c)(6) of this section should address the alternative proposals where appropriate.

§ 161.305 Required analysis and conditions for approval of proposed restrictions.

Each applicant proposing a noise or access restriction on Stage 3 operations shall prepare and make available for public comment an analysis that supports, by substantial evidence, that the six

statutory conditions for approval have been met for each restriction and any alternatives submitted. The statutory conditions are set forth in 49 U.S.C. App. 2153(d)(2) and paragraph (e) of this section. Any proposed restriction (including alternatives) on Stage 3 aircraft operations that also affects the operation of Stage 2 aircraft must include analysis of the proposals in a manner that permits the proposal to be understood in its entirety. (Nothing in this section is intended to add a requirement for the issuance of restrictions on Stage 2 aircraft to those of subpart C of this part.) The applicant shall provide:

(a) The complete text of the proposed restriction and any submitted alternatives, including the proposed wording in a city ordinance, airport rule, lease, or other document, and any sanctions for noncompliance;

(b) Maps denoting the airport geographic boundary, and the geographic boundaries and names of each jurisdiction that controls land use within the airport noise study area;

(c) An adequate environmental assessment of the proposed restriction or adequate information supporting a categorical exclusion in accordance with FAA orders and procedures regarding compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321);

(d) A summary of the evidence in the submission supporting the six statutory conditions for approval; and

(e) An analysis of the restriction, demonstrating by substantial evidence that the statutory conditions are met. The analysis must:

(1) Be sufficiently detailed to allow the FAA to evaluate the merits of the proposed restriction; and

(2) Contain the following essential elements needed to provide substantial evidence supporting each condition for approval:

(i) *Condition 1: The restriction is reasonable, nonarbitrary, and nondiscriminatory.*

(A) Essential information needed to demonstrate this condition includes the following:

(*1*) Evidence that a current or projected noise or access problem exists, and that the proposed action(s) could relieve the problem, including:

(*i*) A detailed description of the problem precipitating the proposed restriction with relevant background information on factors contributing to the proposal and any court-ordered action or estimated liability concerns; a description of any noise agreements or noise or access restrictions currently in effect at the airport; and measures taken to achieve land use compatibility, such as controls or restrictions on land use in the vicinity of the airport and measures carried out in response to 14 CFR Part 150; and actions taken to comply with grant assurances requiring that:

(*A*) Airport development projects be reasonably consistent with plans of public agencies that are authorized to plan for the development of the area around the airport; and

(*B*) The sponsor give fair consideration to the interests of communities in or near where the project may be located; take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land near the airport to activities and purposes compatible with normal airport operations; and not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility (with respect to the airport) of any noise compatibility program measures upon which federal funds have been expended.

(*ii*) An analysis of the estimated noise impact of aircraft operations with and without the proposed restriction for the year the restriction is expected to be implemented, for a forecast timeframe after implementation, and for any other years critical to understanding the noise impact of the proposed restriction. The analysis of noise impact with and without the proposed restriction including:

(*A*) Maps of the airport noise study area overlaid with noise contours as specified in §§ 161.9 and 161.11 of this part;

(*B*) The number of people and the noncompatible land uses within the airport noise study area with and without the proposed restriction for each year the noise restriction is analyzed;

(*C*) Technical data supporting the noise impact analysis, including the classes of aircraft, fleet mix, runway use percentage, and day/night breakout of operations; and

(*D*) Data on current and projected airport activity that would exist in the absence of the proposed restriction.

(*2*) Evidence that other available remedies are infeasible or would be less cost-effective, including descriptions of any alternative aircraft restrictions that have been considered and rejected, and the reasons for the rejection; and of any land use or other nonaircraft controls or restrictions that have been considered and rejected, including those proposed under 14 CFR Part 150 and not implemented, and the reasons for the rejection or failure to implement.

(*3*) Evidence that the noise or access standards are the same for all aviation user classes or that the differences are justified, such as:

(*i*) A description of the relationship of the effect of the proposed restriction on airport users (by aviation user class); and

(*ii*) The noise attributable to these users in the absence of the proposed restriction.

(B) At the applicant's discretion, information may also be submitted as follows:

(*1*) Evidence not submitted under paragraph (e)(2)(ii)(A) of this section (Condition 2) that there is a reasonable chance that expected benefits will equal or exceed expected cost; for example, comparative economic analyses of the costs and benefits of the proposed restriction and aircraft and nonaircraft alternative measures. For detailed elements of analysis, see paragraph (e)(2)(ii)(A) of this section.

(*2*) Evidence not submitted under paragraph (e)(2)(ii)(A) of this section that the level of any noise-based fees that may be imposed reflects the cost of mitigating noise impacts produced by the aircraft, or that the fees are reasonably related to the intended level of noise impact mitigation.

(ii) *Condition 2: The restriction does not create an undue burden on interstate or foreign commerce.* (A) Essential information needed to demonstrate this statutory condition includes:

(*1*) Evidence, based on a cost-benefit analysis, that the estimated potential benefits of the restriction have a reasonable chance to exceed the estimated potential cost of the adverse effects on interstate and foreign commerce. In preparing the economic analysis required by this section, the applicant shall use currently accepted economic methodology, specify the methods used and assumptions underlying the analysis, and consider:

(*i*) The effect of the proposed restriction on operations of aircraft by aviation user class (and for air carriers, the number of operations of aircraft by air carrier), and on the volume of passengers and cargo for the year the restriction is expected to be implemented and for the forecast timeframe.

(*ii*) The estimated costs of the proposed restriction and alternative nonaircraft restrictions including the following, as appropriate:

(*A*) Any additional cost of continuing aircraft operations under the restriction, including reasonably available information concerning any net capital costs of acquiring or retrofitting aircraft (net of salvage value and operating efficiencies) by aviation user class; and any incremental recurring costs;

(*B*) Costs associated with altered or discontinued aircraft operations, such as reasonably available information concerning loss to air carriers of operating profits; decreases in passenger and shipper consumer surplus by aviation user class; loss in profits associated with other airport services or other entities: and/or any significant economic effect on parties other than aviation users.

(*C*) Costs associated with implementing nonaircraft restrictions or nonaircraft components of restrictions, such as reasonably available information concerning estimates of capital costs for real property, including redevelopment, soundproofing, noise easements, and purchase of property interests; and estimates of associated incremental recurring costs; or an explanation of the legal or other impediments to implementing such restrictions.

(*D*) Estimated benefits of the proposed restriction and alternative restrictions that consider, as appropriate, anticipated increase in real estate values and future construction cost (such as sound insulation) savings; anticipated increase in airport revenues; quantification of the noise benefits, such as number of people removed from noise contours and improved work force and/or educational productivity, if any; valuation of positive safety effects, if any; and/or other qualitative benefits, including improvements in quality of life.

(B) At the applicant's discretion, information may also be submitted as follows:

(*1*) Evidence that the affected air carriers have a reasonable chance to continue service at the airport or at other points in the national airport system.

(*2*) Evidence that other air carriers are able to provide adequate service to the airport and other points in the system without diminishing competition.

(*3*) Evidence that comparable services or facilities are available at another airport controlled by the airport operator in the market area, including services available at other airports.

(*4*) Evidence that alternative transportation service can be attained through other means of transportation.

(*5*) Information on the absence of adverse evidence or adverse comments with respect to undue burden in the notice process required in § 161.303, or alternatively in § 161.321, of this part as evidence that there is no undue burden.

(iii) *Condition 3: The proposed restriction maintains safe and efficient use of the navigable airspace.* Essential information needed to demonstrate this statutory condition includes evidence that the proposed restriction maintains safe and efficient use of the navigable airspace based upon:

(A) Identification of airspace and obstacles to navigation in the vicinity of the airport; and

(B) An analysis of the effects of the proposed restriction with respect to use of airspace in the vicinity of the airport, substantiating that the restriction maintains or enhances safe and efficient use of the navigable airspace. The analysis shall include a description of the methods and data used.

(iv) *Condition 4: The proposed restriction does not conflict with any existing federal statute or regulation.* Essential information needed to demonstrate this condition includes evidence demonstrating that no conflict is presented between the proposed restriction and any existing federal statute or regulation, including those governing:

(A) Exclusive rights;

(B) Control of aircraft operations; and

(C) Existing federal grant agreements.

(v) *Condition 5: The applicant has provided adequate opportunity for public comment on the proposed restriction.* Essential information needed to demonstrate this condition includes evidence that there has been adequate opportunity for public comment on the restriction as specified in § 161.303 or § 161.321 of this part.

(vi) *Condition 6: The proposed restriction does not create an undue burden on the national aviation system.* Essential information needed to demonstrate this condition includes evidence that the proposed restriction does not create an undue burden on the national aviation system such as:

(A) An analysis demonstrating that the proposed restriction does not have a substantial adverse effect on existing or planned airport system capacity, on observed or forecast airport system congestion and aircraft delay, and on airspace system capacity or workload;

(B) An analysis demonstrating that non aircraft alternative measures to achieve the same goals as the proposed subject restrictions are inappropriate;

(C) The absence of comments with respect to imposition of an undue burden on the national aviation system in response to the notice required in § 161.303 or § 161.321.

§ 161.307 Comment by interested parties.

(a) Each applicant proposing a restriction shall establish a public docket or similar method for receiving and considering comments, and shall make comments available for inspection by interested parties upon request. Comments must be retained as long as the restriction is in effect.

(b) Each applicant shall submit to the FAA a summary of any comments received. Upon request by the FAA, the applicant shall submit copies of the comments.

§ 161.309 Requirements for proposal changes.

(a) Each applicant shall promptly advise interested parties of any changes to a proposed restriction or alternative restriction that are not encompassed in the proposals submitted, including changes that affect noncompatible land uses or that take place before the effective date of the restriction, and make available these changes to the proposed restriction and its analysis. For the purpose of this paragraph, interested parties include those who received direct notice under § 161.303(b) of this part, or those who were required to be consulted in accordance with the procedures in § 161.321 of this part, and those who commented on the proposed restriction.

(b) If there are substantial changes to a proposed restriction or the analysis made available prior to the effective date of the restriction, the applicant proposing the restriction shall initiate new notice in accordance with the procedures in § 161.303 or, alternatively, the procedures in § 161.321. These requirements apply to substantial changes that are not encompassed in

submitted alternative restriction proposals and their analyses. A substantial change to a restriction includes, but is not limited to, any proposal that would increase the burden on any aviation user class.

(c) In addition to the information in § 161.303(c), a new notice must indicate that the applicant is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction.

(d) If substantial changes requiring a new notice are made during the FAA's 180-day review of the proposed restriction, the applicant submitting the proposed restriction shall notify the FAA in writing that it is withdrawing its proposal from the review process until it has completed additional analysis, public review, and documentation of the public review. Resubmission to the FAA will restart the 180-day review.

§ 161.311 Application procedure for approval of proposed restriction.

Each applicant proposing a Stage 3 restriction shall submit to the FAA the following information for each restriction and alternative restriction submitted, with a request that the FAA review and approve the proposed Stage 3 noise or access restriction:

(a) A summary of evidence of the fulfillment of conditions for approval, as specified in § 161.305;

(b) An analysis as specified in § 161.305, as appropriate to the proposed restriction;

(c) A statement that the entity submitting the proposal is the party empowered to implement the restriction, or is submitting the proposal on behalf of such party; and

(d) A statement as to whether the airport requests, in the event of disapproval of the proposed restriction or any alternatives, that the FAA approve any portion of the restriction or any alternative that meets the statutory requirements for approval. An applicant requesting partial approval of any proposal should indicate its priorities as to portions of the proposal to be approved.

§ 161.313 Review of application.

(a) *Determination of completeness.* The FAA, within 30 days of receipt of an application, will determine whether the application is complete in accordance with § 161.311. Determinations of completeness will be made on all proposed restrictions and alternatives. This completeness determination is not an approval or disapproval of the proposed restriction.

(b) *Process for complete application.* When the FAA determines that a complete application has been submitted, the following procedures apply:

(1) The FAA notifies the applicant that it intends to act on the proposed restriction and publishes notice of the proposed restriction in the *Federal Register* in accordance with

§ 161.315. The 180-day period for approving or disapproving the proposed restriction will start on the date of original FAA receipt of the application.

(2) Following review of the application, public comments, and any other information obtained under § 161.317(b), the FAA will issue a decision approving or disapproving the proposed restriction. This decision is a final decision of the Administrator for purpose of judicial review.

(c) *Process for incomplete application.* If the FAA determines that an application is not complete with respect to any submitted restriction or alternative restriction, the following procedures apply:

(1) The FAA shall notify the applicant in writing, returning the application and setting forth the type of information and analysis needed to complete the application in accordance with § 161.311.

(2) Within 30 days after the receipt of this notice, the applicant shall advise the FAA in writing whether or not it intends to resubmit and supplement its application.

(3) If the applicant does not respond in 30 days, or advises the FAA that it does not intend to resubmit and/or supplement the application, the application will be denied. This closes the matter without prejudice to later application and does not constitute disapproval of the proposed restriction.

(4) If the applicant chooses to resubmit and supplement the application, the following procedures apply:

(i) Upon receipt of the resubmitted application, the FAA determines whether the application, as supplemented, is complete as set forth in paragraph (a) of this section.

(ii) If the application is complete, the procedures set forth in § 161.315 shall be followed. The 180-day review period starts on the date of receipt of the last supplement to the application.

(iii) If the application is still not complete with respect to the proposed restriction or at least one submitted alternative, the FAA so advises the applicant as set forth in paragraph (c)(1) of this section and provides the applicant with an additional opportunity to supplement the application as set forth in paragraph (c)(2) of this section.

(iv) If the environmental documentation (either an environmental assessment or information supporting a categorical exclusion) is incomplete, the FAA will so notify the applicant in writing, returning the application and setting forth the types of information and analysis needed to complete the documentation. The FAA will continue to return an application until adequate environmental documentation is provided. When the application is determined to be complete, including the environmental documentation, the 180-day period for approval or disapproval will begin upon receipt of the last supplement to the application.

(v) Following review of the application and its supplements, public comments, and any other information obtained under § 161.317(b), the FAA will issue a decision approving or disapproving the application. This decision is a final decision of the Administrator for the purpose of judicial review.

(5) The FAA will deny the application and return it to the applicant if:

(i) None of the proposals submitted are found to be complete;

(ii) The application has been returned twice to the applicant for reasons other than completion of the environmental documentation; and

(iii) The applicant declines to complete the application. This closes the matter without prejudice to later application, and does not constitute disapproval of the proposed restriction.

§ 161.315 Receipt of complete application.

(a) When a complete application has been received, the FAA will notify the applicant by letter that the FAA intends to act on the application.

(b) The FAA will publish notice of the proposed restriction in the *Federal Register*, inviting interested parties to file comments on the application within 30 days after publication of the *Federal Register* notice.

§ 161.317 Approval or disapproval of proposed restriction.

(a) Upon determination that an application is complete with respect to at least one of the proposals submitted by the applicant, the FAA will act upon the complete proposals in the application. The FAA will not act on any proposal for which the applicant has declined to submit additional necessary information.

(b) The FAA will review the applicant's proposals in the preference order specified by the applicant. The FAA may request additional information from aircraft operators, or any other party, and may convene an informal meeting to gather facts relevant to its determination.

(c) The FAA will evaluate the proposal and issue an order approving or disapproving the proposed restriction and any submitted alternatives, in whole or in part, in the order of preference indicated by the applicant. Once the FAA approves a proposed restriction, the FAA will not consider any proposals of lower applicant-stated preference. Approval or disapproval will be given by the FAA within 180 days after receipt of the application or last supplement thereto under § 161.313. The FAA will publish its decision in the *Federal Register* and notify the applicant in writing.

(d) The applicant's failure to provide substantial evidence supporting the statutory conditions for approval of a particular proposal is grounds for disapproval of that proposed restriction.

(e) The FAA will approve or disapprove only the Stage 3 aspects of a restriction if the restriction applies to both Stage 2 and Stage 3 aircraft operations.

(f) An order approving a restriction may be subject to requirements that the applicant:

(1) Comply with factual representations and commitments in support of the restriction; and

(2) Ensure that any environmental mitigation actions or commitments by any party that are set forth in the environmental documentation provided in support of the restriction are implemented.

§ 161.319 Withdrawal or revision of restriction.

(a) The applicant may withdraw or revise a proposed restriction at any time prior to FAA approval or disapproval, and must do so if substantial changes are made as described in § 161.309. The applicant shall notify the FAA in writing of a decision to withdraw the proposed restriction for any reason. The FAA will publish a notice in the *Federal Register* that it has terminated its review without prejudice to resubmission. A resubmission will be considered a new application.

(b) A subsequent amendment to a Stage 3 restriction that was in effect after October 1, 1990, or an amendment to a Stage 3 restriction previously approved by the FAA, is subject to the procedures in this subpart if the amendment will further reduce or limit aircraft operations or affect aircraft safety. The applicant may, at its option, revise or amend a restriction previously disapproved by the FAA and resubmit it for approval. Amendments are subject to the same requirements and procedures as initial submissions.

§ 161.321 Optional use of 14 CFR Part 150 procedures.

(a) An airport operator may use the procedures in Part 150 of this chapter, instead of the procedures described in §§ 161.303(b) and 161.309(b) of this part, as a means of providing an adequate public notice and opportunity to comment on proposed Stage 3 restrictions, including submitted alternatives.

b) If the airport operator elects to use 14 CFR Part 150 procedures to comply with this subpart, the operator shall:

(1) Ensure that all parties identified for direct notice under § 161.303(b) are notified that the airport's 14 CFR Part 150 program submission will include a proposed Stage 3 restriction under Part 161, and that these parties are offered the opportunity to participate as consulted parties during the development of the 14 CFR Part 150 program;

(2) Include the information required in § 161.303(c) (2) through (5) and § 161.305 in the analysis of the proposed restriction in the 14 CFR Part 150 program submission; and

(3) Include in its 14 CFR Part 150 submission to the FAA evidence of compliance with the notice requirements in paragraph (b)(1) of this section and include the information required for a Part 161 application in § 161.311, together with a clear identification that the 14 CFR Part 150 submission includes a proposed Stage 3 restriction for FAA review and approval under §§ 161.313, 161.315, and 161.317.

(c) The FAA will evaluate the proposed Part 161 restriction on Stage 3 aircraft operations included in the 14 CFR Part 150 submission in accordance with the procedures and standards of this part, and will review the total 14 CFR Part 150 submission in accordance with the procedures and standards of 14 CFR Part 150.

(d) An amendment of a restriction, as specified in § 161.319(b) of this part, may also be processed under 14 CFR Part 150 procedures.

§ 161.323 Notification of a decision not to implement a restriction.

If a Stage 3 restriction has been approved by the FAA and the restriction is not subsequently implemented, the applicant shall so advise the interested parties specified in § 161.309(a) of this part.

§ 161.325 Availability of data and comments on an implemented restriction.

The applicant shall retain all relevant supporting data and all comments relating to an approved restriction for as long as the restriction is in effect and shall make these materials available for inspection upon request by the FAA. This information shall be made available for inspection by any person during the pendency of any petition for reevaluation found justified by the FAA.

Subpart E -- Reevaluation of Stage 3 Restrictions

§ 161.401 Scope.

This subpart applies to an airport imposing a noise or access restriction on the operation of Stage 3 aircraft that first became effective after October 1, 1990, and had either been agreed to in compliance with the procedures in subpart B of this part or approved by the FAA in accordance with the procedures in subpart D of this part. This subpart does not apply to Stage 2 restrictions imposed by airports. This subpart does not apply to Stage 3 restrictions specifically exempted in § 161.7.

§ 161.403 Criteria for reevaluation.

(a) A request for reevaluation must be submitted by an aircraft operator.

(b) An aircraft operator must demonstrate to the satisfaction of the FAA that there has been a change in the noise environment of the affected airport and that a review and reevaluation pursuant to the criteria in § 161.305 is therefore justified.

(1) A change in the noise environment sufficient to justify reevaluation is either a DNL change of 1.5 dB or greater (from the restriction's anticipated target noise level result) over noncompatible land uses, or a change of 17 percent or greater in the noncompatible land uses, within an airport noise study area. For approved restrictions, calculation of change shall be based on the divergence of actual noise impact of the restriction from the estimated noise impact of the restriction predicted in the analysis required in § 161.305(e)(2)(i)(A)(*1*)(*ii*). The change in the noise environment or in the noncompatible land uses may be either an increase or decrease in noise or in noncompatible land uses. An aircraft operator may submit to the FAA reasons why a change that does not fall within either of these parameters justifies reevaluation, and the FAA will consider such arguments on a case-by-case basis.

(2) A change in the noise environment justifies reevaluation if the change is likely to result in the restriction not meeting one or more of the conditions for approval set forth in § 161.305 of this part for approval. The aircraft operator must demonstrate that such a result is likely to occur.

(c) A reevaluation may not occur less than 2 years after the date of the FAA approval. The FAA will normally apply the same 2-year requirement to agreements under subpart B of this part that affect Stage 3 aircraft operations. An aircraft operator may submit to the FAA reasons why an agreement under subpart B of this part should be reevaluated in less than 2 years, and the FAA will consider such arguments on a case-by-case basis.

(d) An aircraft operator must demonstrate that it has made a good faith attempt to resolve locally any dispute over a restriction with the affected parties, including the airport operator, before requesting reevaluation by the FAA. Such demonstration and certification shall document all attempts of local dispute resolution.

[Docket No. 26432, 56 FR 48698, Sept. 25, 1991; 56 FR 51258, Oct. 10, 1991]

§ 161.405 Request for reevaluation.

(a) A request for reevaluation submitted to the FAA by an aircraft operator must include the following information:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction and any sanctions for noncompliance, whether the restriction was approved by the FAA or agreed to by the airport operator and aircraft operators, the date of the approval or agreement, and a copy of the restriction as incorporated in a local ordinance, airport rule, lease, or other document;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between this change and the likelihood that the restriction does not meet one or more of the conditions in § 161.305;

(5) The aircraft operator's status under the restriction (e.g., currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection; and

(6) A description and evidence of the aircraft operator's attempt to resolve the dispute locally with the affected parties, including the airport operator.

(b) The FAA will evaluate the aircraft operator's submission and determine whether or not a reevaluation is justified. The FAA may request additional information from the airport operator or any other party and may convene an informal meeting to gather facts relevant to its determination.

(c) The FAA will notify the aircraft operator in writing, with a copy to the affected airport operator, of its determination.

(1) If the FAA determines that a reevaluation is not justified, it will indicate the reasons for this decision.

(2) If the FAA determines that a reevaluation is justified, the aircraft operator will be notified to complete its analysis and to begin the public notice procedure, as set forth in this subpart.

§ 161.407 Notice of reevaluation.

(a) After receiving an FAA determination that a reevaluation is justified, an aircraft operator desiring continuation of the reevaluation process shall publish a notice of request for reevaluation in an area wide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area (or the airport vicinity for agreements where an airport noise study area has not been delineated); post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) The airport operator, other aircraft operators providing scheduled passenger or cargo service at the airport, operators of aircraft based at the airport, potential new entrants that are known to be interested in serving the airport, and aircraft operators known to be routinely providing nonscheduled service;

(2) The Federal Aviation Administration;

(3) Each federal, state, and local agency with land use control jurisdiction within the airport noise study area (or the airport vicinity for agreements where an airport noise study area has not been delineated);

(4) Fixed-base operators and other airport tenants whose operations may be affected by the agreement or the restriction;

(5) Community groups and business organizations that are known to be interested in the restriction; and

(6) Any other party that commented on the original restriction.

(b) Each notice provided in accordance with paragraph (a) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction, including whether the restriction was approved by the FAA or agreed to by the airport operator and aircraft operators, and the date of the approval or agreement;

(3) The name of the aircraft operator requesting a reevaluation, and a statement that a reevaluation has been requested and that the FAA has determined that a reevaluation is justified;

(4) A brief discussion of the reasons why a reevaluation is justified;

(5) An analysis prepared in accordance with § 161.409 of this part supporting the aircraft operator's reevaluation request, or an announcement of where the analysis is available for public inspection;

(6) An invitation to comment on the analysis supporting the proposed reevaluation, with a minimum 45-day comment period;

(7) Information on how to request a copy of the analysis (if not in the notice); and

(8) The address for submitting comments to the aircraft operator, including identification of a contact person.

§ 161.409 Required analysis by reevaluation petitioner.

(a) An aircraft operator that has petitioned the FAA to reevaluate a restriction shall assume the burden of analysis for the reevaluation.

(b) The aircraft operator's analysis shall be made available for public review under the procedures in § 161.407 and shall include the following:

(1) A copy of the restriction or the language of the agreement as incorporated in a local ordinance, airport rule, lease, or other document;

(2) The aircraft operator's status under the restriction (e.g., currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection to the restriction;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between this change and the likelihood that the restriction does not meet one or more of the conditions in § 161.305; and

(5) Sufficient data and analysis selected from § 161.305, as applicable to the restriction at issue, to support the contention made in paragraph (b)(4) of this section. This is to include either an adequate environmental assessment of the impacts of discontinuing all or part of a restriction in accordance with the aircraft operator's petition, or adequate information supporting a categorical exclusion under FAA orders implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

(c) The amount of analysis may vary with the complexity of the restriction, the number and nature of the conditions in § 161.305 that are alleged to be unsupported, and the amount of previous analysis developed in support of the restriction. The aircraft operator may incorporate analysis previously developed in support of the restriction, including previous environmental documentation to the extent applicable. The applicant is responsible for providing substantial evidence, as described in § 161.305, that one or more of the conditions are not supported.

§ 161.411 Comment by interested parties.

(a) Each aircraft operator requesting a reevaluation shall establish a docket or similar method for receiving and considering comments and shall make comments available for inspection to interested parties specified in paragraph (b) of this section upon request. Comments must be retained for two years.

(b) Each aircraft operator shall promptly notify interested parties if it makes a substantial change in its analysis that affects either the costs or benefits analyzed, or the criteria in § 161.305, differently from the analysis made available for comment in accordance with § 161.407. Interested parties include those who received direct notice under paragraph (a) of § 161.407 and those who have commented on the reevaluation. If an aircraft operator revises its analysis, it shall make the revised analysis available to an interested party upon request and shall extend the comment period at least 45 days from the date the revised analysis is made available.

§ 161.413 Reevaluation procedure.

(a) Each aircraft operator requesting a reevaluation shall submit to the FAA:

(1) The analysis described in § 161.409;

(2) Evidence that the public review process was carried out in accordance with §§ 161.407 and 161.411, including the aircraft operator's summary of the comments received; and

(3) A request that the FAA complete a reevaluation of the restriction and issue findings.

(b) Following confirmation by the FAA that the aircraft operator's documentation is complete according to the requirements of this subpart, the FAA will publish a notice of reevaluation in the *Federal Register* and provide for a 45-day comment period during which interested parties may submit comments to the FAA. The FAA will specifically solicit comments from the affected airport operator and affected local governments. A submission that is not complete will be

returned to the aircraft operator with a letter indicating the deficiency, and no notice will be published. No further action will be taken by the FAA until a complete submission is received.

(c) The FAA will review all submitted documentation and comments pursuant to the conditions of § 161.305. To the extent necessary, the FAA may request additional information from the aircraft operator, airport operator, and others known to have information material to the reevaluation, and may convene an informal meeting to gather facts relevant to a reevaluation finding.

§ 161.415 Reevaluation action.

(a) Upon completing the reevaluation, the FAA will issue appropriate orders regarding whether or not there is substantial evidence that the restriction meets the criteria in § 161.305 of this part.

(b) If the FAA's reevaluation confirms that the restriction meets the criteria, the restriction may remain as previously agreed to or approved. If the FAA's reevaluation concludes that the restriction does not meet the criteria, the FAA will withdraw a previous approval of the restriction issued under subpart D of this part to the extent necessary to bring the restriction into compliance with this part or, with respect to a restriction agreed to under subpart B of this part, the FAA will specify which criteria are not met.

(c) The FAA will publish a notice of its reevaluation findings in the *Federal Register* and notify in writing the aircraft operator that petitioned the FAA for reevaluation and the affected airport operator.

§ 161.417 Notification of status of restrictions and agreements not meeting conditions-of-approval criteria.

If the FAA has withdrawn all or part of a previous approval made under subpart D of this part, the relevant portion of the Stage 3 restriction must be rescinded. The operator of the affected airport shall notify the FAA of the operator's action with regard to a restriction affecting Stage 3 aircraft operations that has been found not to meet the criteria of § 161.305. Restrictions in agreements determined by the FAA not to meet conditions for approval may not be enforced with respect to Stage 3 aircraft operations.

Subpart F -- Failure to Comply With This Part

§ 161.501 Scope.

(a) This subpart describes the procedures to terminate eligibility for airport grant funds and authority to impose or collect passenger facility charges for an airport operator's failure to comply with the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2151 *et seq.*) or this part. These procedures may be used with or in addition to any judicial proceedings initiated by the FAA to protect the national aviation system and related federal interests.

(b) Under no conditions shall any airport operator receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 (AAIA) or impose or collect a passenger facility

charge under Section 1113(e) of the Federal Aviation Act of 1958 (FAA Act) if the FAA determines that the airport is imposing any noise or access restriction not in compliance with the Airport Noise and Capacity Act of 1990 or this part. Recission of, or a commitment in writing signed by an authorized official of the airport operator to rescind or permanently not enforce, a non complying restriction will be treated by the FAA as action restoring compliance with the Airport Noise and Capacity Act of 1990 or this part with respect to that restriction.

§ 161.503 Informal resolution; notice of apparent violation.

Prior to the initiation of formal action to terminate eligibility for airport grant funds or authority to impose or collect passenger facility charges under this subpart, the FAA shall undertake informal resolution with the airport operator to assure compliance with the Airport Noise and Capacity Act of 1990 or this part upon receipt of a complaint or other evidence that an airport operator has taken action to impose a noise or access restriction that appears to be in violation. This shall not preclude a FAA application for expedited judicial action for other than termination of airport grants and passenger facility charges to protect the national aviation system and violated federal interests. If informal resolution is not successful, the FAA will notify the airport operator in writing of the apparent violation. The airport operator shall respond to the notice in writing not later than 20 days after receipt of the notice, and also state whether the airport operator will agree to defer implementation or enforcement of its noise or access restriction until completion of the process under this subpart to determine compliance.

§ 161.505 Notice of proposed termination of airport grant funds and passenger facility charges.

(a) The FAA begins proceedings under this section to terminate an airport operator's eligibility for airport grant funds and authority to impose or collect passenger facility charges only if the FAA determines that informal resolution is not successful.

(b) The following procedures shall apply if an airport operator agrees in writing, within 20 days of receipt of the FAA's notice of apparent violation under § 161.503, to defer implementation or enforcement of a noise or access restriction until completion of the process under this subpart to determine compliance.

(1) The FAA will issue a notice of proposed termination to the airport operator and publish notice of the proposed action in the *Federal Register*. This notice will state the scope of the proposed termination, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective action the airport operator can take to avoid further proceedings. The due date for comments and corrective action by the airport operator shall be specified in the notice of proposed termination and shall not be less than 60 days after publication of the notice.

(2) The FAA will review the comments, statements, and data supplied by the airport operator, and any other available information, to determine if the airport operator has provided satisfactory evidence of compliance or has taken satisfactory corrective action. The FAA will consult with the airport operator to attempt resolution and may request additional information from other parties to determine compliance. The review and consultation process

shall take not less than 30 days. If the FAA finds satisfactory evidence of compliance, the FAA will notify the airport operator in writing and publish notice of compliance in the *Federal Register*.

(3) If the FAA determines that the airport operator has taken action to impose a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part, the FAA will notify the airport operator in writing of such determination. Where appropriate, the FAA may prescribe corrective action, including corrective action the airport operator may still need to take. Within 10 days of receipt of the FAA's determination, the airport operator shall --

(i) Advise the FAA in writing that it will complete any corrective action prescribed by the FAA within 30 days; or

(ii) Provide the FAA with a list of the domestic air carriers and foreign air carriers operating at the airport and all other issuing air carriers, as defined in § 158.3 of this chapter, that have remitted passenger facility charge revenue to the airport in the preceding 12 months.

(4) If the FAA finds that the airport operator has taken satisfactory corrective action, the FAA will notify the airport operator in writing and publish notice of compliance in the *Federal Register*. If the FAA has determined that the airport operator has imposed a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part and satisfactory corrective action has not been taken, the FAA will issue an order that --

(i) Terminates eligibility for new airport grant agreements and discontinues payments of airport grant funds, including payments of costs incurred prior to the notice; and

(ii) Terminates authority to impose or collect a passenger facility charge or, if the airport operator has not received approval to impose a passenger facility charge, advises the airport operator that future applications for such approval will be denied in accordance with § 158.29(a)(1)(v) of this chapter.

(5) The FAA will publish notice of the order in the *Federal Register* and notify air carriers of the FAA's order and actions to be taken to terminate or modify collection of passenger facility charges in accordance with § 158.85(f) of this chapter.

(c) The following procedures shall apply if an airport operator does not agree in writing, within 20 days of receipt of the FAA's notice of apparent violation under § 161.503, to defer implementation or enforcement of its noise or access restriction until completion of the process under this subpart to determine compliance.

(1) The FAA will issue a notice of proposed termination to the airport operator and publish notice of the proposed action in the *Federal Register*. This notice will state the scope of the proposed termination, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective action the airport operator can take to avoid further proceedings. The due date for comments

and corrective action by the airport operator shall be specified in the notice of proposed termination and shall not be less than 30 days after publication of the notice.

(2) The FAA will review the comments, statements, and data supplied by the airport operator, and any other available information, to determine if the airport operator has provided satisfactory evidence of compliance or has taken satisfactory corrective action. If the FAA finds satisfactory evidence of compliance, the FAA will notify the airport operator in writing and publish notice of compliance in the *Federal Register*.

(3) If the FAA determines that the airport operator has taken action to impose a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part, the procedures in paragraphs (b)(3) through (b)(5) of this section will be followed.

Appendix Y ► Reserved

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Appendix Z ► Definitions and Acronyms

Term	Definition
§	Section
%HA	Percentage of area population characterized as "highly annoyed" by long-term exposure to noise of a specified level.
1970 Airport Act	Airport and Airway Development Act of 1970; (P.L. No. 91-258); (Section 23, nonsurplus property)
1987 Airport Act	Airport and Airway Safety and Capacity Expansion Act of 1987; (P.L. No. 100-223)
1994 Authorization Act	FAA Authorization Act of 1994; (P.L. No. 103-305)
1996 Reauthorization Act	FAA Reauthorization Act of 1996; (P.L. No. 104-264)
Act of 1987	Airport and Airway Safety and Capacity Expansion Act of 1987; (P.L. No. 100-223)
AAIA	Airport and Airway Improvement Act of 1982; (P.L. No. 97-248); (Section 516, nonsurplus property)
AC	Advisory circular. A document published by the Federal Aviation Administration (FAA) giving guidance on aviation issues.
ACO	FAA Office of Airport Compliance and Field Operations
Act of 1938	Civil Aeronautics Act of 1938
Act of 1944	Surplus Property Act (SPA) of 1944; (regulation 16)
Act of 1946	Federal Airport Act of 1946; (P.L. No. 79-377)); (Section 16, nonsurplus property)
Act of 1958	Federal Aviation Act of 1958 (FAA Act)
Act of 1970	Airport and Airway Development Act of 1970; (P.L. No. 91-258); (Section 23, nonsurplus property)
Act of 1973	Airport Development Acceleration Act of 1973 (P.L. No. 93-44)
Act of 1982	Airport and Airway Improvement Act of 1982 (AAIA); (P.L. No. 97-248); (Section 516, nonsurplus property)
Act of 1987	Airport and Airway Safety and Capacity Expansion Act of 1987; (P.L. No. 100-223)
Act of 1990	Aviation Safety and Capacity Expansion Act of 1990 (P.L. No. 101-508)

Act of 1994	FAA Authorization Act of 1994; (P.L. No. 103-305)
Act of 1996	FAA Reauthorization Act of 1996; (P.L. No. 104-264)
ADAP	Airport Development Aid Program
ADO	Airports district office. These offices are outlying units or extensions of regional airport divisions.
ADR	Alternative Dispute Resolution
AEE	FAA Office of Environment and Energy (AEE-100)
Aeronautical Activity	Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations. It includes, but is not limited to: • Air taxi and charter operations. • Scheduled or nonscheduled air carrier services. • Pilot training. • Aircraft rental and sightseeing. • Aerial photography. • Crop dusting. • Aerial advertising and surveying. • Aircraft sales and service. • Aircraft storage. • Sale of aviation petroleum products. • Repair and maintenance of aircraft. • Sale of aircraft parts. • Parachute activities. • Ultralight activities. • Sport pilot activities • Military flight operations
AFD	Airport facility directory
AFRPA	Air Force Real Property Agency
AGL	Height above ground level
AIP	Airport Improvement Program. The AIP is authorized by the Airport and Airway Improvement Act of 1982 (AAIA) (P.L. No. 97-248, as amended). The broad objective of the AAIA

	is to assist in the development of a nationwide system of public use airports adequate to meet the current and projected growth of civil aviation. The AAIA provides funding for airport planning and development projects at airports included in the National Plan of Integrated Airport Systems. The AAIA also authorizes funds for noise compatibility planning and to carry out noise compatibility programs as set forth in the Aviation Safety and Noise Abatement Act of 1979 (P.L. No. 96-143).
AIR-21	Wendell H. Ford Aviation Investment and Reform Act for the 21st Century
Airport	An area of land or water which is used, or intended to be used, for the aircraft takeoff and landing. It includes any appurtenant areas used, or intended to be used, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. It also includes any heliport.
Airport Hazard	Any structure or object of natural growth located on or in the vicinity of a public use airport, or any use of land near such an airport that obstructs the airspace required for the flight in landing or taking off at such airport or is otherwise hazardous to such landing or taking off of aircraft.
Airport Noise Compatibility Program	That program and all revisions thereto, reflected in documents (and revised documents) developed in accordance with Appendix B to Part 150, Airport Noise Compatibility Planning,, including the measures proposed or taken by the airport owner to reduce existing incompatible land uses and to prevent the introduction of additional incompatible land uses within the area.
Airport Sponsor	A public agency or tax-supported organization such as an airport authority, that is authorized to own and operate the airport, to obtain property interests, to obtain funds, and to be able to meet all applicable requirements of current laws and regulations both legally and financially.
ALP	Airport Layout Plan. A plan showing the orientation and location of key airport facilities, such as runways and navigational aids, that must be planned with consideration for approach zones, prevailing winds, airspace use, land contours and many other special factors. The dimensional relationships even within the airport boundaries, between operational and support facilities and allocation of reasonable space to allow for orderly expansion of individual functions

	must be clearly established in advance. This is essential if such facilities are to be subsequently positioned where they can best serve their intended purposes while conforming to applicable safety and construction criteria.
ALUC	Airport Land Use Commission
AMSL	Site elevation above mean sea level
ANCA	Airport Noise and Capacity Act of 1990
ANG	Air National Guard
AOPA	Aircraft Owners and Pilots Association
A&P	Airframe and power plant mechanic
AP-4 Agreement	Agreement between the sponsor and the federal government in which the airport sponsor provided the land and the federal government developed the airport.
Approach Surface	A surface defined by FAR Part 77 "Objects Affecting Navigable Airspace," that is longitudinally centered on the runway centerline and extends outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based on the type of approach available or planned for that runway end.
ARC	Air Reserve Component
ARFF	Aircraft Rescue and Fire Fighting
ARP	FAA Office of Airports
ASAC	Aviation Security Advisory Committee
ASNA	Aviation Safety and Noise Abatement Act of 1979; (P.L. No. 96-193).
Assurance	An assurance is a provision contained in a federal grant agreement to which the recipient of federal airport development assistance has voluntarily agreed to comply in consideration of the assistance provided.
AT	Air Traffic
ATA	Air Transport Association of America
ATC	Air Traffic Control
ATCT	Air Traffic Control Tower
ATSA	Aviation and Transportation Security Act
Aviation Easement	A grant of a property interest in land over which a right of unobstructed flight in the airspace is established.

Aviation Use of Real Property	Aeronautical property. All property comprising the land, airspace, improvements, and facilities used or intended to be used for any operational purpose related to, in support of, or complementary to the flight of aircraft to or from the airfield. It is not confined to land areas or improvements eligible for development with federal aid (FAAP/ADAP/AIP) or to property acquired from federal sources. In addition to the areas occupied by the runways, taxiways, and parking aprons, aeronautical property includes any other areas used or intended to be used for supporting services and facilities related to the operation of aircraft. It also includes property normally required by those activities that are complementary to flight activity such as convenience concessions serving the public including, but not limited to, shelter, ground transportation, food, and personal services.
AWOS	Automated Weather Observation System
Based Aircraft	An aircraft permanently stationed at an airport by agreement between the aircraft owner and the airport management.
BLM	Bureau of Land Management
BRAC	Base Realignment and Closure
BRL	Building restriction lines
Building Codes	Codes, either local or state, that control the functional and structural aspects of buildings and/or structures. Local ordinances typically require proposed buildings to comply with zoning requirements before building permits can be issued under the building codes.
CAA	Civil Aeronautics Administration
CAB	Civil Aeronautics Board
CAP	Civil Air Patrol
CEQ	Council of Environmental Quality
CFI	Certificated Flight Instructor
CFR	Code of Federal Regulations
CGL	Compliance Guidance Letter
CIP	Capital Improvement Program. It consists of the five-year eligible capital requirements at designated airports. It is not a funding plan since the actual funding of development will depend on annual limitations for the Airport Improvement Program (AIP) as imposed by Congress. The CIP provides a systematic approach to identify unmet needs, determine

	optimum distribution of available grant funds, foster cooperation among states, local, and federal authorities, advise and inform the public, identify problems and determine their impacts on the system, and provide FAA with a rational, need-based process for distribution of limited airport grant funds. It also provides a basis for responding to new legislative proposals
Concurrent Land Use	Land that can be used for more than one purpose at the same time. For example, portions of land needed for clear zone purposes could also be used for agriculture purposes at the same time.
CNEL	Community Noise Equivalent Level
CO-OP	Fuel cooperative organization
CPI	Consumer Price Index
CWA	Civil Works Administration
dB	decibel
dBA	A-weighted sound levels in decibels
DBE	Disadvantaged Business Enterprise
DCLA	Development of Civil Landing Areas
DD	Director’s Determination
DLAND	Development of Landing Areas for National Defense
DNL	Day-night average sound level
DoD	Department of Defense
DOI	Department of Interior
DOJ	Department of Justice
DOT	Department of Transportation
EA	Environmental Assessment
EIR	Environmental Impact Report
EIS	Environmental Impact Statement. A document that provides full and fair discussion of the significant environmental impacts that would occur as a result of a proposed project and informs decision makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts.
Enplanement	Counting of a passenger boarding of a commercial flight.
EPA	Environmental Protection Agency

EPNdB	Effective Perceived Noise Level in decibels
Exclusive Right	A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.
Exhibit "A"	Airport land depicted on property map attached to the Airport Layout Plan (ALP).
FAA	Federal Aviation Administration
FAA Act	Federal Aviation Act of 1958
FAAP	Federal Aid to Airports Program
FAD	Final Agency Decision; Final Decision and Order
FAR	Federal Aviation Regulations. (These are found in Title 14 Code of Federal Regulations (CFR).
FBI	Federal Bureau of Investigation
FBO	Fixed-base operator. An individual or firm operating at an airport and providing general aircraft services such as maintenance, storage, and ground, and flight instruction.
FCC	Federal Communications Commission
F&E	Facilities and Equipment (funding source)
Federal Agency	For purposes of the compliance program, an agency of the federal government. This does include the certain elements of the National Guard or the Air Guard as they may be controlled by the National Guard Bureau in Washington, DC, as an element of the Department of Defense.
Federal Funds	Money or property conveyed from the United States Government. Any airport that consists in whole or in part of property, improvements, or other assets conveyed by the United States Government -- without monetary consideration -- for airport purposes, or that was acquired, developed, or improved with federal assistance must be considered as an airport upon which federal funds have been expended.
FICAN	Interagency Committee on Aviation Noise
FICON	Federal Interagency Committee on Noise
FICUN	Federal Interagency Committee on Urban Noise

FMV	Fair Market Value. The highest price estimated in terms of money that a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser or tenant who buys or rents with knowledge of all the uses to which it is adapted and for which it is capable of being used. It is also frequently referred to as the price at which a willing seller would sell and a willing buyer buy, neither being under abnormal pressure. FMV will fluctuate based on the economic conditions of the area.
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact. A document briefly explaining the reasons an action will not have a significant effect on the human environment and therefore justifies the decision not to prepare an Environmental Impact Statement (EIS). A FONSI is issued by the federal agency following the preparation of an environmental assessment.
FR	Federal Register
FS	Flight Standards
FSDO	Flight Standards District Office
FSS	Flight Service Station
FY	Fiscal Year
GA	General Aviation
Government Aircraft	For purposes of the compliance program, federal government aircraft is defined as aircraft owned or leased to the federal government. This includes all aircraft operated by National Guard Army units and Air National Guard units.
Grant Agreement	A grant agreement represents any agreement made between the FAA (on behalf of the United States) and an airport sponsor in which the airport sponsor agrees to certain assurances. In general, the airport sponsor assures it will operate the airport for the use and benefit of the public as an airport for aeronautical purposes. The grant agreement and assurances will apply whether the airport sponsor receives the grant of federal funding or a conveyance of land.
GSA	General Services Administration
HQ	Headquarters
ICAO	International Civil Aviation Organization
IFR	Instrument Flight Rules

Independent Operator	A commercial operator offering a single aeronautical service but without an established place of business on the airport. An airport sponsor may or may not allow this type of servicing to exist on the airport.
INM	Integrated Noise Model. The FAA computer model used by the civilian aviation community for evaluating aircraft noise impacts near airports. The INM uses a standard database of aircraft characteristics and applies them to an airport's average operational day to produce noise contours.
Instrument Approach	A series of predetermined maneuvers for the orderly transfer of an aircraft under instrument flight conditions from the beginning of the initial approach to a landing or to a point from which a landing may be made visually.
Interim Use	Interim use of aeronautical property for nonaviation purposes. An interim use is defined as a temporary short term (normally not to exceed 3 years) nonaviation use of aeronautical property conveyed to, or acquired by, the airport sponsor.
IP	Information Publication
Land Use Compatibility	The coexistence of land uses surrounding the airport with airport-related activities.
Land Use Controls	Measures established by state or local government that are designed to carry out land use planning. Among other measures, the controls include: zoning, subdivision regulations, planned acquisition, easements, covenants or conditions in building codes and capital improvement programs, such as establishment of sewer, water, utilities or their service facilities.
Land Use Management	
Measures	Land use management techniques that consist of both remedial and preventive measures. Remedial or corrective measures typically include sound insulation or land acquisition. Preventive measures typically involve land use controls that amend or update the local zoning ordinance, comprehensive plan, subdivision regulations and building code.
Landing Area/Airfield	Any locality, either of land or water, including airports and intermediate landing fields, used or intended to be used for taking off and landing aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo. (Definition in Federal Aviation Act, Section 101.)

Landside	That part of an airport used for activities other than the movement of aircraft, such as vehicular access roads and parking.
LEP	Limited English proficiency
Local Operation	Any operation performed by an aircraft that: • operates in the local traffic pattern or within sight of the tower or airport, or • is known to be departing for, or arriving from, flight in local practice areas located within a 20-mile radius of the control tower or airport, or • executes a simulated instrument approach or low pass at the airport.
LOI	Letter of Intent
Long Term Lease	A lease with a term of five (5) years or more.
LRA	Local Redevelopment Authority
MAP	Military Airport Program
Mediation	The use of a mediator or co-mediators to facilitate open discussion between disputants and assist in negotiating a mutually agreeable resolution. Mediation is a method of alternative dispute resolution that provides an initial forum to settle disputes informally prior to regulatory intervention on the part of the FAA.
Minimum Standards	The qualifications or criteria that may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on-airport aeronautical activities for the right to conduct those activities.
Mitigation	The avoidance, minimization, reduction, elimination, or compensation for adverse environmental effects of a proposed action.
Mitigation Measure	An action taken to alleviate adverse impacts.
MoGas	Automotive gasoline
MTOW	Maximum certificated takeoff weight
NADP	Noise Abatement Departure Procedures
NAS	National Airspace System
NAS	Naval Air Station
NASA	National Aeronautics and Space Administration

NASAO	National Association of State Aviation Officials
NATA	National Air Transportation Association
NBAA	National Business Aviation Association
NCP	Noise Compatibility Plan. The NCP consists of an optimum combination of preferred noise abatement and land use management measures and a plan for the implementation of the measures. For planning purposes, the implementation plan also includes the estimated cost for each of the recommended measures to the airport sponsor, the FAA, airport users, and the local units of government.
NDB	Nondirectional beacon
NEF	Noise exposure forecast
NEM	Noise Exposure Map. The NEM is a scaled map of the airport, its noise contours and surrounding land uses. The NEM depicts the levels of noise exposure around the airport, both for the existing conditions and forecasts for the five-year planning period. The area of noise exposure is designated using the DNL (day-night average sound level) noise metric.
NEPA	National Environmental Policy Act of 1969. The original legislation establishing the environmental review process.
Net Proceeds	The sum derived from a lease sale, salvage or other disposal of airport property at fair market value (FMV) after deductions or allowances have been made for directly related expenses such as advertising, legal services, surveys, appraisals, taxes, commissions, title insurance, and escrow services.
NEUP	National Emergency Use Provision
NLR	Noise Level Reduction. The amount of noise level reduction in decibels achieved through incorporation of noise attenuation (between outdoor and indoor levels) in the design and construction of a structure.
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Investigation
Noise Exposure Contours	Lines drawn about a noise source indicating constant energy levels of noise exposure. DNL is the measure used to describe community exposure to noise.
Noise-sensitive Area	Area where aircraft noise may interfere with existing or planned use of the land. Whether noise interferes with a particular use depends upon the level of noise exposure and

	the types of activities that are involved. Residential neighborhoods, educational, health, and religious structures and sites, outdoor recreational, cultural and historic sites may be noise sensitive areas.
NOTAM	Notice to Airmen
NPIAS	National Plan of Integrated Airport Systems
NPRM	Notice of Proposed Rule Making
NRA	Non-Rulemaking Actions/Airports Airspace Analysis
NTSB	National Transportation Safety Board
Obstruction	Natural or manmade objects that penetrate surfaces defined in 14 CFR Part 77, *Objects Affecting Navigable Airspace*.
OE	Operational Error
OE/AAA	Obstruction Evaluation/Airport Airspace Analysis
OFZ	Object free zone
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPI	Office of Primary Interest
PD	Pilot Deviation
PCI	Pavement Condition Indicator
PFC	Passenger Facility Charge. The PFC program, first authorized by the Aviation Safety and Capacity Expansion Act of 1990 and now codified under Section 40117 of Title 49 U.S.C., provides a source of additional capital to improve, expand, and repair the nation's airport infrastructure. The legislation allows public agencies controlling commercial service airports to charge enplaning passengers using the airport a facility charge. The FAA must approve any facility charges imposed on enplaning passengers.
PGP	Planning Grant Program
PIC	Pilot-in-command
P.L.	Public Law
Private-use Airport	A publicly owned or privately owned airport not open to the public
Proprietary Exclusive	The owner of a public use airport (public or private owner) may elect to provide any or all of the aeronautical services needed by the public at the airport. In fact, the statutory

	prohibition against exclusive rights does not apply to these owners; they may exercise, but not grant, the exclusive right to conduct any aeronautical activity. However, the sponsor that elects to engage in a proprietary exclusive must use its own employees and resources to carry out its venture. An independent commercial enterprise that has been designated as agent of the owner may not exercise, nor be granted, an exclusive right.
Public Airport	An airport used or intended to be used for public purposes: • that is under the control of a public agency and • that is used or intended to be used for the landing, taking off, or surface maneuvering of aircraft.
Public-use Airport	A public airport or a privately owned airport used or intended to be used for public purposes. Examples: • a reliever airport • an airport determined by the Secretary of Transportation to have at least 2,500 passenger enplanements each year and offering scheduled passenger aircraft service.
Quit Claim Deed	A deed that transfers the exact interest in real estate of one to another.
RAA	Regional Airline Association
RIAT	Runway Incursion Action Team
ROFA	Runway object free area.
RPZ	Runway Protection Zone. A trapezoidal-shaped area centered on the extended runway centerline that is used to enhance the safety of aircraft operations. It begins 200 feet beyond the end of the runway or area usable for takeoff or landing. The RPZ dimensions are functions of the design aircraft, type of operation, and visibility minimums.
RSA	Runway Safety Area. The runway safety area (RSA) is an airport design standard established by the FAA as a safety enhancement to protect aircraft. The RSA is an integral part of the runway environment. The RSA is a defined surface surrounding the runway prepared or suitable for reducing the risk of damage to aircraft in the event of an undershoot, overshoot, or veer-off from the runway. The RSA is intended to provide a measure of safety by significantly reducing the extent of personal injury and aircraft damage.
RSP	Runway Safety Program

RSAT	Runway Safety Action Team
Runway incursion	Any occurrence at an airport with an Air Traffic Control Tower involving an aircraft, vehicle, person, or object on the ground that creates a collision hazard or results in a loss of separation with an aircraft taking off, intending to take off, landing, or intending to land.
SAR	Search and Rescue
SBGA	State block grant agencies
SBGP	State block grant program
SBGS	State block grant state
Sound Attenuation	Acoustical phenomenon whereby a reduction of sound energy is experienced between the noise source and the receiver. This energy loss can be attributed to atmospheric conditions, terrain, vegetation, constructed features (e.g., sound insulation) and natural features.
SEL	Sound Exposure Level. A measure of the physical energy of the noise event that takes into account both intensity and duration. By definition SEL values are referenced to a duration of one second. SEL is higher than the average and the maximum noise levels as long as the event is longer than one second. Sound exposure level is expressed in decibels (dB). People do not hear SEL.
Self-fueling and Self-service	The fueling or servicing of an aircraft by the owner of the aircraft or the owner's employee. Self-fueling means using fuel obtained by the aircraft owner from the source of his/her preference. Self-service includes activities such as adjusting, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources supplied by the aircraft owner. Part 43 of the Federal Aviation Regulations permits the holder of a pilot certificate to perform specific types of preventative maintenance on any aircraft owned or operated by the pilot.
SPA	Surplus Property Act of 1944 (P.L. No. 80-289)
Tenant	A person or organization occupying space or property on an airport under a lease or other agreement.
TRACON	Terminal Radar Approach Control
TSA	Transportation Security Administration
TSR	Transportation Security Regulations

UNICOM	Non-government air/ground radio communication station. It may provide airport information at public use airports where there is neither a tower nor a Flight Service Station.
Uniform Act	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended
U.S.	United States
U.S.C.	United States Code
U.S.D.A.	Department of Agriculture
USGS	United States Geological Survey
USN	United States Navy
Variance	An authorization for the construction or maintenance of a building or structure, or for the establishment or maintenance or use of land that is prohibited by a zoning ordinance. This is a lawful exception from specific zoning ordinance standards and regulations predicated on the practical difficulties and/or unnecessary hardships on the petitioner being required to comply with those regulations and standards from which an exemption or exception is sought.
VASI	Visual Approach Slope Indicator
VFR	Visual Flight Rule
Visual Approach	An approach to an airport conducted with visual reference to the terrain.
VOR	Very High Frequency Omnidirectional Radio Range. (A dead reckoning ground based navigational aid.)
V/PD	Vehicle Pedestrian Deviation
WAA	War Assets Administration
Zoning	The partitioning of land parcels in a community by ordinance into zones, and the establishment of regulations in the ordinance to govern the land use and the location, height, use, and land coverages of buildings within each zone. The zoning ordinance usually consists of text and zoning maps. A zoning ordinance is primarily a legal document that allows a local government effective and legal regulation over uses of property while protecting and promoting the public interest.

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