Appendix R-K

Regulations and Requirements Regarding Use of Federal Funds and Airport Revenues as Related to Mitigation Measures

R-K0 – Letters Related to Potential Use of Airport Funds

SAN DIEGO INTERNATIONAL AIRPORT

LET'S GO.

August 27, 2019

Dave Cushing, Manager
Los Angeles Airports District Office
Federal Aviation Administration
Western-Pacific Region
777 S. Aviation Blvd., Suite 150
El Segundo, CA 90245

Re: Request for Authorization to Fund Roadway and Intersection Improvements

Dear Dave:

Thank you for taking the time over the past year to meet with the San Diego County Regional Airport Authority (Airport Authority) staff to discuss necessary improvements to intersections and roadways that directly serve San Diego International Airport (Airport or SDIA). As discussed in detail below, the Airport Authority seeks to provide for the costs for these discrete roadway and intersection improvements and respectfully requests authorization from the FAA to fund these necessary improvements.

As you know, the Airport has seen unprecedented growth since 2011 which has resulted in increased traffic congestion around the Airport. This traffic congestion makes it difficult for Airport passengers and cargo to access the Airport in a safe and efficient manner. We also discussed the Airport Development Plan (ADP). The ADP is the current planning effort to optimize and meet the current and future passenger demand at the Airport. In July of last year, the Airport Authority issued a draft Environmental Impact Report (DEIR) for the ADP and received numerous comments in response. Many of the comments raised the issue of the use of the 2013 aviation forecasts, which were based on data from 2012, as well as roadway impacts.

The Airport Authority recognizes that, while the ADP does not induce growth, improvements to roadway segments that directly serve airport passengers and airport employees will allow more safe and efficient travel to the Airport. In fact, the impacts to the roadway segments and intersections around SDIA will occur whether or not the ADP improvements are implemented. In response to these comments, the Authority updated the aviation forecasts for the Airport, taking into account a number of factors that have contributed to the growth occurring faster than originally projected in the 2013 aviation forecasts. Such factors include strong economic growth that occurred in the San Diego region between 2011 and 2017, a decrease in domestic airfares, the use of larger capacity aircraft (in terms of number of seats), higher load factors (in terms of percentage of occupied seats), and substantial increases in both origin-destination and connecting passengers at the Airport. The FAA approved the 2019 aviation forecasts on June 19, 2019.

The Airport Authority has spent the past year meeting with the City of San Diego, San Diego Association of Governments (SANDAG), Port of San Diego, Caltrans, MTS and others who are interested in how the

public accesses the Airport – both by car and transit – and sharing with them the 2019 aviation forecasts. As part of that discussion, the Airport Authority has identified a refined set of roadway segments and intersections serving the Airport that will be impacted by the continued passenger growth at SDIA -- growth which will occur whether or not Terminal 1 will be replaced.

SDIA is an origin and destination airport with approximately 97% of arriving passengers having San Diego as their ultimate destination. In addition, SDIA has only one runway and is the busiest single runway airport in the country. SDIA is also unique in that there is no direct freeway access to the Airport. Finally, the individuals using SDIA are located in all areas of the County of San Diego – some more than 50 miles away (see Exhibit A). For all of these reasons, the Airport Authority, as the operator of the Airport, has a vested interest in and commitment to getting people to the Airport in a safe and efficient manner. To this end, the Airport Authority must work with local agencies to determine how best to serve the traveling public. As stated above, the Airport Authority has worked with the City of San Diego over the past year to identify off-airport roadway and intersection improvements (including associated pedestrian and bicycle infrastructure) that will improve and facilitate the movement of passengers, cargo and baggage and are consistent with the City's community plans. It should be noted that the number of roadway segments and intersections for which the Airport Authority seeks authorization to pay has been greatly reduced as a result of collaboration with the City of San Diego.[1] The refined set of identified improvements only extend to the nearest public facility and are the only direct access routes to the Airport. The direct access routes are not owned or controlled by the Airport Authority.

Projected passenger growth at SDIA, as demonstrated in the 2019 aviation forecasts approved by the FAA, will result in increased traffic to and from the Airport. As stated above, there is no direct freeway access to the Airport and access to the Airport via vehicle traffic is limited. Exhibit B, attached to this letter, depicts street access to the Airport. Exhibit B identifies the intersection locations, mitigation measures and percentage of airport passengers using each identified intersection. The Airport Authority seeks authorization from the FAA to provide for the costs for the roadway and intersection improvements listed in Exhibit C, which would allow more efficient and safe access to the airport for the traveling public. These improvements are needed due to the anticipated passenger growth reflected in the 2019 aviation forecasts. Each traffic section identified will experience increased traffic as a direct result of the increased passenger growth at SDIA. The proposed improvements are needed to address reasonable and foreseeable impacts and will improve access to the Airport for passengers, cargo and baggage. The specific segments identified serve the Airport directly and do not extend beyond the nearest major arterial.

Specifically, the Airport Authority seeks to provide for the costs for improvements to the discrete roadway and intersection improvements listed on Exhibit C. By this letter, the Airport Authority respectfully requests authorization from the FAA to fund these improvements.

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[1] The DEIR identified 43 roadway segments and 21 intersections compared to the recirculated draft Environmental Impact Report, which will include 4 roadway segments and 7 intersections.

Please let us know if you have any questions or need further clarification regarding the improvements required.

Sincerely,

Kimberly J. Becker
President/CEO
San Diego County Regional Airport Authority

EXHIBIT A

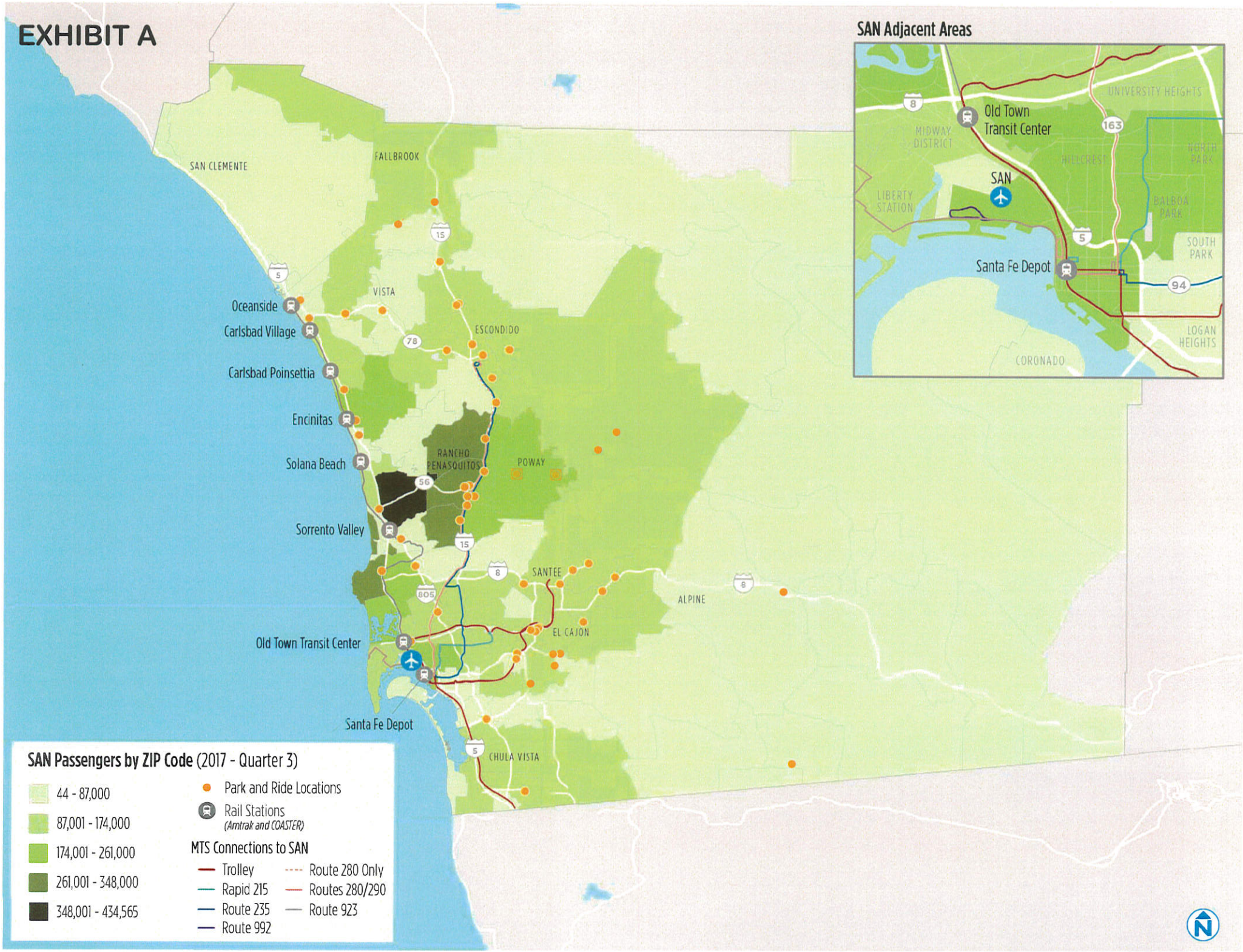
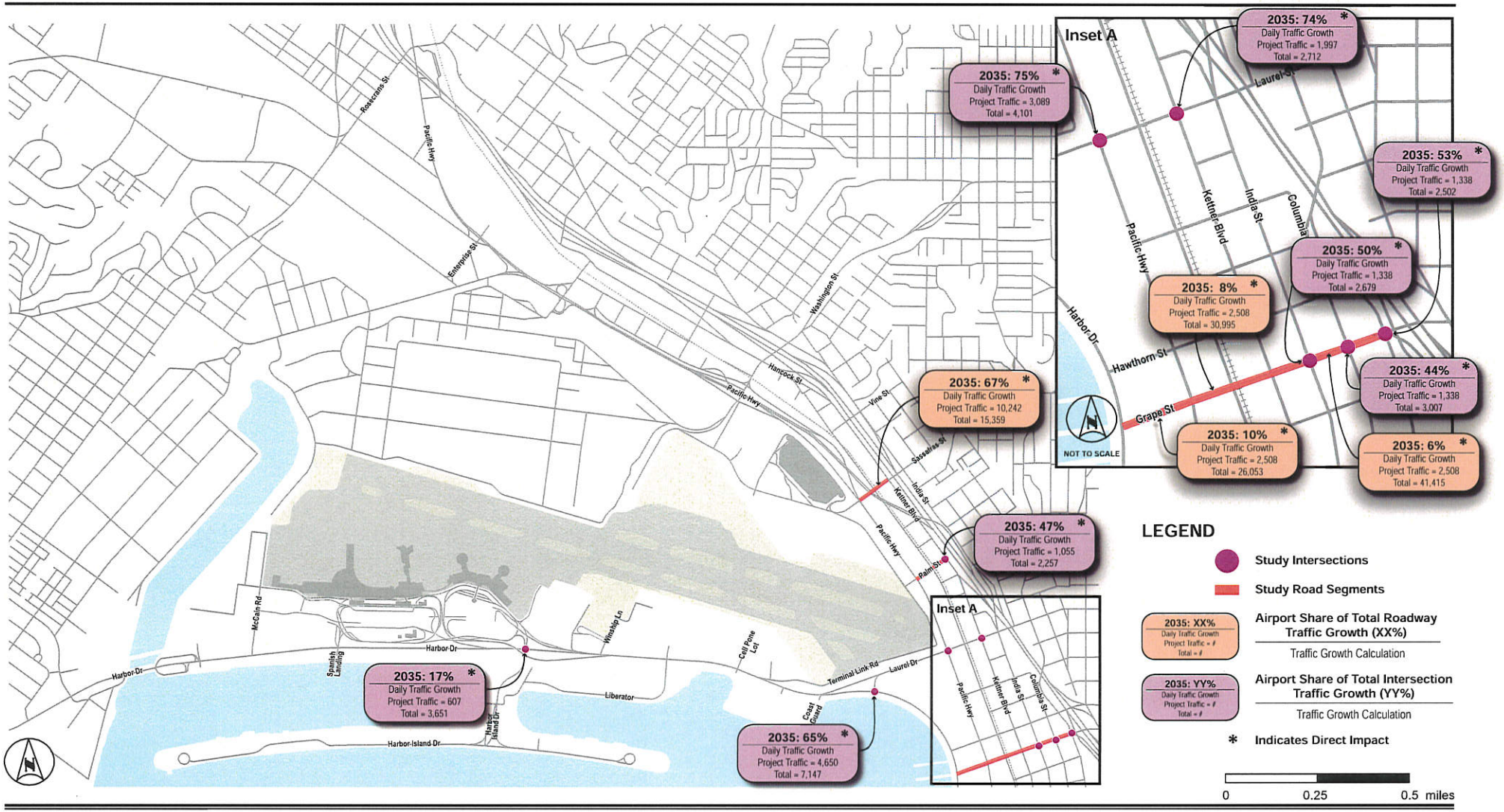

SAN Adjacent Areas
Old Town Transit Center
SAN
Santa Fe Depot
UNIVERSITY HEIGHTS
MIDWAY DISTRICT
HILLCREST
NORTH PARK
LIBERTY STATION
BALBOA PARK
SOUTH PARK
LOGAN HEIGHTS
CORONADO
SAN CLEMENTE
FALLBROOK
VISTA
ESCONDIDO
Oceanside
Carlsbad Village
Carlsbad Poinsettia
Encinitas
Solana Beach
RANCHO PENASQUITOS
POWAY
Sorrento Valley
SANTEE
ALPINE
EL CAJON
Old Town Transit Center
Santa Fe Depot
CHULA VISTA
SAN Passengers by ZIP Code (2017 - Quarter 3)
44 - 87,000
87,001 - 174,000
174,001 - 261,000
261,001 - 348,000
348,001 - 434,565
Park and Ride Locations
Rail Stations
(Amtrak and COASTER)
MTS Connections to SAN
Trolley
Rapid 215
Route 235
Route 992
Route 280 Only
Routes 280/290
Route 923

EXHIBIT B

SDCRAA ADP EIR



Kimley»Horn

2035 Alternative 4 Intersection and Roadway Facilities Requiring Mitigation

K:\SND_TPTO\195072001 - SDCRAA ADP EIR UPDATE\ADOBE\ILLUSTRATOR\Airport Share Percents\Alt 4 Project - 2035 Airport Share & Mitigation Facilities.ai

EXHIBIT C

DRAFT - Alternative 4 Roadway Segment Mitigation

	Mitigation		Mitigation Cost	LOS	LOS MITIGATED	Volume		Airport Share of Growth	*Remarks*
						Project	Growth		
2024									
Sassafras St: Pacific Hwy - Kettner Blvd	MM-TR-RS-1a	3 Lane Collector (w/o TWLT lane) to 4 Lane Collector	$ 227,100	F	D	4,820	5,381	90%	
2030									
Grape St: Harbor Dr - Pacific Hwy	MM-TR-RS-1b	3 Lane Collector (one-way) to 4 Lane Collector (one-way)	$ 1,143,900	F	E	569	9,961	6%	Cost for improvements included for entire Grape corridor
Grape St: Pacific Hwy - India St	MM-TR-RS-1c	3 Lane Collector (one-way) to 4 Lane Collector (one-way)	–	F	F	569	16,208	4%	
Grape St: India St - State St	MM-TR-RS-1d	3 Lane Collector (one-way) to 4 Lane Collector (one-way)	–	F	F	569	24,163	2%	

Total Roadway Mitigation Cost $ 1,371,000

DRAFT - Alternative 4 Intersection Mitigation

	Mitigation		Mitigation Cost	Peak Hour	LOS	LOS MITIGATED	Volume		Airport Share of Traffic Growth	*Remarks*
							Project	Growth		
2024										
Int 16: Laurel St at Kettner Blvd	MM-TR-I-1c	• Restripe SB approach to LT | T | R | R	$ 47,800	AM	F	D	1,343	1,736	77%	
				MID	F	C	1,532	1,956	78%	
				PM	F	D	1,306	1,852	71%	
Int 41: Kettner Blvd at Palm St	MM-TR-I-1e	• Install traffic signal	$ 998,600	AM	F	C	711	1,478	48%	
				MID	F	C	810	1,580	51%	
				PM	F	C	696	1,625	43%	
2026										
Int 15: Laurel St at Pacific Hwy	MM-TR-I-1b	• Remove a WB thru lane on the West leg and add a second EB left-turn lane • Convert a SB thru lane into a second SB right-turn lane • Re-coordinate signals along Laurel Street • Add Class IV cycle track on Pacific Highway from Laurel St to Washington St	$ 4,632,200	AM	C	D	2,226	2,849	78%	Cost includes cycle track on Pacifc Highway ($3,385,500)
				MID	E	D	2,451	3,151	78%	
				PM	E	D	2,141	2,960	72%	
2030										
Int 14: Laurel St at North Harbor Dr	MM-TR-I-1a	• Remove SB left-turn movement (Non-airport traffic will be redirected to Pacific Highway – Hawthorn Street) • Add third EB left-turn lane and remove an EB thru lane	$ 258,100	AM	F	D	3,773	4,701	80%	
				MID	E	C	4,117	4,921	84%	
				PM	F	D	3,627	4,924	74%	
Int 29: Grape St at Columbia St	MM-TR-I-4a	• Retime signals along Grape Street	$ 60,000	AM	D	D	1,081	1,958	55%	Cost for improvements included in the MM-TR-I-4a
				MID	D	C	1,182	2,158	55%	
				PM	E	D	1,050	2,355	45%	
Int 30: Grape St at State St/I-5 SB Ramp	MM-TR-I-4b	• Retime signals along Grape Street	–	AM	C	C	1,081	1,777	61%	
				MID	E	C	1,182	1,924	61%	
				PM	E	D	1,050	2,090	50%	
Int 33: North Harbor Dr at Harbor Island Dr/ Airport Terminal Rd	MM-TR-I-1d	• Re-coordinate signals along North Harbor Drive	$ 100,000	AM	D	D	520	2,445	21%	
				MID	D	D	560	2,375	24%	
				PM	E	D	520	2,918	18%	
2035										
Int 28: Grape St at India St	MM-TR-I-5c	• Remove parking from the south side and add a 4th travel lane from North Harbor Drive to State Street • Retime signals along Grape Street	–	AM	D	C	1,236	2,376	52%	Cost for improvements included in the MM-TR-RS-1b, MM-TR-RS-1c, MM-TR-RS-1d. Signal retiming completed as part of MM-TR-4a and MM-TR-4b.
				MID	D	C	1,338	2,679	50%	
				PM	F	C	1,133	2,791	41%	

Total Intersection Mitigation Cost $ 6,096,700

OFFICE OF MAYOR KEVIN L. FAULCONER

July 31, 2019

Mr. David Cushing, Manager
Federal Aviation Administration
Los Angeles Airport District Office
777 S. Aviation Boulevard, Suite #150
El Segundo, CA 90245

RE: SAN's Proposed Offsite Roadway & Transit Improvements

Dear Mr. Cushing,

I am submitting this letter on behalf of the City of San Diego to supplement the San Diego County Regional Airport Authority's (Airport Authority) formal request for Federal Aviation Administration (FAA) authorization to spend airport revenues on specific offsite roadway and transit improvements. Air travel demand in the San Diego region has increased substantially over the last 5 years and is forecasted to continue to grow over the next decade. The Airport Authority has been working on a new airport master plan, known as the "Airport Development Plan," for San Diego International Airport (SAN) to meet this demand and provide a better experience for travelers.

The City of San Diego has been collaborating with the Airport Authority over the last year to identify potential improvements to City-owned streets, as well as local public transit, that could be implemented to reduce airport-related traffic congestion. The City has been particularly interested in these improvements aligning with its Downtown Mobility Plan and Midway-Pacific Community Plan. Both of these plans were created through extensive public engagement processes and provide tailored development policies and guidance for the two community areas, which border the Airport site.

Through the City and Airport Authority's efforts, the two agencies have identified a specific package of improvements to roadway segments, intersections, and transit in close proximity to the San Diego International Airport to enhance mobility for airport passengers and employees. The City of San Diego is committed to continuing this collaboration with the Airport Authority as it further designs and implements these improvements, pending formal approval of the Airport Development Plan and related environmental documents.

Please feel free to contact me at (619) 236-6597 orPBouteller@sandiego.gov if you have any questions or would like to discuss this item further. The City of San Diego appreciates your time and consideration.

Sincerely,

Patrick Bouteller
Director of Government Affairs

cc: Kimberly Becker, Airport Authority President/CEO
Dennis Probst, Airport Authority Vice President - Development
Brendan Reed, Airport Authority Director of Planning & Environmental Affairs

R-K1 – 49 U.S. Code Section 46301

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Legal Information Institute OPEN ACCESS TO LAW SINCE 1992 [LII]

49 U.S. Code § 46301 - Civil penalties

(a) General Penalty.—

(1) A person is liable to the United States Government for a civil penalty of not more than $25,000 (or $1,100 if the person is an individual or small business concern) for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 423, chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), and 44908), chapter 451, section 47107(b) (including any assurance made under such section), or section 47133 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41719) continues or, if applicable, for each flight involving the violation (other than a violation of section 41719).

(3) Penalty for diversion of aviation revenues.—
The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(4) Aviation security violations.—
Notwithstanding paragraph (1) of this subsection, the maximum civil penalty for violating chapter 449 shall be $10,000; except that the maximum civil penalty shall be $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

(5) Penalties applicable to individuals and small business concerns.—

(A) An individual (except an airman serving as an airman) or small business concern is liable to the Government for a civil penalty of not more than $10,000 for violating—

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(i) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502 (b) or (c), chapter 447 (except sections 44717–44723), chapter 449 (except sections 44902, 44903(d), 44904, and 44907–44909), or [1] chapter 451, or section 46314(a) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) applies.

(B) A civil penalty of not more than $10,000 may be imposed for each violation under paragraph (1) committed by an individual or small business concern related to—

(i) the transportation of hazardous material;

(ii) the registration or recordation under chapter 441 of an aircraft not used to provide air transportation;

(iii) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;

(iv) a violation of section 44725, relating to the safe disposal of life-limited aircraft parts; or

(v) a violation of section 40127 or section 41705, relating to discrimination.

(C) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41719 committed by an individual or small business concern shall be $5,000 instead of $1,000.

(D) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41712 (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary by an individual or small business concern that is intended to afford consumer protection to commercial air transportation passengers shall be $2,500 for each violation.

(6) Failure To [2] Collect [2] Airport [2] Security [2] Badges [2].—
Notwithstanding paragraph (1), any employer (other than a governmental entity or airport operator) who employs an employee to whom an airport security badge or other identifier used to obtain access to a secure area of an airport is issued before, on, or after the date of enactment of this paragraph and who does not collect or make reasonable efforts to collect such badge from the employee on the date that the employment of the employee is terminated and does not notify the operator of the airport of such termination within 24 hours of the date of such termination shall be liable to the Government for a civil penalty not to exceed $10,000.

(b) Smoke Alarm Device Penalty.—

(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than $2,000.

(c) Procedural Requirements.—

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(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, chapter 423, or section 44909 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) Administrative Imposition of Penalties.—

(1) In this subsection—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723), chapter 451, section 46301(b), section 46302 (for a violation relating to section 46504), section 46318, section 46319, section 46320, or section 47107(b) (as further defined by the Secretary under section 47107(k) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security may impose a civil penalty for a violation of chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), section 46302 (except for a violation relating to section 46504), or section 46303 of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security or Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Secretary of Homeland Security or Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

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(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Secretary of Homeland Security or Administrator initiates if—

(A) the amount in controversy is more than—

(i) $50,000 if the violation was committed by any person before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act;

(ii) $400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(iii) $50,000 if the violation was committed by an individual or small business concern on or after that date;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5)

(A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)

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(A) The Administrator may impose a penalty on a person (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

(i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(ii) each conclusion of law is made according to applicable law, precedent, and public policy; and

(iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

(i) a civil penalty shall not be assessed against an individual;

(ii) a civil penalty may be compromised as provided under subsection (f); and

(iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.

(8) The maximum civil penalty the Under Secretary, Administrator, or Board may impose under this subsection is—

(A) $50,000 if the violation was committed by any person before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act;

(B) $400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(C) $50,000 if the violation was committed by an individual or small business concern on or after that date.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) Penalty Considerations.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

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(f) Compromise and Setoff.—

(1)

(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), 44908, and 44909), or chapter 451 of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) Judicial Review.—
An order of the Secretary or the Administrator imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) Nonapplication.—

(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.

(i) Small Business Concern Defined.—
In this section, the term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1231; Pub. L. 103–305, title I, § 112(c), title II, § 207(c), Aug. 23, 1994, 108 Stat. 1575, 1588; Pub. L. 103–429, § 6(60), Oct. 31, 1994, 108 Stat. 4385; Pub. L. 104–264, title V, § 502(c), title VIII, § 804(b), title XII, § 1220(b), Oct. 9, 1996, 110 Stat. 3263, 3271, 3286; Pub. L. 104–287, § 5(77), Oct. 11, 1996, 110 Stat. 3396; Pub. L. 105–102, § 3(c)(4), Nov. 20, 1997, 111 Stat. 2215; Pub. L. 106–181, title II, § 222, title V, §§ 503(c), 504(b), 519(c), title VII, §§ 707(b), 720, Apr. 5, 2000, 114 Stat. 102, 133, 134, 149, 158, 163; Pub. L. 106–424, § 15, Nov. 1, 2000, 114 Stat. 1888; Pub. L. 107–71, title I, § 140(d)(1)–(4), Nov. 19, 2001, 115 Stat. 642; Pub. L. 107–296, title XVI, § 1602, Nov. 25, 2002, 116 Stat. 2312; Pub. L. 108–176, title V, § 503(a)–(c), Dec. 12, 2003, 117 Stat. 2557, 2558; Pub. L. 108–458, title IV, § 4027(a), Dec. 17, 2004, 118

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Stat. 3727; Pub. L. 110–53, title XIII, § 1302(b), Aug. 3, 2007, 121 Stat. 392; Pub. L. 110–161, div. E, title V, § 542, Dec. 26, 2007, 121 Stat. 2079; Pub. L. 112–74, div. D, title V, § 564(a), Dec. 23, 2011, 125 Stat. 981; Pub. L. 112–95, title IV, § 415(b), title VIII, § 803, Feb. 14, 2012, 126 Stat. 96, 119; Pub. L. 113–188, title XV, § 1501(b)(2)(B), Nov. 26, 2014, 128 Stat. 2024; Pub. L. 114–190, title II, § 2205(b), July 15, 2016, 130 Stat. 631.)

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[1] So in original. The word “or” probably should not appear.

[2] So in original. Probably should not be capitalized.

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49 U.S.C. § 47107 - U.S. Code - Unannotated Title 49. Transportation § 47107. Project grant application approval conditioned on assurances about airport operations

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(a) General written assurances. --The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that--

(1) the airport will be available for public use on reasonable conditions and without unjust discrimination;

(2) air carriers making similar use of the airport will be subject to substantially comparable charges--

(A) for facilities directly and substantially related to providing air transportation; and

(B) regulations and conditions, except for differences based on reasonable classifications, such as between--

(i) tenants and nontenants; and

(ii) signatory and nonsignatory carriers;

(3) the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes obligations substantially similar to those already imposed on air carriers of that classification or status;

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if--

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;

(5) fixed-base operators similarly using the airport will be subject to the same charges;

(6) an air carrier using the airport may service itself or use any fixed-base operator allowed by the airport operator to service any carrier at the airport;

(7) the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions;

(8) a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary;

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(9) appropriate action will be taken to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards;

(10) appropriate action, including the adoption of zoning laws, has been or will be taken 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;

(11) 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;

(12) the airport owner or operator will provide, without charge to the Government, property interests of the sponsor in land or water areas or buildings that the Secretary decides are desirable for, and that will be used for, constructing at Government expense, facilities for carrying out activities related to air traffic control or navigation;

(13) the airport owner or operator will maintain a schedule of charges for use of facilities and services at 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; and

(B) without including in the rate base used for the charges the Government's share of costs for any project for which a grant is made under this subchapter or was made under the Federal Airport Act or the Airport and Airway Development Act of 1970;

(14) the project accounts and records will be kept using a standard system of accounting that the Secretary, after consulting with appropriate public agencies, prescribes;

(15) the airport owner or operator will submit any annual or special airport financial and operations reports to the Secretary that the Secretary reasonably requests and make such reports available to the public;

(16) the airport owner or operator will maintain a current layout plan of the airport that meets the following requirements:

(A) the plan will be in a form the Secretary prescribes;

(B) the Secretary will approve the plan and any revision or modification before the plan, revision, or modification takes effect;

(C) the owner or operator will not make or allow any alteration in the airport or any of its facilities if the alteration does not comply with the plan the Secretary approves, and the Secretary is of the opinion that the alteration may affect adversely the safety, utility, or efficiency of the airport; and

(D) when an alteration in the airport or its facility is made that does not conform to the approved plan and that the Secretary decides adversely affects the safety, utility, or efficiency of any property on or off the airport that is owned, leased, or financed by the Government, the owner or operator, if requested by the Secretary, will--

(i) eliminate the adverse effect in a way the Secretary approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility, efficiency, and cost of operation that existed before the alteration was made, except in the case of a relocation or replacement of an existing airport facility that meets the conditions of section 47110 (d) (https://1.next.westlaw.com/Link/Document/FullText?findType=Y&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&r

(17) each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services will be awarded in the same way that a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement prescribed for or by the sponsor;

(18) the airport and each airport record will be available for inspection by the Secretary on reasonable request, and a report of the airport budget will be available to the public at reasonable times and places;

(19) the airport owner or operator will submit to the Secretary and make available to the public an annual report listing in detail--

(A) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(B) all services and property provided to other units of government and the amount of compensation received for provision of each such service and property;

(20) 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, but the sponsor does not have any obligation under this paragraph, or because of it, to fund special facilities for intercity bus service or for other modes of transportation; and

(21) 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.

(b) Written assurances on use of revenue.--(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, 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.

(2) 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.

(3) This subsection does not prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(c) Written assurances on acquiring land.--(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if--

(A)(i) the land may be needed for an aeronautical purpose (including runway protection zone) or serves as noise buffer land; and

(ii) revenue from interim uses of the land contributes to the financial self-sufficiency of the airport; and

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the owner or operator of the use of the land and did not object to the use and the land is still being used for that purpose.

(2) The Secretary of Transportation may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that if an airport owner or operator has received or will receive a grant for acquiring land and--

(A) if the land was or will be acquired for a noise compatibility purpose (including land serving as a noise buffer either by being undeveloped or developed in a way that is compatible with using the land for noise buffering purposes)--

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested in another project at the airport or transferred to another airport as the Secretary prescribes under paragraph (4); or

(B) if the land was or will be acquired for an airport purpose (except a noise compatibility purpose) --

(i) the owner or operator, when the land no longer is needed for an airport purpose, will dispose of the land at fair market value or make available to the Secretary an amount equal to the Government's proportional share of the fair market value;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested in another project at the airport or transferred to another airport as the Secretary prescribes under paragraph (4).

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(4) In approving the reinvestment or transfer of proceeds under paragraph (2)(A)(iii) or (2)(B)(iii), the Secretary shall give preference, in descending order, to the following actions:

(A) Reinvestment in an approved noise compatibility project.

(B) Reinvestment in an approved project that is eligible for funding under section 47117(e) (https://1.next.westlaw.com/Link/Document/FullText?findType=Y&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refTy

(C) Reinvestment in an approved airport development project that is eligible for funding under section 47114 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refTy 47115 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refTy or 47117 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refTy

(D) Transfer to a sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.

(E) Payment to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1012823&refTy

(5)(A) A lease at fair market value by an airport owner or operator of land acquired for a noise compatibility purpose using a grant provided under this subchapter shall not be considered a disposal for purposes of paragraph (2).

(B) The airport owner or operator may use revenues from a lease described in subparagraph (A) for an approved airport development project that is eligible for funding under section 47114 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refTy 47115 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refTy or 47117 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refTy

(C) The Secretary shall coordinate with each airport owner or operator to ensure that leases described in subparagraph (A) are consistent with noise buffering purposes.

(D) The provisions of this paragraph apply to all land acquired before, on, or after the date of enactment of this paragraph.

(d) Assurances of continuation as public-use airport. --The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) Written assurances of opportunities for small business concerns.--(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) (https://1.next.westlaw.com/Link/Document/FullText?findType=Y&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType= of this title) or qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act).

(2) An airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including any business operated through a management contract or subcontract. The dollar amount of a management contract or subcontract with a disadvantaged business enterprise shall be added to the total participation by disadvantaged business enterprises in airport concessions and to the base from which the airport's percentage goal is calculated. The dollar amount of a management contract or subcontract with a non-disadvantaged business enterprise and the gross revenue of business activities to which the management contract or subcontract pertains may not be added to this base.

(3) Except as provided in paragraph (4) of this subsection, an airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including the purchase from disadvantaged business enterprises of goods and services used in businesses conducted at the airport, but the owner or operator and the businesses conducted at the airport shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

(4)(A) In complying with paragraph (1) of this subsection, an airport owner or operator shall include the revenues of car rental firms at the airport in the base from which the percentage goal in paragraph (1) is calculated.

(B) An airport owner or operator may require a car rental firm to meet a requirement under paragraph (1) of this subsection by purchasing or leasing goods or services from a disadvantaged business enterprise. If an owner or operator requires such a purchase or lease, a car rental firm shall be permitted to meet the requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern owned and controlled by a socially and economically disadvantaged individual or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).

(C) This subsection does not require a car rental firm to change its corporate structure to provide for direct ownership arrangements to meet the requirements of this subsection.

(5) This subsection does not preempt--

(A) a State or local law, regulation, or policy enacted by the governing body of an airport owner or operator; or

(B) the authority of a State or local government or airport owner or operator to adopt or enforce a law, regulation, or policy related to disadvantaged business enterprises.

(6) An airport owner or operator may provide opportunities for a small business concern owned and controlled by a socially and economically disadvantaged individual or a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act) to participate through direct contractual agreement with that concern.

(7) An air carrier that provides passenger or property-carrying services or another business that conducts aeronautical activities at an airport may not be included in the percentage goal of paragraph (1) of this subsection for participation of small business concerns at the airport.

(8) Not later than April 29, 1993, the Secretary of Transportation shall prescribe regulations to carry out this subsection.

(f) Availability of amounts. --An amount deposited in the Airport and Airway Trust Fund under--

(1) subsection (c)(2)(A)(iii) of this section is available to the Secretary of Transportation to make a grant for airport development or airport planning under section 47104 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType= of this title;

(2) subsection (c)(2)(B)(iii) of this section is available to the Secretary--

(A) to make a grant for a purpose described in section 47115(b) (https://1.next.westlaw.com/Link/Document/FullText?findType=Y&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refT of this title; and

(B) for use under section 47114(d)(2) (https://1.next.westlaw.com/Link/Document/FullText?findType=Y&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refT of this title at another airport in the State in which the land was disposed of under subsection (c)(2)(B)(ii) of this section; and

(3) subsection (c)(2)(B)(iii) of this section is in addition to an amount made available to the Secretary under section 48103 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType= of this title and not subject to apportionment under section 47114 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType= of this title.

(g) Ensuring compliance.--(1) To ensure compliance with this section, the Secretary of Transportation--

(A) shall prescribe requirements for sponsors that the Secretary considers necessary; and

(B) may make a contract with a public agency.

(2) The Secretary of Transportation may approve an application for a project grant only if the Secretary is satisfied that the requirements prescribed under paragraph (1)(A) of this subsection have been or will be met.

(h) Modifying assurances and requiring compliance with additional assurances.--

(1) In general. --Subject to paragraph (2), before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must--

(A) publish notice of the proposed modification in the Federal Register; and

(B) provide an opportunity for comment on the proposal.

(2) Public notice before waiver of aeronautical land-use assurance. --Before modifying an assurance under subsection (c)(2)(B) that requires any property to be used for an aeronautical purpose, the Secretary must provide notice to the public not less than 30 days before making such modification.

(i) Relief from obligation to provide free space. --When a sponsor provides a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility at Government expense, the Secretary may relieve the sponsor from an obligation in a contract made under this chapter, the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

(j) Use of revenue in Hawaii.--(1) In this subsection--

(A) "duty-free merchandise" and "duty-free sales enterprise" have the same meanings given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8) (https://1.next.westlaw.com/Link/Document/FullText?findType=Y&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refTy

(B) "highway" and "Federal-aid system" have the same meanings given those terms in section 101 (a) of title 23 (https://1.next.westlaw.com/Link/Document/FullText?findType=Y&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refTy

(2) Notwithstanding subsection (b)(1) of this section, Hawaii may use, for a project for construction or reconstruction of a highway on a Federal-aid system that is not more than 10 miles by road from an airport and that will facilitate access to the airport, revenue from the sales at off-airport locations in Hawaii of duty-free merchandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

(3)(A) Revenue from sales referred to in paragraph (2) of this subsection in a Hawaiian fiscal year that Hawaii may use may not be more than the amount that is greater than 150 percent as determined under paragraph (2).

(B) The maximum amount of revenue Hawaii may use under paragraph (2) of this subsection is $250,000,000.

(4) If a fee imposed or collected for rent, landing, or service from an aircraft operator by an airport operated by Hawaii is increased during the period from May 4, 1990, through December 31, 1994, by more than the percentage change in the Consumer Price Index of All Urban Consumers for Honolulu, Hawaii, that the Secretary of Labor publishes during that period and if revenue derived from the fee increases because the fee increased, the amount under paragraph (3)(B) of this subsection shall be reduced by the amount of the projected revenue increase in the period less the part of the increase attributable to changes in the Index in the period.

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

(6) Hawaii is not eligible for a grant under section 47115 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType= of this title in a fiscal year in which Hawaii uses under paragraph (2) of this subsection revenue from sales referred to in paragraph (2). Hawaii shall repay amounts it receives in a fiscal year under a grant it is not eligible to receive because of this paragraph to the Secretary of Transportation for deposit in the discretionary fund established under section 47115 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=

(7)(A) This subsection applies only to revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, and to amounts in the Airport Revenue Fund of Hawaii that are attributable to revenue before May 4, 1990, on sales referred to in paragraph (2).

(B) Revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, may be used under paragraph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year beginning after December 31, 1994.

(k) Policies and procedures to ensure enforcement against illegal diversion of airport revenue.--

(1) In general. --Not later than 90 days after August 23, 1994, the Secretary of Transportation shall establish policies and procedures that will assure the prompt and effective enforcement of subsections (a)(13) and (b) of this section and grant assurances made under such subsections. Such policies and procedures shall recognize the exemption provision in subsection (b)(2) of this section and shall

respond to the information contained in the reports of the Inspector General of the Department of Transportation on airport revenue diversion and such other relevant information as the Secretary may by law consider.

(2) Revenue diversion. --Policies and procedures to be established pursuant to paragraph (1) of this subsection shall prohibit, at a minimum, the diversion of airport revenues (except as authorized under subsection (b) of this section) 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.

(3) Efforts to be self-sustaining. --With respect to subsection (a)(13) of this section, policies and procedures to be established pursuant to paragraph (1) of this subsection shall take into account, at a minimum, whether owners and operators of airports, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, have undertaken reasonable efforts to make their particular airports as self-sustaining as possible under the circumstances existing at such airports.

(4) Administrative safeguards. --Policies and procedures to be established pursuant to paragraph (1) shall mandate internal controls, auditing requirements, and increased levels of Department of Transportation personnel sufficient to respond fully and promptly to complaints received regarding possible violations of subsections (a)(13) and (b) of this section and grant assurances made under such subsections and to alert the Secretary to such possible violations.

(5) Statute of limitations. --In addition to the statute of limitations specified in subsection (m)(7), with respect to project grants made under this chapter--

(A) any request by a sponsor or any other governmental entity 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

(B) any amount of airport funds that are used to make a payment or 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 (m).

(l) Audit certification.--

(1) In general. --The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall include a provision in the compliance supplement provisions to require a recipient of a project grant (or any other recipient of Federal financial assistance that is provided for an airport) to include as part of an annual audit conducted under sections 7501 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType= through 7505 of title 31 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType= a review concerning the funding activities with respect to an airport that is the subject of the project grant (or other Federal financial assistance) and the sponsors, owners, or operators (or other recipients) involved.

(2) Content of review. --A review conducted under paragraph (1) shall provide reasonable assurances that funds paid or transferred to sponsors are paid or transferred in a manner consistent with the applicable requirements of this chapter and any other applicable provision of law (including regulations promulgated by the Secretary or the Administrator).

(m) Recovery of illegally diverted funds.--

(1) In general. --Not later than 180 days after the issuance of an audit or any other report that identifies an illegal diversion of airport revenues (as determined under subsections (b) and (k) and section 47133 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType= the Secretary, acting through the Administrator, shall--

(A) review the audit or report;

(B) perform appropriate factfinding; and

(C) conduct a hearing and render a final determination concerning whether the illegal diversion of airport revenues asserted in the audit or report occurred.

(2) Notification. --Upon making such a finding, the Secretary, acting through the Administrator, shall provide written notification to the sponsor and the airport of--

(A) the finding; and

(B) the obligations of the sponsor to reimburse the airport involved under this paragraph.

(3) Administrative action. --The Secretary may withhold any amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor--

(A) receives notification that the sponsor is required to reimburse an airport; and

(B) has had an opportunity to reimburse the airport, but has failed to do so.

(4) Civil action. --If a sponsor fails to pay an amount specified under paragraph (3) during the 180-day period beginning on the date of notification and the Secretary is unable to withhold a sufficient amount under paragraph (3), the Secretary, acting through the Administrator, may initiate a civil action under which the sponsor shall be liable for civil penalty in an amount equal to the illegal diversion in question plus interest (as determined under subsection (n)).

(5) Disposition of penalties.--

(A) Amounts withheld. --The Secretary or the Administrator shall transfer any amounts withheld under paragraph (3) to the Airport and Airway Trust Fund.

(B) Civil penalties. --With respect to any amount collected by a court in a civil action under paragraph (4), the court shall cause to be transferred to the Airport and Airway Trust Fund any amount collected as a civil penalty under paragraph (4).

(6) Reimbursement. --The Secretary, acting through the Administrator, shall, as soon as practicable after any amount is collected from a sponsor under paragraph (4), cause to be transferred from the Airport and Airway Trust Fund to an airport affected by a diversion that is the subject of a civil action under paragraph (4), reimbursement in an amount equal to the amount that has been collected from the sponsor under paragraph (4) (including any amount of interest calculated under subsection (n)).

(7) Statute of limitations. --No person may bring an action for the recovery of funds illegally diverted in violation of this section (as determined under subsections (b) and (k)) or section 47133 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType= after the date that is 6 years after the date on which the diversion occurred.

(n) Interest.--

(1) In general. --Except as provided in paragraph (2), the Secretary, acting through the Administrator, shall charge a minimum annual rate of interest on the amount of any illegal diversion of revenues referred to in subsection (m) in an amount equal to the average investment interest rate for tax and loan accounts of the Department of the Treasury (as determined by the Secretary of the Treasury) for the applicable calendar year, rounded to the nearest whole percentage point.

(2) Adjustment of interest rates. --If, with respect to a calendar quarter, the average investment interest rate for tax and loan accounts of the Department of the Treasury exceeds the average investment interest rate for the immediately preceding calendar quarter, rounded to the nearest whole percentage point, the Secretary of the Treasury may adjust the interest rate charged under this subsection in a manner that reflects that change.

(3) Accrual. --Interest assessed under subsection (m) shall accrue from the date of the actual illegal diversion of revenues referred to in subsection (m).

(4) Determination of applicable rate. --The applicable rate of interest charged under paragraph (1) shall--

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

(o) Payment by airport to sponsor. --If, in the course of an audit or other review conducted under this section, the Secretary or the Administrator determines that an airport owes a sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport, interest on that amount shall be determined in the same manner as provided in paragraphs (1) through (4) of subsection (n), except that the amount of any interest assessed under this subsection shall be determined from the date on which the Secretary or the Administrator makes that determination.

(p) Notwithstanding any written assurances prescribed in subsections (a) through (o), a general aviation airport with more than 300,000 annual operations may be exempt from having to accept scheduled passenger air carrier service, provided that the following conditions are met:

(1) No scheduled passenger air carrier has provided service at the airport within 5 years prior to January 1, 2002.

(2) The airport is located within or underneath the Class B airspace of an airport that maintains an airport operating certificate pursuant to section 44706 of title 49 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=

(3) The certificated airport operating under section 44706 of title 49 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType= does not contribute to significant passenger delays as defined by DOT/FAA in the "Airport Capacity Benchmark Report 2001".

(q) An airport that meets the conditions of paragraphs (1) through (3) of subsection (p) is not subject to section 47524 of title 49 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ with respect to a prohibition on all scheduled passenger service.

(r) Competition disclosure requirement.--

(1) In general. --The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a large hub airport or a medium hub airport only if the Secretary receives assurances that the airport sponsor will provide the information required by paragraph (2) at such time and in such form as the Secretary may require.

(2) Competitive access. --On February 1 and August 1 of each year, an airport that during the previous 6-month period 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 provide service to the airport or to expand service at the airport shall transmit a report to the Secretary that--

(A) describes the requests;

(B) provides an explanation as to why the requests could not be accommodated; and

(C) provides a time frame within which, if any, the airport will be able to accommodate the requests.

(3) Sunset provision. --This subsection shall cease to be effective beginning April 1, 2016.

(s) Agreements granting through-the-fence access to general aviation airports. --

(1) In general. --Subject to paragraph (2), a sponsor of a general aviation airport shall not be considered to be in violation of this subtitle, or to be in violation of a grant assurance made under this section or under any other provision of law as a condition for the receipt of Federal financial assistance for airport development, solely because the sponsor enters into an agreement that grants to a person that owns residential real property adjacent to or near the airport access to the airfield of the airport for the following:

(A) Aircraft of the person.

(B) Aircraft authorized by the person.

(2) Through-the-fence agreements. --

(A) In general. --An agreement described in paragraph (1) between an airport sponsor and a property owner (or an association representing such property owner) shall be a written agreement that prescribes the rights, responsibilities, charges, duration, and other terms the airport sponsor determines are necessary to establish and manage the airport sponsor's relationship with the property owner.

(B) Terms and conditions. --An agreement described in paragraph (1) between an airport sponsor and a property owner (or an association representing such property owner) shall require the property owner, at minimum--

(i) to pay airport access charges that, as determined by the airport sponsor, are comparable to those charged to tenants and operators on-airport making similar use of the airport;

(ii) to bear the cost of building and maintaining the infrastructure that, as determined by the airport sponsor, is necessary to provide aircraft located on the property adjacent to or near the airport access to the airfield of the airport;

(iii) to maintain the property for residential, noncommercial use for the duration of the agreement;

(iv) to prohibit access to the airport from other properties through the property of the property owner; and

(v) to prohibit any aircraft refueling from occurring on the property.

[(t) Redesignated (s)]

« Prev (https://codes.findlaw.com/us/title-49-transportation/49-usc-sect-47106.html) Next » (https://codes.findlaw.com/us/title-49-transportation/49-usc-sect-47108.html)

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R-K3 – Federal Register Notice: Policy and Procedures Concerning the Use of Airport Revenue, Volume 64, Page 7696, Tuesday, February 16, 1999

Federal Register

Tuesday
February 16, 1999

Part II

Department of Transportation

Federal Aviation Administration

Policy and Procedures Concerning the Use of Airport Revenue; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA) DoT

ACTION: Policy statement.

SUMMARY: This document announces the final publication of the Federal Aviation Administration policy on the use of airport revenue and maintenance of a self-sustaining rate structure by Federally-assisted airports. This statement of policy (''Final Policy'') was required by the Federal Aviation Administration Authorization Act of 1994, and incorporates provisions of the Federal Aviation Administration Reauthorization Act of 1996. The Final Policy is also based on consideration of comments received on two notices of proposed policy issued by the FAA in February 1996, and December 1996, which were published in the **Federal Register** for public comment. The Final Policy describes the scope of airport revenue that is subject to the Federal requirements on airport revenue use and lists those requirements. The Final Policy also describes prohibited and permitted uses of airport revenue and outlines the FAA's enforcement policies and procedures. The Final Policy includes an outline of applicable record-keeping and reporting requirements for the use of airport revenue. Finally, the Final Policy includes the FAA's interpretation of the obligation of an airport sponsor to maintain a self-sustaining rate structure to the extent possible under the circumstances existing at each airport.

DATES: This Final Policy is effective February 16, 1999.

FOR FURTHER INFORMATION CONTACT: J. Kevin Kennedy, Airport Compliance Specialist, Airport Compliance Division, AAS–400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8725; Barry L. Molar, Manager, Airport Compliance Division, AAS–400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3446.

SUPPLEMENTARY INFORMATION:

Outline of Final Policy

The Final Policy implements the statutory requirements that pertain to the use of airport revenue and the maintenance of an airport rate structure that makes the airport as self-sustaining as possible. The Final Policy generally represents a continuation of basic FAA policy on airport revenue use that has been in effect since enactment of the Airport and Airway Improvement Act of 1982 (AAIA), currently codified at 49 U.S.C. § 47107(b). The FAA issued a comprehensive statement of this policy in the Notice of Proposed Policy dated February 26, 1996 (Proposed Policy), and addressed four particular issues in more detail in the Supplemental Notice of Proposed Policy dated December 18, 1996 (Supplemental Notice). The Final Policy includes provisions required by the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305 (August 23, 1994) (FAA Authorization Act of 1994), and the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104–264 (October 9, 1996), 110 Stat. 3269 (FAA Reauthorization Act of 1996). The Final Policy also includes changes adopted in response to comments on the Proposed Policy and Supplemental Notice.

The Final Policy contains nine sections. Section I is the Introduction, which explains the purpose for issuing the Final Policy and lists the statutory authorities under which the FAA is acting.

Section II, ''Definitions,'' defines federal financial assistance, airport revenue and unlawful revenue diversion.

Section III, ''Applicability of the Policy,'' describes the circumstances that make an airport owner or operator subject to this Final Policy.

Section IV, ''Statutory Requirements for the Use of Airport Revenue,'' discusses the statutes that govern the use of airport revenue.

Section V, ''Permitted Uses of Airport Revenue,'' describes categories and examples of uses of airport revenue that are considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all permitted uses but is intended to provide examples for practical guidance.

Section VI, ''Prohibited Uses of Airport Revenue,'' describes categories and examples of uses of airport revenue not considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all prohibited uses but is intended to provide examples for practical guidance.

Section VII, ''Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure,'' describes policies regarding the requirement that an airport maintain a self-sustaining airport rate structure. This is a new section of the policy, which provides more complete guidance on the subject than appeared in either the Proposed Policy or Supplemental Notice.

Section VIII, ''Reporting and Audit Requirements,'' addresses the requirement for the filing of annual airport financial reports and the requirement for a review and opinion on airport revenue use in a single audit conducted under the Single Audit Act, 31 U.S.C. §§ 7501–7505.

Section IX, ''Monitoring and Compliance,'' describes the FAA's activities for monitoring airport sponsor compliance with the revenue-use requirements and the requirement for a self-sustaining airport rate structure and the range of actions that the FAA may take to assure compliance with those requirements. Section IX also describes the sanctions available to FAA when a sponsor has failed to take corrective action to cure a violation of the revenue-use requirement.

Background

Governing Statutes

Four statutes govern the use of airport revenue: the AAIA; the Airport and Airway Safety and Capacity Expansion Act of 1987; the FAA Authorization Act of 1994; and the FAA Reauthorization Act of 1996. These statutes are codified at 49 USC 47101, *et seq.*

Section 511(a)(12) of the AAIA, part of title V of the Tax Equity and Fiscal Responsibility Act, Public Law 97–248, (now codified at 49 USC 47107(b)) established the general requirement for use of airport revenue. As originally enacted, the revenue-use requirement 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.''

The original revenue-use requirement also contained an exception, or ''grandfather'' provision, permitting certain uses of airport revenue for non-airport purposes that predate the AAIA.

The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (December 30, 1987), narrowed the permitted uses of airport revenues to nonairport facilities that are ''substantially'' as well as directly related to actual air transportation; required local taxes on aviation fuel enacted after December 30, 1987, to be

spent on the airport or, in the case of state taxes on aviation fuel, state aviation programs or noise mitigation on or off the airport; and slightly modified the grandfather provision.

The FAA Authorization Act of 1994 Act included three sections regarding airport revenue.

Section 110 added a policy statement to Title 49, Chapter 471, ''Airport Development,'' concerning the preexisting requirement that airports be as self-sustaining as possible, 49 USC § 47101(a)(13).

Section 111 added a new sponsor assurance requiring airport owners or operators to submit to the Secretary and to make available to the public an annual report listing all amounts paid by the airport to other units of government, and the purposes for the payments, and a listing of all services and property provided to other units of government and the amount of compensation received. Section 111 also requires an annual report to the Secretary containing information on airport finances, including the amount of any revenue surplus and the amount of concession-generated revenue.

Section 112(a) requires the Secretary to establish policies and procedures that will assure the prompt and effective enforcement of the revenue-use requirement and the requirement that airports be as self-sustaining as possible.

Section 112(b) amends 49 USC § 47111, ''Payments under project grant agreements,'' to provide the Secretary, with certain limitations, to withhold approval of a grant application or a new application to impose a Passenger Facility Charge (PFC) for violation of the revenue-use requirement. Section 112(c) authorizes the Secretary to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the revenue retention requirement. Section 112(d) requires the Secretary, in administering the 1994 Authorization Act's revenue diversion provisions and the AIP discretionary grants, to consider the amount being lawfully diverted pursuant to the grandfathering provision by the sponsor compared to the amount being sought in discretionary grants in reviewing the grant application. Consequently, in addition to the prohibition against awarding grants to airport sponsors that have illegally diverted revenue, the FAA considers the lawful diversion of airport revenues by airport sponsors under the grandfather provision as a factor militating against the distribution of discretionary grants to the airport, if the amounts being lawfully diverted exceed the amounts so lawfully diverted in the airport's first year after August 23, 1994.

Section 112(e), which amended the Anti-Head Tax Act, 49 USC § 40116(d)(2)(A), prohibits a State, political subdivision, or an authority acting for a State or political subdivision from collecting a new tax, fee, or charge which is imposed exclusively upon any business located at a commercial service airport or operating as a permittee of the airport, other than a tax, fee, or charge utilized for airport or aeronautical purposes.

Title VIII of the FAA Reauthorization Act of 1996 included new provisions on the use of airport revenue. Among other things, section 804 codifies the preexisting grant-assurance based revenue-use requirement as 49 U.S.C. § 47133. Section 804 also expands the application of the revenue-use restriction to any airport that is the subject of Federal assistance.

Section 805, codified as 49 U.S.C. § 47107(m) *et seq.*, requires recipients of Federal assistance for airports who are subject to the Single Audit Act to include a review and opinion on airport revenue use in single audit reports.

Under section 47107(n), the Secretary, acting through the Administrator of the FAA, will perform fact finding and conduct hearings in certain cases; may withhold funds that would have otherwise been made available under Title 49 of the U.S. Code to a sponsor including another public entity of which the sponsor is a member entity, and may initiate a civil action under which the sponsor shall be liable for a civil penalty, if the Secretary receives a report disclosing unlawful use of airport revenue. Section 47107(n) also includes a statute of limitations that prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. The Secretary is also authorized to recover civil penalties in the amount of three times the unlawfully diverted airport revenue under 49 U.S.C. § 46301(n)(5).

Section 47107(o) requires the Secretary to charge a minimum annual rate of interest on the amount of any illegal diversion of revenues. Interest is due from the date of the illegal diversion.

Section 47107(l)(5) imposes a statute of limitation of six years after the date on which the expense is incurred for repayment of sponsor claims for reimbursement of past expenditures and contributions on behalf of the airport. A sponsor may claim interest on the amount due for reimbursement, but only from the date the Secretary determines that the airport owes a sponsor.

Procedural History

In response to provisions in the 1994 Authorization Act, the FAA issued the Proposed Policy. (61 FR 7134, February 26, 1996) After reviewing all comments received in response to the notice, the FAA issued the Supplemental Notice on December 11, 1996, and requested further public comment. (61 FR 66735, December 18, 1996) Although the FAA published both documents as proposed policies, both notices stated that the FAA would apply the policies in reviewing revenue-use issues pending publication of a final policy.

The Department received 32 comments on the Proposed Policy and received 50 comments on the Supplemental Notice. Comments were received from airport owners and operators, airline organizations, transit authorities, and affected businesses and organizations. Most of the commenters were airport owners and operators. The Airport Council International-North America and the American Association of Airport Executives also provided comments supporting the sponsor/operator positions. Two major groups commented on behalf of the airlines—the Air Transport Association of America and the International Air Transport Association.

The Aircraft Owners and Pilots Association and the National Air Transportation Association commented on behalf of the general aviation and private aircraft owners. AOPA was primarily concerned with sponsor/airport accountability and the prompt and effective enforcement of the revenue diversion prohibitions.

Several port authorities, transit authorities, environmental groups, other public interest groups, trade associations, private businesses and individuals commented on a variety of specific issues.

The following discussion of comments is organized by issue rather than by commenter. Issues are discussed in the order they arise in the Final Policy. Airport proprietors and their representatives who took similar positions on an issue are collectively referred to as ''airport operators.'' Airlines and airline trade associations are referred to as ''air carriers'' when the organizations took common positions. The summary of comments is intended to represent the general divergence or correspondence in commenters' views on various issues. It is not intended to be an exhaustive restatement of the comments received.

In addition, many comments on the original notice of proposed policy were addressed in the supplemental notice.

Those comments are not addressed again in this discussion.

The FAA considered all comments received, even if they are not specifically identified in this summary.

Discussion of Comments by Issue

1. Applicability

a. Applicability of Policy to Privately Owned Airports

In accordance with the statutes in effect at the time it was published, the Proposed Policy applied only to public agencies that had received AIP grants for airport development. The Proposed Policy included a specific statement that it did not apply to privately owned airports that had taken AIP grants while under private ownership. The Supplemental Notice did not modify these provisions.

The Comments: A public interest group concerned about reducing airport noise and mitigating its impacts recommended that the policy should apply to operators of privately owned airports.

Final Policy: The new statutory provision added by the Reauthorization Act of 1996, governing the restriction on the use airport revenue, 49 U.S.C. § 47133, does not differentiate between publicly or privately owned airports. The statute applies to all airports that have received Federal assistance. Under the AAIA certain privately-owned airports that are available for public use are eligible to receive airport development grants. As a result, any privately owned airport that receives an AIP grant after October 1, 1996, (the effective date of the FAA Reauthorization Act of 1996), is subject to the revenue use requirements. The applicability section of the Final Policy, Section III, is modified to reflect the expansion of the revenue-use requirement to include privately-owned airports.

b. Applicability of Policy to Publicly and Privately Owned Airports Subject to Federal Assistance

As a result of the same change in the law, recipients of Federal assistance provided after October 1, 1996, other than AIP grants, are also subject to the revenue-use restrictions. However, the Reauthorization Act of 1996 did not define Federal assistance, and the legislative history does not provide guidance on the meaning of this term. In addition, it did not explicitly address the status of airports that received Federal assistance other than AIP airport development grants before October 1, 1996, and therefore were not already bound by the revenue use restrictions. These issues are addressed in the Final Policy, based on the FAA's review of the statute, its legislative history and relevant judicial decisions.

Applicability of the revenue-use requirement under § 47133 depends on the definition of the term ''Federal assistance.'' In the absence of guidance in the statute and legislative history, the FAA has relied on the interpretation given to the similar term ''Federal financial assistance'' in Federal regulations and court decisions. 28 CFR part 41, ''Implementation of Executive Order 12250, Non-discrimination on the Basis of Handicap in Federally Assisted Programs,'' section 41.4(e) establishes the definition of ''Federal financial assistance'' for all Federal agencies implementing § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. That definition is in turn subject to the limitation of the Department of Transportation v. Paralyzed Veterans, 477 U.S. 597 (1986) (Paralyzed Veterans), which specifically addressed the issue of whether certain facilities and services provided by the FAA in managing the national airspace system constituted federal assistance. That decision held that the provision of air navigation services and facilities to airlines by the FAA did not make the commercial airline passenger service a Federally assisted program within the meaning of § 504.

The FAA's interpretation of the term ''Federal assistance'' is included in Section II of the Final Policy, Definitions. The Final Policy's definition of ''Federal assistance'' adapts the generalized language of 28 CFR § 41.4(e) to the specific circumstances of airports receiving Federal support and reflects the holding of the Paralyzed Veterans decision. The definition lists as Federal Assistance the following:

(1) Airport development and noise mitigation grants;

(2) Transfers, under various statutory provisions, of Federal property at no cost to the airport sponsors; and

(3) Planning grants related to a specific airport.

Under this definition, FAA installation and operation of navigational aids and FAA operation of control towers are not considered Federal assistance, based on the Supreme Court decision in Paralyzed Veterans. Similarly, the FAA does not consider passenger facility charges (PFCs) to be Federal assistance even though PFCs may be collected only with approval of the FAA.

Airport development and noise mitigation grants are considered Federal assistance because they apply to a specific airport, and that airport is, therefore, ''subject to Federal assistance'' under the statute. Transfers of Federal property to an airport are considered Federal assistance because they also apply to a specific airport. Planning grants may apply to a specific airport or may be more general in nature. Under § 47133, the FAA considers only planning grants related to a specific airport to be Federal assistance.

However, not all airports that are the subject of Federal assistance are necessarily bound to the revenue-use assurance simply by the passage of § 47133. Established Federal grant law prevents a statute from being construed to modify unilaterally the terms of preexisting grant agreements absent a clear showing of legislative intent to do so. *Bennett* v. *New Jersey* 470 U.S. 632 (1985), 84 L.Ed 2d 572, 105 S.Ct. 1555. Neither the statutory language nor its legislative history indicates an intent by Congress to apply § 47133 to impose the revenue-use requirement on airports that were not already subject to it. By contrast, a recent example of Congressional intent to modify preexisting grant agreements exists in § 511(a)(14) of the Airport and Airway Improvement Act of 1982, 49 USC App. 2210(a)(14), which was recodified at 49 USC 47107(c)(2)(B). That subsection, which was added to the AAIA in 1987, established requirements for the disposal of land acquired with Federal grants that is no longer needed for airport purposes. The statute by its terms applied to an ''airport owner or operator [who] receives a grant before on or after December 31, 1987'' for the purchase of land for airport development purposes. This language demonstrated a clear Congressional intent to modify preexisting grant agreements. The language of § 47133 and its legislative history lacks any such express direction.

Therefore, the FAA does not interpret § 47133 to impose the revenue-use requirements on an airport that was not already subject to the revenue-use assurance on October 1, 1996. An airport that had 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. 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. As discussed below, by operation of § 47133, the revenue-use requirement would remain in effect as long as the airport functioned as an airport.

For airports that were already subject to the revenue-use requirement on October 1, 1996, and those that become subject to the requirement after that date, the effect of § 47133 is to extend the duration of the requirement indefinitely. This application is not explicit in the statute and reference to the legislative history of the statute is necessary to determine congressional intent and the specific meaning and application of the statutory language. The legislative history of § 47133 makes it clear that Congress enacted § 47133 to extend the duration of the revenue-use requirement for airports that are already subject to it. In describing an earlier version of § 47133, the Committee on Transportation and Infrastructure of the House of Representatives stated that the reason for the change was because ''revenue diversion burdens interstate commerce even if the airport is no longer receiving grants. In recognition of this fact, the bill applies the exact same revenue diversion prohibition to airports that have a FAA certificate [modified to airports that are subject to Federal assistance in conference] as now applied to airports that receive AIP grants. For the most part, these will be the same airports.'' H.R. Rep. 104–714 (July 26, 1996) at 38, reprinted at 1996 US Code, Congressional and Administrative News at 3675. The report further stated that broadening the prohibition would ''make it clear that an airport cannot escape this prohibition [on revenue diversion] by refusing to accept AIP grants[;]'' remove ''this perverse incentive to refuse AIP grants * * *[;].'' and ''once again [encourage] all airports to use available Federal money to increase safety, capacity, and reduce noise.'' *Id.*

Any airport that had an outstanding AIP grant agreement in effect on October 1, 1996, was already bound to the same revenue use assurance that is contained in § 47133. Because § 47133 is extending the duration of an existing obligation, there is no conflict with the principle of Federal grant law outlined above.

c. Relationship of Final Policy to Airport Privatization

In the applicability and definition section of the Proposed Policy, the FAA stated that proceeds from the sale of the entire airport as well as from individual parcels of land would be considered as airport revenue. The FAA also stated that it did not intend ''to effectively bar airport privatization initiatives,'' and that the FAA would take into account ''the special conditions and constraints imposed by the fact of a change in ownership of the airport.'' 61 Fed. Reg. at 7140. The FAA proposed to remain ''open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the requirements and objectives of § 47107(b) without unnecessarily interfering with the appropriate privatization of airport infrastructure.'' *Id.*

Airport operators: A number of airport operators expressed concern that the guidance in the Proposed Policy was too ambiguous to encourage privatization and might discourage privatization initiatives. One operator suggested that the FAA should take a flexible approach to the proceeds of a privatization transaction when an airport's concession revenues are sufficient to allow a public owner to use some sales proceeds for nonairport purposes without increasing fees charged to aeronautical users and without continuing a need for Federal subsidy. Another airport operator suggested that the financial terms of a transaction would reflect the local circumstances in which the transaction was negotiated and recommended that the FAA account for this fact in reviewing revenue diversion claims.

Air carriers: ATA adamantly opposed the sale or transfer of a public use airport in a situation when such an action would cause airport revenue to be taken off the airport. ATA believes that the FAA does not have the flexibility or the statutory authority to require anything less than 100% compliance under 49 USC § 47107(b).

General aviation: The AOPA is concerned that the policy gives the impression that airport privatization is a fully resolved issue. The AOPA believes that the policy must avoid any implication that the issue is resolved or that the FAA endorses privatization.

Other commenters: Three public interest organizations addressed the issue of privatization from different perspectives. A group concerned with preventing and mitigating airport noise suggests that the FAA must ensure that adequate funds remain available to meet current and future airport noise mitigation needs. This group recommended that, before approving a transfer, the FAA should conduct a thorough audit of the airport's compliance with noise compatibility requirements, plans, and promises, and that the FAA should assess the adequacy of resources to address noise compatibility problems. The FAA should also require enforcement mechanisms to ensure implementation of noise compatibility and mitigation measures as a condition of the sale or transfer.

Two other groups supported a policy that does not discourage airport privatization. One of these suggested that the FAA consider defederalization of airports. The comments regarding defederalization are beyond the scope of this proceeding, because they would require statutory changes.

Final Policy: The Final Policy adopts the basic approach of the Proposed Policy toward privatization, with some language changes for clarity and readability. In addition, the Final Policy explicitly acknowledges the Airport Privatization Pilot Program.

Guidance on the process for obtaining FAA approval of the sale or lease of an airport is contained in FAA Order 5190.6a, Airport Compliance Requirements. The Final Policy is not intended to modify the process in any way. FAA approval is required for any transfer, including those between government entities. The Final Policy makes clear, however, that in processing an application for approval the FAA will: (a) treat proceeds from the sale or lease as airport revenue; and (b) apply the revenue-use requirement flexibly, taking into consideration the special conditions and constraints imposed by a change in ownership of the airport. For example, as is noted in the Final Policy, if the owner of a single airport is selling the airport, it may be inappropriate to require the seller to simply return the proceeds to the private buyer to use for operation of the airport.

The FAA requires the transfer document to bind the new operator to all the terms and grant assurances in the sponsor's grant agreement. The FAA retains sufficient authority and power through its grant assurances to ensure compliance by the new owner with all of its obligations, including any grant-based obligations relating to mitigation of environmental impacts of the airport; to conduct sponsor audits and to take other appropriate action to ensure that the airport is self-sustaining.

The Final Policy's approach to privatization does not represent, as ATA suggests, less than 100 percent compliance with the revenue-use requirement. The FAA agrees with the ATA that we cannot waive that requirement. Rather, the FAA has committed to exercise its authority to interpret the requirement in a flexible way to account for the unique circumstances presented by a change of ownership.

The Final Policy is not an endorsement of privatization and it does not resolve the policy debate about privatization. FAA will continue to review the sale or lease of an airport on

a case-by-case basis, including transfers proposed under the Airport Privatization Pilot Program, 49 U.S.C. 47134, created by § 149 of the FAA Reauthorization Act of 1996. The demonstration program authorizes the FAA to exempt five airports from Federal statutory and regulatory requirements governing the use of airport revenue. Under the program, the FAA can exempt an airport sponsor from its obligations to repay Federal grants, to return property acquired with Federal assistance, and to use the proceeds of the sale or lease exclusively for airport purposes. The latter exemption is also subject to approval by the air carriers serving the airport.

The FAA notes the concerns that the revenue-use requirement may discourage privatization. Congress addressed this prospect by enacting the Privatization Pilot Program, which authorizes the FAA to grant exemptions from sections 47107(b) and 47133 to permit the sponsor to use sales or lease proceeds for nonairport purposes, on certain conditions. That exemption would not be required unless sales or lease proceeds were airport revenue. In addition, the FAA will consider the unique circumstances—financial and otherwise—of individual transactions in determining compliance with section 47107(b), and this should address to some degree the commenters' concerns about privatization.

d. Effect of § 47133 on Return on Investment for Private Airport Owners or Operators That Accept Federal Assistance

By extending the revenue-use requirement to privately-owned airports, § 47133 requires the FAA to consider a new issue—the extent to which a private owner that assumes the revenue-use obligation may be compensated from airport revenue for the ownership of the airport. Section 47133 prohibits all such private airport owners or operators from using airport revenue for any purpose other than the capital and operating costs of the airport. However, the FAA does not consider section 47133 to preclude private owners or operators from being paid or reimbursed reasonable compensation for providing airport management services. Private operators, presently, provide airport management services at a number of airports. In many cases, these airports are publicly owned and subject to the revenue-use requirement. The private operator is providing these services under some form of contract with the public owner. These services are considered part of the operating cost of the airport owner, and the fees can be paid from airport revenue.

It is reasonable to equate private operators managing publicly owned airports with private owner/operators managing privately owned or leased airports. To avoid any confusion of the issue, reasonable compensation for management services provided by the owner of a privately-owned airport is identified as a permitted use of airport revenue in the Final Policy.

Private airport owners may typically expect a return on their capital investment. Such investment could be considered a capital cost of the airport. In the case of private owners or operators of airports who have assumed the revenue-use obligation, that obligation would limit the ability to use the return on capital invested in the airport for nonairport purposes. In particular, the FAA expects private owners to be subject to the same requirements governing a self-sustaining airport rate structure and the recovery of unreimbursed capital contributions and operating expenses from airport revenue as public sponsors. Under section 47107(l)(5), private sponsors—like public sponsors—may recover their original investment within the six-year statute of limitation. In addition, they are entitled to claim interest from the date the FAA determines that the sponsor is entitled to reimbursement under section 47107(p). Any other profits generated by a privately-owned airport subject to section 47133 (after compensating the owner for reasonable costs of providing management services) must be applied to the capital and operating costs of the airport.

This interpretation is required by provisions of 49 U.S.C. 47134, the airport privatization pilot program. Section 47134 authorizes the FAA to grant exemptions from the revenue-use requirement to permit the private operator to ''earn compensation from the operations of the airport.'' This exemption would not be necessary if section 47133 did not restrict the freedom of the private owner of a Federally-assisted airport to use the profits from the investment in the airport for nonairport purposes. This interpretation does not unreasonably burden private owners, because they receive a benefit (in the form of either Federal property added to the airport or Federal grant funds) in exchange for assuming the restrictions on the use of their profit.

e. Grandfather Provisions

The Proposed Policy included a discussion of the grandfather provisions of section 47107(b) in the section on permitted uses of airport revenue. That discussion included a list of examples of financing obligations and statutory provisions that had been previously found by the Department of Transportation to confer grandfather status.

The Comments: Two airport operators commented on this issue. One is an airport operator whose status under the grandfather provisions was under consideration by the FAA when the Proposed Policy was published. Its concerns were addressed by the FAA's consideration of its individual situation.

The second commenter is airport operator already established as a grandfathered airport operator. This commenter recommends that the Final Policy continue to recognize the rights of grandfathered airports.

Final Policy: The Final Policy continues to recognize the rights of grandfathered airport owners set forth at title 49 U.S.C. 47107(b)(2) and 47133. To qualify an airport for grandfathered status, the statute requires that local covenants, assurances or governing laws pre-dating September 2, 1982, must specifically pledge the use of airport generated revenues to support not only the airport but also the general debt obligations or other facilities of the owner or operator. However, the Final Policy is modified to reflect the requirement in the 1996 FAA Reauthorization Act that the FAA consider the increase in grandfathered payments of airport revenue as a factor militating against the award of discretionary grants.

f. Applicability to Non-municipal Airport Authorities

Lehigh-Northampton Airport Authority (LNAA): LNAA asserted that the airport revenue-use requirement does not allow FAA to regulate airport transactions with non-governmental parties and does not empower FAA to override state and local laws governing the use of airport revenue for airport marketing and promotional activities. The commenter advanced a number of arguments as to why FAA does not have authority to restrict such transactions. First, Congress has shaped the revenue diversion statute to identify financial irregularities in dealings between an airport enterprise account and another unit of government. The statute does not contemplate FAA regulation of airport financial relationships with non-government parties. Second, Congress did not intend the ''capital or operating costs'' language in the revenue diversion statute to authorize a new Federal regulatory scheme to narrow the types or levels of airport expenditures beyond

what is legal under applicable state and local law. Third, there is not a statutory requirement for FAA to regulate airport expenditures for community events or charitable contributions in the absence of facts suggesting that such expenditures are the result of undue influence by a governmental unit.

The LNAA currently has a case pending before the FAA under FAR Part 13, in which certain expenditures that LNAA characterizes as marketing and promotional expenses are being examined for consistency with the revenue-use requirement. LNAA's assertions with respect to its own promotional activities will be addressed by the FAA in that proceeding. To the extent that LNAA's practices were inconsistent with this Final Policy, LNAA will have an opportunity to argue that the Final Policy should not be applied to its situation.

The general issues of the use of airport revenue for marketing and promotional expenses and charitable donations are discussed separately below.

The FAA is not modifying the applicability of the Final Policy based on LNAA's other concerns. The language of section 47107(b) explicitly states that revenue generated by the airport may only be expended for the capital or operating costs of the airport or local airport system; it contains no limiting language concerning ''financial irregularities.'' The statute further defines expenditures for general economic development and promotion as unlawful use of airport revenue, providing specific authority over transactions that do not involve transfers of airport revenue to other governmental entities. See 49 U.S.C. 47107(l)(2). This provision grants authority for regulation of expenditures for charitable and community-use purposes.

In addition, the Congressional mandate to establish policies and procedures to ''assure the prompt and effective enforcement'' of the revenue use and self-sustainability requirements (49 U.S.C. 47107(l)(1)) provides statutory authority to adopt more detailed guidance on permitted and prohibited uses of airport revenue. Many airport operators have expressed concern over the difficulty of responding to OIG findings of unlawful revenue use without clear and specific FAA guidance on permitted and prohibited practices.

Finally, the grandfathering provision establishes Congressional intent to prohibit certain airport revenue practices authorized by state or local law that do not satisfy the specific requirements of the grandfather provisions of the AAIA.

2. Definition of Airport Revenue

a. Proceeds From Sale of Airport Property

The Proposed Policy included proceeds from the sale of airport property in the proposed definition of airport revenue. No distinction was made between property acquired with airport revenue and property acquired with other funds provided by the sponsor. In the explanatory statement, the FAA discussed alternatives it had considered, including limiting the definition to property acquired with airport revenue. (61 FR 7138) The FAA also stated that a sponsor would be able to recoup any funds it contributed to finance the acquisition of airport property as an unreimbursed capital contribution.

Airport operators: Airport operators objected to defining proceeds from the sale of airport property as airport revenue. ACI/AAAE argued that the definition would reduce incentives for airport sponsors to pursue legitimate airport endeavors. One airport operator argued that the definition constitutes a transfer of wealth from the taxpayers to the airport users, and that cities would be less willing to contribute to future airport projects. Another individual operator argued that the policy should not apply to property acquired with the sponsor's own funds and to property acquired with airport revenue before 1982. This airport operator further argues that application of the policy to property acquired before 1982 amounts to a taking of airport property without just compensation and without Congressional authorization. Finally, this operator argued that the proposed definition appears to contradict a portion of the FAA Compliance Handbook, Order 5190.6A (October 2, 1989), Paragraph 7–18, that states there is no required disposition of net revenues from sale or disposal of land not acquired with Federal assistance.

Air carriers: The ATA commented that the use of airport revenue for repayment of contributions from prior years should be limited. According to ATA, reimbursements should be permitted only when the sponsor and airport enter into a written agreement concerning the terms of reimbursement before the service or expenditure is provided.

Other commenters: A public interest organization opposed the treatment of proceeds from the sale of airport property as airport revenue. This commenter argued that the sponsor, as the principal provider of airport's land and capital, has a legitimate claim to cash-out the value of its investments and to use the proceeds for other purposes.

The Final Policy: The Final Policy does not modify the treatment of proceeds from the sale, lease or other disposal of airport property. Proceeds from the sale lease or other disposal of all airport property are considered airport revenue subject to the revenue-use requirement and this policy, unless the property was acquired with Federal funds or donated by the Federal government. While proceeds from disposal of Federally-funded and Federally-donated property are also airport revenue, these proceeds are subject to separate legal requirements that are even more restrictive than the revenue-use requirement.

As discussed in the Proposed Policy, this definition is consistent with the language of the original version of section 47107(b), which applies to ''all revenues generated by the airport.''

In addition, the Airport Privatization Pilot Program, 49 U.S.C. 47134, permits the FAA to grant exemptions from the revenue-use requirements to permit a sponsor to keep the proceeds from a sale or lease transaction, but only to the extent approved by 65 percent of the air carriers. An exemption would not be required unless the proceeds from the sale or lease of the entire airport were airport revenue within the meaning of section 47107(b) and 47133. Since the proceeds from the sale of an entire airport are airport revenue, it follows that the proceeds from the sale of individual pieces of airport property are also airport revenue.

Further, section 47107(l)(5)(A) establishes a six-year period during which sponsors may claim reimbursement for their capital and operating contributions. This limitation on seeking reimbursement could be avoided through the process of disposing of airport property, if the proceeds of sales were not themselves considered airport revenue. Through section 47107(l)(5)(A) Congress has defined the rights of airport owners and operators to recover their investments in airport property for use for nonairport purposes. Subject to the six-year statute of limitations, the sponsor is entitled to use airport revenues for reimbursement of such contributions. Section 47107(p) provides that a sponsor may also claim interest if the FAA determines that a sponsor is entitled to reimbursement, but interest runs only from the date on which the FAA makes the determination. As discussed below, the Final Policy provides flexibility to

structure future contributions to permit reimbursement over a longer period of time in order to promote the financial stability of the airport. The six-year limitation, which is incorporated in the Final Policy, also addresses ATA's request for a time limit on the airport owner or operator's ability to claim recoupment for past unreimbursed requests.

The FAA does not accept the suggestion that the definition is an unauthorized taking of sponsor property without just compensation. First, as noted, the definition is supported by the 1996 FAA Reauthorization Act, which included an express provision for an exemption from the revenue use restriction for sale and lease proceeds. Second, all airport sponsors, including the airport commenters, voluntarily agreed to their restrictions on the use of airport revenue when they accepted grants-in-aid under the AIP program. Finally, the definition does not deprive the commenter of its property. The proceeds from the disposal will still flow to the commenter sponsor to be used for a legitimate local public purpose—operation and development of the commenter's airport.

The FAA acknowledged in the Proposed Policy that existing FAA internal orders contain provisions on the status of proceeds from the disposal of airport property that are inconsistent with this Final Policy. As stated in the Proposed Policy, this inconsistency does not preclude the FAA from defining proceeds from the disposal of airport property as airport revenue in this Final Policy. Rather, ''the Policy takes precedence, and the orders will be revised to reflect the policies in this statement.'' 61 FR 7138. In addition, the provisions in the FAA internal orders are in conflict with the 1996 FAA Reauthorization Act. Because of this statutory conflict, the FAA cannot continue to apply them.

b. Revenue Generated by Off-airport Property

The Proposed Policy defined as airport revenue the revenue received for the use of property owned and controlled by a sponsor and used for airport-related purposes, but not located on the airport.

Airport operators: The ACI–NA/AAAE and two individual airport operators objected to this definition of airport revenue. The ACI–NA/AAAE stated that revenues received from off-airport activities should ordinarily not be counted as airport revenue. One airport operator argued that this definition is inconsistent with the statutory definition of airport in the AAIA. The other airport operator (the State of Hawaii) is especially concerned about revenue generated by off-airport duty fee shops.

No other comments were received.

Final Policy: The Final Policy does not modify the definition of airport revenue as it pertains to off-airport revenue. This definition is consistent with FAA's prior interpretation, which has defined as airport revenue the revenues received by the airport owner or operator from remote airport parking lots, downtown airport terminals, and off-airport duty free shops.

After enactment of the original revenue-use requirement, the FAA initiated an administrative action to require the State of Hawaii to use its revenue from off-airport duty free sales in a manner consistent with section 47107(b). In response, Congress amended the revenue-use requirement to provide a specific and limited exemption to the State of Hawaii to permit up to $250 million in off-airport duty-free sales revenue to be used for construction of highways that are part of the Federal-Aid highway system and that are located in the vicinity of an airport. See, 49 U.S.C. § 47107(j). The statutory exemption would only be necessary if the revenue from off-airport duty free shops is airport revenue within the meaning of the statute.

c. Royalties From Mineral Extraction

The Proposed Policy included royalties from mineral extraction on airport property earned by a sponsor as airport revenue.

Airport operators: One airport operator objected to including revenue from the sale of sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport in the definition of airport revenue. The operator stated that the retention of mineral rights as airport property would represent a windfall to the airport at the sponsor's expense; that the Proposed Policy is contrary to congressional intent and that it would take, without compensation, valuable property rights from the sponsor. The operator also cited a prior decision where FAA concluded the production of natural gas at Erie, Pennsylvania, does not serve either the airport or any air transportation purpose. The royalties generated by such production were determined to be outside the scope of the revenue-use requirement.

Final Policy: The Final Policy retains the proposed definition of airport revenue to include the sale of sponsor-owned mineral, natural, agricultural products or water to be taken from the airport. On further review of the Erie interpretation in this proceeding, the FAA no longer considers the analogy drawn in that interpretation—between mineral extraction and operation of a convention center or water treatment plant—to be appropriate. Rather, mineral and water rights represent a part of the airport property and its value. Just as proceeds from the sale or lease of airport property constitute airport revenue, proceeds from the sale or lease of a partial interest in the property—i.e. water or mineral rights—should also be considered airport revenue. The FAA will not require an airport owner or operator to reimburse the airport for past mineral royalty payments used for nonairport purposes based on the Erie interpretation. However, all airport owners and operators will be required to treat these payments as airport revenue prospectively, starting on the publication date of the Final Policy.

With respect to agricultural products, the FAA has always treated lease revenue from agricultural use of airport property as airport revenue, even if that revenue is calculated as a portion of the revenue generated by the crops grown on the airport property. The definition in the Final Policy will assure that the airport gets the full benefit of agricultural leases of airport property, regardless of the form of compensation it receives for agricultural use of airport property.

The FAA does not consider this interpretation to create a taking of airport owner or operator property. As discussed in other contexts, the limitation on the use of airport revenue was voluntarily undertaken by the airport operator upon receiving AIP grants. In addition, the revenues generated by these activities will still flow to the sponsor for its use for a legitimate local governmental activity, the operation and development of its airport.

d. Other Issues

The Final Policy includes a discussion of the requirement of 49 U.S.C. § 40116(d)(2)(A). This provision requires that taxes, fees or charges first taking effect after August 23, 1994, assessed by a governmental body exclusively upon businesses at a commercial service airport or upon businesses operating as a permittee of the airport be used for aeronautical, as well as airport purposes. This addition is included, at the suggestion of a commenter, to comply with the statutory provision, which was enacted as section 112(d) of the 1994 FAA Authorization Act.

3. Permitted Uses of Airport Revenue

a. Promotion/marketing of the Airport

Congress, in the FAA Authorization Act of 1994, permitted the use of airport revenues for promotion of the airport by expressly prohibiting ''use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems.'' The Supplemental Proposed Policy cited this law and recognized that many airport sponsors engage in some form of promotional effort, to encourage use of the airport and increase the level of service. Accordingly, the Supplemental Notice provided that ''[a]irport revenue may be used for * * * [c]osts of activities directed toward promoting public and industry awareness of airport facilities and services, and salary and expenses of employees engaged in efforts to promote air service at the airport.'' 61 FR 66470.

However, the preamble to the Supplemental Notice stated that promotional/marketing expenditures directed toward regional economic development, rather than specifically toward promotion of the airport, would not be considered a permitted use of airport revenue. In addition, the FAA proposed to prohibit the use of airport revenue for a direct purchase of air service or subsidy payment to air carriers because the FAA does not consider these payments to be capital or operating costs of the airport.

Airport operators: In their comments to the original proposed policy, ACI–NA/AAAE requested that FAA establish a ''safe harbor,'' or a maximum dollar amount (perhaps based on a percentage of airport costs), under which an airport could spend airport revenue on certain promotional and marketing activities. Greater percentage amounts would be allowed for the costs of airport-specific activities, while lower amounts would be allowed for joint efforts for campaigns and organizations that have broader, regional marketing missions.

Several airport operators supported this ''safe harbor'' concept in their comments to the docket for the original Proposed Policy. One such commenter, without reference to ACI/AAAE's remarks, suggested a cap of 5% of an airport's budget as a ''safe harbor'' for marketing expenses that are not directly related to the airport or airport system. Furthermore, this commenter would limit the use of airport revenue to a maximum share of 20 percent of the overall cost of any joint-project budget.

ACI/AAAE did not pursue the concept of ''safe harbor'' in their comments to the docket for the Supplemental Policy, focusing instead on the discretion of the airport operator to use reasonable business judgment to determine potential benefits to the airport. Several airports concurred with the ACI–NA/AAAE position, and one airport operator added that joint-marketing expenses, if reasonable and clearly related to aviation, should be considered an operating cost of the airport.

The ACI/AAAE and several individual airport operators commented that an airport cannot be distinguished from the region served by the airport. ACI/AAAE commented that the policy should permit reasonable spending for marketing of communities and regions because airports are not ultimate destinations of passengers. Therefore, airport operators must be free to make a reasonable attempt to increase revenues by investing in the promotion of their community as a destination.

Some airports specifically opposed the ATA's suggestion of a cap, described below.

Air carriers: In its comments to the Supplemental Notice, the ATA mentioned the concept of a maximum or ''cap'' under which expenditures would be considered reasonable, but would apply it to efforts to promote the services of the airport itself. The ATA would have the policy prohibit entirely the use of airport revenue for the promotion of regional development, because ''expenditures by an airport to promote local or regional economic development—as opposed to the services and functionality of an airport—should not be considered legitimate airport costs.'' In regard to cooperative or joint-marketing expenses, the ATA focused on airport participation in joint-marketing of new airline services, suggesting that these activities be limited to a 60-day promotional period. ATA also warned against abuses of cooperative marketing, in particular programs that result in promotion of a particular airline.

The ATA rejected the airport position that use of airport revenue to fund regional promotional activities is acceptable, because airports themselves are not destinations. They stated, ''[l]ocal governments that are also airport sponsors should not be permitted to pass off local and regional promotional activities in order to charge such costs to an airport. Indeed, many civic organizations and chambers of commerce undertake such activities directly, since continued economic development directly benefits the local businesses that constitute such organizations.''

The Final Policy: The FAA has modified the provisions on permitted uses of airport revenue in regard to promotion and marketing in the Final Policy. The FAA has applied the sections 47107(b) and 47107(l) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport. The permitted uses of airport revenue for marketing and promotion are split into two paragraphs, V.A.2 and V.A.3., in the Final Policy—one addressing costs that may be fully paid with airport revenue, and one addressing costs that may be shared. The issues of general economic development, direct subsidies of air carriers, the waiving of fees to airport users and airport participation in airline marketing and promotion is further addressed in Section VI.

The Final Policy provides, under V.A.2, that expenditures for the promotion of an airport, promotion of new air service and competition at the airport, and marketing of airport services are legitimate costs of an airport's operation. These expenditures may be financed entirely with airport revenue, and the expenditures may include the costs of employees engaged in the promotion of airport services. In addition, cooperative airport-airline advertising of air service at the airport may be financed with airport revenue, with or without matching funds. The FAA is prepared to rely on airport management to assure that the level of expenditures for such purposes would be reasonable in relation to the airport's specific financial situation. In addition, cooperative airport-airline advertising of air service must be conducted in compliance with applicable grant assurances prohibiting unjust discrimination in providing access to the airport.

For other advertising and promotional activities, such as regional or destination marketing, airport revenue may be used to pay a share of the costs only if the advertising or promotional material includes a specific reference to the airport. The share must be reasonable, based on the benefits to the airport of participation in the activity. The FAA construes the prohibition on ''use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems' to preclude the reliance on airport management judgment to support the use of airport revenue for general destination advertising containing no references to the airport. Likewise, the prohibition precludes adoption of a safe-harbor

provision for general promotional expenses.

Except as discussed above, the Final Policy does not limit the amounts of airport revenue that can be spent for all permitted promotional marketing and advertising activities. The FAA expects that expenditure of airport revenues for these purposes would be reasonable in relation to the airport's specific financial situation. Disproportionately high expenditures for these activities may cause a review of the expenditures on an *ad hoc* basis to verify that all expenditures actually qualify as legitimate airport costs. Examples of permissible and prohibited expenditures are included in the Final Policy itself.

b. Reimbursement of Past Contributions

The Proposed Policy permitted airport revenue to be used to reimburse a sponsor for past unreimbursed capital or operating costs of the airport. The Proposed Policy did not include a limit on how far back in time a sponsor could go to claim reimbursement, in accordance with the law in effect at the time. In addition, the Preamble noted that the FAA had not to date permitted a sponsor to claim reimbursement for more than the principal amount actually contributed to the airport. The FAA requested comment on whether the FAA should permit recoupment of interest or an inflationary adjustment or whether, in the case of contributed land, recoupment should be based on current land values.

Airport operators: ACI–NA/AAAE and a number of individual airport operators supported recoupment of interest or inflation adjustment on previous contributions or subsidies to the airport.

Air carriers: The ATA objected to the Proposed Policy and commented that recoupment should be subject to a number of requirements to prevent abuses.

The Final Policy: After the proposed policy was issued, Congress enacted legislation to limit the use of airport revenue for reimbursement of past contributions, and to limit claims for interest on past contributions. 49 U.S.C. §§ 47107(l)(5), 47107(p). The Final Policy incorporates these statutory provisions. Based on Congressional intent evidenced by the legislative history of these provisions, airport revenue may be used to reimburse a sponsor only for contributions or expenditures for a claim made after October 1, 1996, when the claim is made within six years of the contribution or expenditure. In addition, a sponsor may claim interest only from the date the FAA determines that the sponsor is entitled to reimbursement, pursuant to section 47107(p). The FAA interprets these statutory provisions to apply to contributions or expenditures made before October 1, 1996, so long as the claim is made after that date.

If an airport is unable to generate sufficient funds to repay the airport owner or operator within six years, the Final Policy permits repayment over a longer period, with interest, if the contribution is structured and documented as an interest bearing loan to the airport when it is made. The interest rate charged to the airport should not exceed a rate that the sponsor received for other investments at the time of the contribution.

c. Donations of Airport Revenue to Charitable/Community Service Organizations

The Supplemental Proposed Policy addressed the use of airport property for public recreational purposes, and addressed the use of airport funds to support community activities and for participation in community events. The FAA proposed that the use of airport revenue for such donations would not be considered a cost of operating the airport, unless the expenditure is directly related to the operation of the airport. For example, expenditures to support participation in the airport's federally approved disadvantaged business enterprise program would be considered permissible as supporting a use directly related to the operation of the airport. In contrast, expenditures to support a sponsor's participation in a community parade would not be considered to be directly related to the operation of the airport.

Airport operators: ACI–NA/AAAE contended that the expenditure of airport revenue for community or charitable purposes is appropriate and should be recognized as legitimate. Airports, regardless of their size, type, and certification or lack thereof, are important members of their local communities and, therefore, must be able to maintain their prominent, highly visible roles in their respective communities. Airports are regarded by their communities as local business enterprises and, consequently, are expected to contribute to local non-profit charitable concerns in the same manner as other local business enterprises.

Individual airport operators generally supported the position of ACI–NA/AAAE, although some individual operators acknowledged that some limitation on the expenditures may be appropriate. One suggested a *de minimis* standard; another proposed a ''safe harbor'' based on a percentage of the airport's total budget. Another urged that airport owners/operators be allowed leeway to make contributions of airport funds, in reasonable amounts and consistent with the local circumstances, and to use airport property for charitable purposes on the same basis.

Other airport operators commented that the Final Policy should give comparable treatment to the use of airport funds and airport property for community goodwill by recognizing the limited use of airport revenue to support charitable and community organizations as a legitimate operating cost of the airport.

Air carriers: Air carriers did not comment specifically on charitable contributions, although they commented extensively on the use of airport property for community or charitable purposes. Generally the air carriers suggested that use of airport property should be subject to strict conditions to avoid abuse.

Other commenters: An advocacy group in support of a particular airport commented that, in order for an airport to be as self-sustaining as possible, the use of each income dollar is critical, and that federally assisted airports must be fully responsive to the citizens of the community by providing information on the use of airport funds.

Final Policy: The Final Policy generally follows the approach of the Supplemental Notice. Airport funds may be used to support community activities, or community organizations, if the expenditures are directly and substantially related to the operation of the airport. In addition, the policy provides explicitly that where the amount of the contribution is minimal, the airport operator may consider the ''directly and substantially related to air transportation'' standard to be met if the contribution has the intangible benefit of enhancing the airport's acceptance in local communities impacted by the airport.

Expenditures that are directly and substantially related to the operation of the airport qualify inherently as operating costs of the airport. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that benefit is intangible and not quantifiable. Where the amount of the 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 community acceptance for the airport.

However, if there is no clear relationship between the charitable or community expenditure and airport operations, the use of airport revenue may be an expenditure for the benefit of the community, rather than an operating cost of the airport. The different treatment of the use of airport funds (direct payments to charitable and community organizations) and the use of airport property (less than FMV leases for charitable or community purposes) is grounded in the applicable laws: the revenue-use requirement (section 47107(b)), which governs the use of airport funds, provides far less flexibility than the requirement for a self-sustaining rate structure (section 47107(a)(13)), which applies to the use of airport property.

Examples of permitted and prohibited expenditures are included in the Final Policy.

d. Use of Airport Revenue to Fund Mass Transit Airport Access Projects

The Supplemental Proposed Policy addressed in Part VII.C., the circumstances in which an airport sponsor could provide airport property at less than fair market value to a transit operator. The Supplemental Proposed Policy did not address the use of airport revenue to finance the construction of transit facilities. That issue, however, was raised in the comments.

Airport Operators: Two airport operators supported the use of airport revenue for the construction of transit facilities. One commenter stated that an airport should be permitted to use airport revenues and assets to provide mass transit service to on-airport commercial uses. Another commenter referred to the AIP Handbook, FAA Order 5100.38A § 555, which provides AIP project eligibility for rapid transit facilities.

Air carriers: Air carriers did not specifically discuss the use of airport revenue to finance transit facilities. However, as discussed below, they objected to providing airport property for transit facilities at nominal lease rates.

Other Commenters: Two commenters representing transit operator interests supported the expenditure of airport revenues to finance transit facilities. A transit operator stated that in order to create a better balance between transit and highway interests, transit facilities should be totally eligible expenses, paid for in the same manner as other road and parking enhancements. A transit trade association urged the FAA to take appropriate actions to ensure that passenger fees and other airport revenues are widely eligible to fund a range of airport surface transportation modes, including public transportation.

The FAA also received extensive comments on providing airport property for use by transit providers at less than FMV rents. These comments are addressed separately below.

Final Policy: The Final Policy has been modified to provide guidance on the use of airport revenues to finance airport ground access projects. The Final Policy states that airport revenue may be used for the capital or operating costs of such a project if it can be considered an airport capital project, or is part of a facility owned or operated by the airport sponsor and directly and substantially related to air transportation of passengers or property, relying directly on the statutory language of § 47107(b).

As an example, the Final Policy summarizes the FAA's decision on the use of airport revenue to finance construction of the rail link between San Francisco International Airport and the Bay Area Rapid Transit (BART) rail system extension running past the airport. In that decision, the FAA approved the use of airport revenues to pay for the actual costs incurred for structures and equipment associated with an airport terminal building station and a connector between the airport station and the BART line. The structures and equipment were located entirely on airport property, and were designed and intended exclusively for use of airport passengers. The BART extension was intended for the exclusive use of people travelling to or from the airport and included design features to discourage use by through passengers. Based on these considerations, the FAA determined that the possibility of incidental use by nonairport passengers did not preclude airport revenues from being used to finance 100 percent of the otherwise eligible cost items. For purposes of this analysis, the FAA considered ''airport passengers'' to include airport visitors and employees working at the airport.

4. Accounting Issues

a. Principles for Allocation of Indirect Costs

Based on the comments to the Proposed Policy, the FAA addressed the principles of indirect cost allocation in its Supplemental Notice. The Supplemental Notice made clear that the allocation of indirect costs is allowable under 49 USC § 47107(b), and that no particular method of cost allocation will be required, including OMB Circular A–87. To ensure, however, that indirect costs are limited to allowable capital and operating costs, the FAA proposed to apply certain general principles and prohibitions to the allocation of costs. The Supplemental Notice did not limit significantly the development of local cost allocation methodologies, or interfere with the application of Generally Accepted Accounting Principles (GAAP) and other accounting industry recognized standards.

In the Supplemental Notice, the FAA stated that it would expect that a Federally approved cost allocation plan that complied with OMB Circular A–87 or other Federal guidance and was consistent with GAAP would be reasonable and transparent, and would generally meet the requirements of section 47107(b). However, the use of a Federally approved cost allocation plan does not rule out the possibility that a particular cost item allowable under that guidance would be in violation of the airport revenue retention requirement if allocated to the airport.

The Supplemental Notice also required specifically that indirect cost allocations be applied consistently across departments to the sponsoring government agency, and not unfairly burden the airport account. The general sponsor cost allocation plan could not result in an over-allocation to an enterprise fund. In addition, the sponsor would have to charge comparable users, such as enterprise accounts, for indirect costs on a comparable basis.

Lastly, the Supplemental Notice proposed to prohibit the allocation of general costs of the sponsoring government to the airport. However, this prohibition would not affect direct or indirect billing for actual services provided to the airport by local government.

Airport Operators: Generally, airport operators agreed with the proposal to acknowledge that the allocation of indirect costs as allowable under 49 USC § 47107(b), and to provide that no particular allocation methodology, including OMB Circular A–87, be required.

One airport operator requested the FAA to further clarify that it is not imposing on airport sponsors all of the specific elements of OMB CircularA–87. The operator was concerned that the statement in the Supplemental Notice that the FAA ''believe[s] the specific principles identified by the OIG are an appropriate construction of the revenue retention requirement'' may lead to confusion over whether adherence to OMB Circular A–87 is mandatory for

allocating costs to be paid by airport revenue.

Several airport operators were concerned that the FAA would not accept the allocation of costs in accordance with a Federally-approved cost allocation plan, but could review the plan to ensure that allocation of specific cost items meet the special revenue retention requirements. For example, one airport operator commented that the FAA's approach would impose on airport sponsors burdens and requirements in excess of the detailed requirements of OMB-Circular A–87, which are designed to ensure a reasonable and consistent cost allocation system. The airport proprietor proposed that such compliance with a federally-approved cost allocation plan be considered sufficient to satisfy the revenue retention requirement.

Another airport operator proposed that the FAA revise the policy to clarify that a specific cost, as opposed to a type of cost, cannot be treated as both a direct and an indirect cost. The airport operator offered as an example a city-owned and operated airport at which some police services are provided by officers assigned exclusively to the airport and other services are provided by general duty police officers. The commenter suggested that it should be permissible to charge the airport for the officers assigned exclusively to the airport as a direct cost and to charge for the general duty officers as an indirect cost allocation.

Additionally, this commenter proposed revising the policy to clarify that costs that are chargeable to one city department on a direct basis may be charged to other city departments on an indirect basis. The airport operator offered an example in which police are exclusively assigned to a city-owned airport, but are not exclusively assigned to other city departments. The commenter argued that it would be reasonable to charge the airport for police services as a direct cost, and to charge the other departments as an indirect cost allocation.

Several airport operators were also concerned that the supplemental policy implied that a local cost allocation plan must provide that all users for a service be billed equally. For example, ACI-NA and AAAE suggested that the requirement for consistent application should be interpreted to require the local government to go through the exercise of assessing indirect costs against all governmental departments, including those wholly funded by that governmental entity. Likewise, an airport operator requested that the FAA clarify that the supplemental policy does not mean that an airport sponsor must actually bill all of its General Fund agencies for certain municipal costs in order to be able to charge such costs to its airports. All of those airport proprietors that expressed concern over this proposed policy generally commented that this issue was considered and rejected by the Department of Transportation in the Second Los Angeles International Airport Rates Proceeding, Docket OST–95–474. According to the airport proprietors, the DOT recognized that in many cases sponsor agency operations are paid from a common General Fund. Under those circumstances, it is illogical and unnecessary for one General Fund agency to bill another General Fund agency for municipal services.

One airport operator proposed that the word ''equally'' be removed from VII.B.4 of the proposed policy. The commenter urged that the FAA allow airport sponsors the flexibility to allocate costs to various users on a reasonable, equitable basis relative to the benefits received, even though specific users may sometimes be treated differently. Returning to its example of police services, the commenter suggested that if the sponsor chooses not to charge a housing authority for costs of a special police unit assigned to that authority, it should be of no concern to the FAA as long as those costs are not then charged to the airport.

Another airport operator argued that each of its proprietary departments are unique and governed by different City Charter provisions; that they make different uses of city services; and have different financial arrangements with the sponsor's general fund. This commenter argued that treating the departments the same for cost allocation purposes because the departments are enterprise funds would, therefore, serve no valid purpose.

Several airport operators disagreed with FAA's proposed policy to prohibit the indirect cost allocation of general costs of government. Several commenters stated that the proposed policy would reverse longstanding practice at many airports and could be inconsistent with federally-approved cost allocation plans, which provide for the allocation of a share of indirect costs of various local government functions. One airport operator argued that there is no statutory basis for prohibiting the allocation of general costs of government, other than costs for particular identified services.

Finally, one airport operator commented that the proposed policy does not sufficiently clarify the appropriate allocations for fire and police stations that do not serve the airport exclusively. The airport operator proposed that policy explicitly permit a sponsor to allocate costs based on the intended purpose and value of the station to the airport, not its actual use. The airport operator argues that a more flexible approach could better implement the applicable statutory provision that prohibits ''direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport.''

Airlines: ATA supports the proposed policy clarification that no particular cost allocation methodology for indirect costs is preferred.

The Final Policy: The Final Policy reflects a different and simplified approach to indirect cost allocation that is intended to facilitate development of permissible cost allocation plans and the review of those plans in the single audit process. The Final Policy specifies that the cost allocation plans must be consistent with Attachment A of OMB Circular A–87. Attachment A sets forth general principles for developing cost allocation plans. Those principles are essentially a restatement of the principles proposed in the Supplemental Policy. By referring to Attachment A, the Final Policy establishes a standard that is well understood by airport cost accountants and by airport operators' independent auditors. The Final Policy does not require compliance with the other attachments to OMB Circular A–87, which include more rigid requirements and defines categories of grant recipient costs that are eligible and ineligible for reimbursement with Federal grant funds.

The Final Policy continues to specify that the costs allocated must themselves be eligible for expenditure of airport revenue under section 47107(b). Attachment A to OMB Circular A–87 provides principles for cost allocation methodologies. The cost items that may be charged to airport revenue are determined by the requirements of section 47107(b). Therefore, sponsors, and the FAA, cannot rely solely on compliance with OMB Circular A–87 to assure that the costs items charged to the airport in a Federally approved cost allocation plan are consistent with section 47107(b).

The Final Policy continues to specify that the airport must not be charged directly and indirectly for the same costs. The FAA is not persuaded that the example of police services offered by an airport sponsor requires a modification of this requirement. This

provision is not intended to preclude both the direct and indirect billing in the situation cited by the commenter—where police services are provided to the airport on both an exclusive-use and a shared-use basis. In the cited example, it would be preferable to bill for police exclusively assigned to the Airport on a direct cost basis. It would be impossible, however, to bill for the shared-use police without engaging in some form of indirect cost allocation. The FAA did not intend the supplemental policy to preclude treatment of police services as both direct and indirect costs in these circumstances, only to preclude double billing on both a direct and indirect basis, for the same police costs.

Similarly, with respect to the second example of police services where the airport receives exclusive-use police services and other sponsor departments receive shared-use police services, the FAA did not intend the Supplemental Notice to preclude disparate billing methodologies. Inherent in Attachment A is that comparable units of a sponsoring government making comparable uses of the sponsor's services should have costs allocated and billed in a comparable fashion. The clarification noted above should address this situation as well. In the second example sited, the FAA would consider the sponsor departments receiving shared-use police services not to be comparable to the airport receiving exclusive use police services.

The Final Policy also provides that the allocation plan must not burden the airport with a disproportionate share of allocated costs, and requires that all comparable units of the airport owner or operator be billed for indirect costs billed to the airport. The FAA is unwilling to accept the suggestion that comparable users of a service may sometimes be treated differently for billing purposes, so long as the costs attributed to one unit of government are not then charged to the airport. The FAA believes that such practices would result in an unfair burden being placed upon the airport simply because of the airport's ability to pay.

This provision, however, is not intended to require a sponsor's General Fund activities to bill other General Fund activities for indirect costs that are properly allocable to those activities, if the airport is billed. The policy is clear that comparable billing for services is required only for comparable users.

Enterprise funds need not be treated as comparable to units of a sponsoring government financed from the sponsor's general fund, and comparable billing between enterprise funds and other units of government is not required. While the FAA may presume that enterprise funds are comparable to each other, an airport sponsor is free to demonstrate that particular enterprise funds are sufficiently different in material ways—such as the way they consume sponsor services or their overall financial relationships with the sponsor—to justify different practices in charging for indirect costs. The Final Policy does not further define comparability because decisions on comparability will depend on the specific circumstances of a sponsor. The Final Policy also explicitly permits the allocation of general costs of government and central services costs to the airport, if the cost allocation plans meets the Final Policy's requirements. As specified in the Final Policy, however, the allocation of these costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the allocated costs.

In addition, the FAA continues to recognize that use of airport revenue to pay some expenses not normally considered to be allowable pursuant to OMB Circular A–87, such as fire and police services, is consistent with the revenue retention requirement. If such costs are allocated as an indirect cost in accordance with the Final Policy, they will be considered by the FAA as acceptable charges.

The Final Policy is modified to permit the allocation of certain categories of a sponsor's general cost of government as an indirect charge to the airport. Such charges include indirect expenses of the Office of Governor of a State, State legislatures, offices of mayors, county supervisors, city councils, etc. An airport owner's or operator's central service costs may also be allocated to the airport. The Final Policy specifies that allocation of these categories of costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the costs.

The FAA proposed to prohibit the allocation of all general costs to the airport on the grounds that the payment of such costs with airport revenue would be inconsistent with the purpose of the revenue use restriction—to avoid subsidy of general sponsor governmental activity. It is clear from the comments that airports routinely pay for a share of the general costs the legislative and executive branches of the governmental unit of which the airport is a part under cost allocation plans prepared in accordance with GAAP. Further, the comments demonstrate that the payment of legislative and executive branch costs by airport revenue can be justified as a cost of the airport because the legislative and executive branches have direct, tangible oversight and control responsibilities for the airport, and their activities provide direct benefits to the airport, such as in the areas of funding, capital development, and marketing.

In addition, under the Final Policy, the costs of shared-use facilities must be allocated to all users of the facility, even if the original purpose of constructing the facility was to provide exclusive use or benefit to the airport. While a sponsor-owned facility may have originally been established for the benefit of the airport, the FAA believes that the purpose of the facility can change from time to time based on local circumstances and that allocation of costs should be based on current purpose, as well as use. The FAA may consider a number of factors in determining current purpose, including current use, design and functionality.

b. Standard of Documentation for the Reimbursement of Cost of Services and Contributions to Government Entities

In its administration of airport agreements, the FAA is not normally concerned with the internal management or accounting procedures used by airport owners. As a matter of policy and procedure, the FAA has consistently required that reimbursement of capital and operating costs of an airport made by a government entity must be clearly supportable and documented.

Neither the Proposed Policy nor the Supplemental Notice explicitly discussed a standard of documentation that must be achieved for a sponsor to claim reimbursement for services and/or contributions it provided to the airport. However, events subsequent to the issuance of both documents indicate a need for FAA to provide specific guidance on the standard of documentation that will support the expenditure of airport revenues.

In the examination of a possible diversion of airport revenue by the City of Los Angeles at Los Angeles International, Ontario, Van Nuys and Palmdale Airports (FAA Docket No. 16–01–96), the FAA reviewed the underlying documentation which the City of Los Angeles offered to support the payment of approximately $31 million in airport revenue to the Los Angeles' general fund as the reimbursement of sponsor contributions and services provided to the airport. In the Director's Determination dated March 17, 1997, the FAA stated its standard of documentation to justify such reimbursements. Accordingly, the

FAA is including that standard in the Final Policy.

The Final Policy requires that reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, be supported by adequate documentary evidence. Adequate documentation consists of underlying accounting records and corroborating evidence, such as invoices, vouchers and cost allocation plans, to support all payments of airport revenues to other government entities. If this underlying accounting data is not available, the Final Policy allows reimbursement to a government entity based on audited financial statements, if such statements clearly identify the expenses as having been incurred for airport purposes consistent with the Final Policy statement. In addition, the Final Policy provides that budget estimates are not a sufficient basis for reimbursement of government entities. Budget estimates are just that—estimates of projected expenditures, not records of actual expenditures. Therefore, budget estimates cannot be relied on as documentary evidence to show that the funds claimed for reimbursement were actually expended for the benefit of the airport.

Indirect cost allocation plans, however, may use budget estimates to establish pre-determined indirect cost allocation rates. Such estimated rates must, however, be adjusted to actual expenses in the subsequent accounting period.

5. Prohibited Uses of Airport Revenue

a. Impact Fees/Contingency Fees

The Proposed Policy prohibited the payment of impact fees assessed by a nonsponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities. The Supplemental Notice did not modify this provision. The term ''impact fees'' was not defined in the Proposed Policy.

Airport operators: One Florida airport sponsor stated that impact fees should be allowable to either a sponsoring or non-sponsoring governmental body. Another commented that the language referring to a ''non-sponsoring'' governmental body was vague and confusing. Within the state of Florida, impact fees are typically administered by a non-sponsoring government body. It was stated that the wording did not seem to prohibit impact fee payments when assessed by a ''sponsoring'' agency, or impact fees that an airport sponsor is obligated to pay.

The Final Policy: For clarity, the Final Policy is modified to delete the reference to ''non-sponsoring'' governmental body and to delete the reference to fees the sponsor is not obligated to pay. In addition, the FAA is adding a statement that in appropriate circumstances, airport revenue may be used to reimburse a governmental body for expenditures that the imposing government will incur as a result of on-airport development, based on actual expenses incurred.

The effect of the deletions is to broaden the prohibition to all impact fees, within the meaning of the term used in the policy statement. As such, the deletions are consistent with the statutory prohibition on payment of airport revenues that do not reflect the value of services or facilities actually provided to the airport. Until a governmental unit undertakes the activity for which the impact fee is intended to compensate, it is impossible to know with certainty whether the impact fee is an accurate reflection of the cost of the activity attributable to the airport or its value to the airport, or even that the activity will occur. This situation is true regardless of both the status of the governmental unit as airport sponsor and the status of the fee as discretionary. The FAA understands that many local laws or regulations authorizing impact fees do not require the fees to be spent to mitigate or accommodate the results of the airport action that triggers the fee. The FAA has no basis for assuring the payment of impact fees would be consistent with the purpose of section 47107(b)—to prevent an airport sponsor who received Federal assistance from using airport revenues for expenditures unrelated to the airports.

The broader prohibition is consistent with applicable FAA policies. Longstanding FAA policy has permitted a sponsor to claim reimbursement from airport revenue only for ''clearly supportable and documented charges, * * * supported by documented evidence.'' FAA Order 5190.6A, par. 4–20.a(2)(c)(ii). An impact fee assessed before the imposing government incurred any expenses to accommodate airport growth would not meet this standard.

In addition, a standard of documentation required by the Final Policy applies to all expenditures of airport revenues subject to section 47107(b), including impact fee payments. That standard requires that expenditures of airport revenues be supported by data on the actual costs incurred for the benefit of the airport, not by budget or other estimates, which impact fees essentially are. The Final Policy will allow submission of those assessed fees resulting from the proposed development when the amount of the fees become fully quantifiable, as provided for in Section IV of the Final Policy, following implementation by the imposing government of the mitigation measures for which the impact fee is assessed. At that time, the FAA can best determine whether the fees assessed against airport revenue satisfy the requirements of section 47107(b) and this policy. In unusual circumstances, the FAA may permit a prepayment of estimated impact fees at the commencement of a mitigation project, if the funds are necessary to permit the mitigation project to go forward, so long as there is a reconciliation process that assures the airport is reimbursed for any overpayments, based on actual project costs, plus interest.

However, the Final Policy does take into account the potential that an airport operator may be required by state or local law to finance the costs of mitigating the impact of certain airport development projects undertaken by the airport sponsor. Therefore, where airport development causes a government agency to take an action, such as constructing a new highway interchange in the vicinity of the airport, airport revenues may be used equal to the prorated share of the cost. In all cases, the action must be shown to be necessitated by the airport development. In the case of infrastructure projects, such impact mitigation must also be located in the vicinity of the airport. This proximity requirement is not being applied to all mitigation measures because some mitigation measures—especially certain environmental mitigation measures—may not occur in the vicinity of the airport.

The Final Policy also acknowledges the possibility that an airport operator may be bound by local or state law to use airport revenue to pay an impact fee that is prohibited by this policy. The Final Policy states that the FAA will consider any such local circumstances in determining appropriate corrective action.

b. Subsidy of Air Carriers

As discussed in Section V ''Permitted Uses,'' the Supplemental Notice acknowledged the fact that Congress, in the 1994 FAA Authorization Act, effectively authorized the use of airport revenue for promotion of the airport by expressly prohibiting ''use of airport revenues for general economic development, marketing, and

promotional activities unrelated to airports or airport systems.'' At the same time, that statutory provision also limited the scope of acceptable promotional activity.

In the Supplemental Notice, the FAA proposed new policy language that more clearly addressed the kinds of promotional and marketing activities that are and are not legitimate operating costs of the airport under 47107(b). In the Supplemental Notice, Section VIII(I), the FAA proposed that ''[d]irect subsidy of air carrier operations'' is a prohibited use of airport revenue because it is not considered a cost of operating the airport. The FAA drew a distinction between methods of encouraging new service. Supplemental Notice proposed to allow the use of airport revenue to encourage passengers to use the airport through promotional activities, including cooperative promotional activities with airlines and to allow airport operators to enhance the viability of new service through fee incentives, on the one hand. As noted, the FAA proposed to prohibit the use of airport revenue to simply buy increased use of the airport by paying an air carrier to operate aircraft, on the other. The FAA considered the former activities to be a permitted expenditure for the promotion and marketing of the airport and the latter to be a prohibited expenditure for general economic development. The FAA explained in the preamble to the Supplemental Notice that neither promotional activities nor promotional fee discounts would be considered a prohibited direct subsidy of airline operations. 61 FR at 66738.

Airport operators: In their comments on the Supplemental Notice, ACI–NA/AAAE state that, generally, an expenditure or activity should not be considered revenue diversion if there is a reasonable expectation that such an expenditure or activity will benefit the airport. Furthermore, they note that the law does not single out direct air carrier subsidy or fee waivers for more stringent scrutiny than other marketing activities. This argument in favor of the reasonable business judgement of the airport management should be applied to the use of airport revenue for promotion and marketing not unrelated to the airport, including direct air carrier subsidies and fee waivers. ACI/AAAE stated ''both forms of financial assistance should be permitted, if an airport has a reasonable expectation that the subsidy will benefit the airport and the subsidy or discount is made available on a non-discriminatory basis.''

ACI/AAAE further stated that there is no real distinction between direct subsidy and fee waivers, as well as none between direct subsidy and the residual airport costing methodologies, making the distinction in the policy illogical. They predicted that the proposed policy is likely to promote detrimental effects, including eliminating air service to some small airports, increasing congestion at dominant hubs at the expense of medium-sized airports, reducing potential competition and raising fares.

Several individual airport operators concurred with the ACI–NA/AAAE position. One operator commented that any subsidies should be permitted, as long as the airport remains self-sustaining and the subsidies are not included in airline costs in calculating landing fees, terminal rents and other user charges.

Another airport operator, the LNAA, which is engaged as a party in a 14 CFR Part 13 investigation regarding its former air carrier subsidy program, commented that there is no real difference between an airport making a direct subsidy to an air carrier or waiving fees.

Two airport operators expressed different views. One operator agreed that airport revenues should not be used to subsidize new air carrier service because the practice of subsidization could lead to destructive competition for air service among airports. Another airport operator stated that it ''does not currently engage in nor does it contemplate any form of direct subsidy to air carriers in exchange for air service.'' This operator considers the Supplemental Notice to provide adequate flexibility to airport operators to foster and promote air service development.

Air carriers: The ATA strongly opposed the assertion that direct subsidies of airline operations with airport revenue may be considered to be operating costs of the airport and would extend the prohibition to indirect subsidies. They argued that the distinction in the proposed policy that allows fee waivers under certain circumstances, but prohibits direct subsidy is illogical. Both result in revenue diversion, whether the beneficiary is ''a start up carrier, a new entrant in a market, or an existing carrier at an airport.'' The ATA further commented, in connection with joint marketing endeavors, that the permissible ''promotional period'' should be defined, as should the scope of permissible marketing activities.

The Final Policy: The FAA has clarified the policy provision on the direct subsidy of air carriers with airport revenue; however, the prohibition remains, as does the distinction between direct subsidy and the waiving of fees and the joint promotion of new service. The FAA has applied the test of section 47107(b) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport.

In pursuit of uniformity, the FAA has integrated references to the section on the permitted uses of airport revenue, as well as to the section on self-sustainability, to assist airport operators in pursuing reasonable strategies to promote the airport and provide incentives to encourage new air service. Among other things, marketing of air service to the airport, and expenditures to promote the airport to potential air service providers can be treated as operating costs of the airport. Of course, support for marketing of air service to the airport must be provided consistently with grant assurances prohibiting unjust discrimination.

The setting of fees is a recognized management task, based on a number of considerations, including the airport management's assessment of the services needed by airport consumers, and the airport management's assessment of the financial arrangements necessary to secure that service. The FAA has consistently maintained that fee waivers or discounts involving no expenditure of airport funds raise issues of compliance with the self-sustaining rate structure requirement, not the revenue-use requirement. The Final Policy therefore, permits fee waivers and discounts during a promotional period. The waiver or discount must be offered to all users that are willing to provide the type and level of new service that qualifies for the promotional period. The Policy limits the fee waiver or discount to promotional periods because of the requirement that the airport maintain a self-sustaining airport rate structure. In addition, indefinite fee waivers or discounts could raise questions of compliance with grant assurances prohibiting unjust discrimination. The Final Policy does not define a permitted promotional period. There is too much variation in the circumstances of individual airports throughout the country to permit adoption of a single national definition of a suitable promotional period.

In contrast, the direct payment of subsidies to airline involves the expenditure of airport funds and hence raises questions under the revenue-use requirements. The FAA continues to believe that the costs of operating aircraft, or payments to air carriers to

operate certain flights, are not reasonably considered an operating cost of an airport. In addition, payment of subsidy for air service can be viewed as general regional economic development and promotion, rather than airport promotion. Use of airport revenue for these purposes is expressly prohibited under the terms of the 1994 FAA Authorization Act. The Final Policy does not preclude a sponsor from using funds other than airport revenue to pay airline subsidies for new service, and it does not preclude other community organizations— such as chambers of commerce or regional economic development agencies—from funding a program to support new air service. Therefore, the Final Policy maintains the distinction between direct subsidy of air carriers and the waiving of fees, and prohibits the former.

6. Policies Regarding the Requirement for a Self-Sustaining Rate Structure

As noted in the summary, the Final Policy contains a separate section on the requirement that an airport maintain a rate structure that makes the airport as self-sustaining as possible under the circumstances at the airport, to provide more comprehensive guidance in a single document. The 1994 FAA Authorization Act directed the FAA to adopt policies and procedures to assure compliance with both the revenue uses and self-sustaining airport rate structure requirement. The general guidance repeats the guidance appearing in the Department of Transportation Policy Statement Regarding Airport Rates and Charges, 61 FR 31994 (June 21, 1996). The Final Policy interprets the basic requirement and addresses exceptions to the basic rule for leases of airport property at nominal or less-than fair market value (FMV) to specific categories of users.

Each federally assisted airport owner/operator is required by statute and grant assurance to have an airport fee and rental structure that will make the airport as self-sustaining as possible under the particular airport circumstances, in order to minimize the airport's reliance on Federal funds and local tax revenues. The FAA has generally interpreted the self-sustaining assurance to require airport sponsors to charge FMV commercial rates for nonaeronautical uses of airport property. However, in the case of aeronautical uses, user charges are also subject to the standard of reasonableness. In applying the two standards together for aeronautical property, the FAA has considered it acceptable for an airport operator to charge fees to aeronautical users that are less than FMV, but more than nominal charges. The FAA defines ''aeronautical use'' as any 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 operations. Policy Statement Regarding Airport Fees, Statement of Applicability, 61 FR at 32017.

Many entities lease airport property for aeronautical and nonaeronautical uses at nominal lease rates. The FAA has determined that nominal leases to many of these entities is consistent with the requirement to maintain a self-sustaining airport rate structure. The Final Policy provides specific guidance regarding nominal leases for six categories of users. This guidance is discussed below.

a. Use of Property at Less Than FMV for Community/Charitable/Recreational Use

Airport operators: The ACI–NA/AAAE agree with the general conclusion that use of airport property for community and charitable purposes at less than FMV should be permissible. However, they argued that the criteria listed in the Supplemental Notice are too narrow. Other criteria should be considered, and an airport should be required to provide no more than one justification. The ACI–NA/AAAE specifically mentioned aeronautical higher education institutions and not-for-profit air and space museums as additional permitted uses, based on H.R. Rep. 104–714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 USCC.A.N. 3676.

Individual airport operators also requested more flexibility in various forms. One operator suggested that the Supplemental Notice establishes an unnecessary two-part test which many community uses of airport property will fail to satisfy. Another operator argued that such airport property use should not be limited to temporary arrangements, e.g., parks and baseball fields, which indicates that only uses that allow property to be returned rather quickly to the airport inventory would be permitted.

In contrast, another airport operator suggested that, in order to place less burden on the airport operator, such uses should be limited in scope and that the below-market value amount that an airport operator could charge for such usage should be established as some percentage of the appraised value of the property.

Air carriers: The ATA agrees in principle with the concept of limited use of airport property for certain specified community purposes at less than FMV. However, ATA stated that the Supplemental Notice lacks specificity and that its application would consequently be inconsistent with the self-sustaining and revenue-use requirements. The ATA proposed to narrow the first element of the standard to permit contribution of property if the property is put to a general public use desired by the local community and the use does not adversely affect the capacity, safety or operations of the airport. The ATA would narrow the second test by permitting the use of property that is expected to generate no more than minimal revenue, which the ATA would define as minimal revenue equal to or less than 20 percent of revenue that could be earned by similar airport property in commercial or air carrier use. When the property could be expected to earn more than this defined minimal amount, the ATA would permit less than FMV rental if the revenue earned by the community use approximates the revenue that would otherwise be generated.

The ATA would also require that the community use be subject to periodic review and renewed justification and that the airport proprietor retain absolute discretion to reclaim the property for airport use.

Other commenters: A member of the United States House of Representatives expressed concern that the policy, if adopted as proposed, does not provide sufficient flexibility to airport operators to be good neighbors within their community. This commenter suggested that in rural areas, requiring community organizations to pay FMV could reduce airport revenue as paying community organizations are forced off of the airport by higher rents and no new tenants are found.

Final Policy: The Final Policy generally permits below-FMV-rental of airport property for community uses, but generally limits the uses to property that is not potentially capable of producing substantial income and not needed for aeronautical use. Consistent with the suggestions of the ATA, the permitted community uses of such property will be limited to those that are compatible with the safe and efficient operation of the airport and which are for general local use. In addition, the community use should not preclude reuse of the property for airport purposes, if the airport operator determines that such reuse will provide greater benefits to the airport than the continued community use. Leases to private, non-profit organizations generally will be required to be at market rates unless the sponsor can demonstrate a ''community goodwill''

purpose to the lease, or can demonstrate a benefit to aviation and the airport, as discussed below.

While the Final Policy states that property provided for community use at no charge should be expected to produce no more than minimal revenue, we are not adopting a definition of minimal. For property that is capable of generating more than minimal revenue, a sponsor could charge less than FMV rental rates for community use, if the revenue earned from the community use approximates that revenue that could otherwise be generated. Providing such property for community use at no charge would not be appropriate.

The FAA has determined that this approach to community use strikes an appropriate balance between the needs of the airport to be a good neighbor and the Federal requirements on the use of airport revenue and property. This formulation provides substantial flexibility to airport operators. At the same time, the self-sustaining requirement and the policy goal of the revenue-use requirement justify some limitation on local discretion in this area.

The requirement that community use not preclude reversion to airport use is based on both the self-sustaining requirement and the airport sponsor's basic AIP obligation to operate a grant-obligated airport as an airport.

Under the Final Policy, the lease of airport property to a unit of the sponsoring government for nonaeronautical use at less than fair market value is considered a prohibited revenue diversion unless one of the specific exceptions permitting below-market rental rates applies. If a sponsor's use of airport property qualifies as community use, and the other requirements for community-use leases are satisfied, the FAA would not object to a lease at less than fair market value. Qualified uses could include park or recreational uses or other public service functions. However, such use would be subject to special scrutiny to ensure that the requirements for below-FMV community use is satisfied. The community use provision of the Final Policy does not apply to airport property used by a department or subsidiary agency of the sponsoring government seeking an alternative site for the sponsor's general governmental purposes at less-than-commercial value. For example, a city cannot claim the community use exception for a nominal value lease of airport property for a municipal vehicle maintenance garage. Such usage, while beneficial to the taxpaying citizens of the sponsoring government, would be difficult to justify as benefiting the airport by improving the airport's acceptance in the community.

b. Not for Profit Aviation Museums

The DOT OIG has cited instances in which an aviation museum at a federally assisted airport is leasing airport property at less than a fair market rental rate. In clarifying the revenue diversion prohibitions recommended for inclusion in the FAA Authorization Act of 1996, the House Transportation and Infrastructure Committee urged the FAA to take a flexible approach to the lease of airport property at below-market rates to not-for-profit air and space museums located on airport property. H.R. Rep. No. 104–714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 U.S.C.C.A.N. 3676 (House Report). The Committee recommended that this type of rental arrangement should not be considered revenue diversion because of the contribution that such museums make to the understanding and support of aviation.

One airport operator commented that long-term, less-than-market value rental arrangements, particularly for leaseholds encompassing permanent facilities, should be permitted when such arrangements serve a clear and valuable aviation-related purpose. This comment could include aviation museums.

One operator of a not-for-profit aviation museum urged the FAA to permit nominal rate leases. This operator stated that a FMV-based lease for its museum property would double its current operating budget.

The Final Policy: The Final Policy permits airport operators to charge reduced rental rates and fees, including nominal rates, to not-for-profit aviation museums, to the extent that the reduction is reasonably justified by the tangible and intangible benefits to the airport or civil aviation. This provision recognizes the potential for aviation museums to provide benefits to the airport by stimulating understanding and support of aviation, consistent with the suggestion contained in the House Report, U.S.C.C.A.N. 3676. Benefits to the airport may include any in-kind services provided to the airport and airport users by the aviation museum. The limitation to not-for profit museums is consistent with the requirement for a self-sustaining airport rate structure, because there is no reason to give for-profit aviation museums preferential treatment over other commercial aeronautical activities. All for-profit aeronautical activities provide some benefit to the airport, by making it more attractive for potential airport users. If this benefit were a sufficient reason to permit reduced rental rates to commercial aviation businesses on a routine basis, the requirement for a self-sustaining airport rate structure would be virtually unenforceable.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified aviation museum as it would any other aeronautical activity in setting rental rates and other fees to be paid by the museum.

c. Aeronautical Higher Education Programs

The DOT OIG has cited instances in which aeronautical secondary and post-secondary education programs at federally assisted airports are leasing airport property at less than a fair market rental rate.

In the House Report, 1996 U.S.C.C.A.N. 3676, the House Transportation and Infrastructure Committee also urged the FAA to take a flexible approach to aeronautical higher education programs located on airports. The Committee recognized that some federally obligated airports have leased property to non-profit, accredited collegiate aviation programs, and that facilitating these programs will help build a base of support for airport operations by giving students, who will be the future users of the national airspace system, easy access to aviation facilities.

The Final Policy: The Final Policy permits reduced rental rates, including nominal rates, to not-for-profit aeronautical secondary and post-secondary education programs conducted by accredited educational institutions, to the extent that the reduction is justified by tangible or intangible benefits to the airport or to civil aviation. This treatment is justified for the same reason that reduced rental rates and fees to certain aviation museums are permitted. Again, the benefits may include in-kind services provided to the airport and airport users. As with aviation museums, the educational institution and education program must be not-for-profit. For-profit aviation education, such as flight-training, is a standard commercial aeronautical activity at many airports. Permitting reduced rental rates and fees to for-profit aviation education programs would seriously undermine compliance with the self-sustaining requirement and could raise questions of compliance with the grant assurances prohibiting unjust discrimination.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified not-for-profit aeronautical education program as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

d. Civil Air Patrol Leases

Reduced-rental leases, including nominal leases, to the Civil Air Patrol/United States Air Force Auxiliary (CAP) at a number of airports have also been criticized in OIG audits. As a result of this criticism, some airport operators have been seeking higher rents from the CAP when leases have come up for renewal.

In its comments, the CAP contends that the current standard airport industry practice of permitting CAP use of airport property for a nominal rent confers substantial benefits to the airport and, in general, to the aviation community. The CAP, therefore, requests that a policy be adopted which would formally permit CAP units to continue to occupy facilities on federally obligated airports at a nominal rent, whether under formal lease arrangements, or otherwise, at the discretion of the airport owner/operator.

The Final Policy: The Final Policy permits reduced rental rates and fees to CAP units operating at the airport, in recognition of the benefits to the airport and benefits to aviation similar to those provided by not-for-profit aviation museums and aeronautical secondary education programs. As with other not-for profit-aviation entities, the reduction must be reasonably justified by benefits to the airport or to civil aviation. In-kind services to the airport and airport users may be considered in determining the benefits that the CAP unit provides. In addition, this treatment of the CAP, which has been conferred with the status of an auxiliary to the United States Air Force, is not identical to the treatment provided to military units in the Final Policy, as discussed below, but is consistent with that treatment.

The reduced rental rates and fees are available only to those CAP units operating aircraft at the airport. For CAP units without aircraft, a presence at the airport is not critical. The airport operator can accommodate those CAP units with property that is not subject to Federal requirements on maintaining a self-sustaining rate structure, without compromising the effectiveness of the CAP units. Of course, if such units provide in-kind services that benefit the airport, the value of those services may be recognized as an offset to FMV rates.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified not-for-profit aeronautical CAP lease as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

e. Police/Firefighting Units Operating Aircraft at the Airport

Many airports host police or fire-fighting units operating aircraft (often helicopters). The OIG has frequently criticized reduced rate or no-cost leases to these units of government as inconsistent with the self-sustaining and revenue-use requirements.

The Final Policy requires the airport operator to charge reasonable rental rates and fees to these units of government. In effect, these units of government must be treated the same as other aeronautical tenants of the airport. This treatment is consistent with the policy's general approach toward dealings between units of government—fees should be set at the level that would be produced by arm's-length bargaining. The treatment is also justified because police and fire-fighting aircraft units provide benefits to the community as a whole, and not necessarily to the airport. However, as with other police and fire-fighting units located at an airport, the policy does allow rental payments to be offset to reflect the value of services actually provided to the airport by the police and fire-fighting aircraft units.

f. Use of Property by Military Units

The US Air Force Reserve and the Air National Guard both have numerous flying units located on federally obligated, public-use airports. The majority of these aircraft-operating units are located on leased property at civilian airports established on former military airport land transferred by the US Government to the airport owner/operator under the Surplus Property Act of 1944, as amended, or under other statutes authorizing the conveyance of surplus Federal property for use as a public airport. Frequently, the favorable lease terms were contemplated in connection with the transfer of the former military property and may have been incorporated in property conveyance documents as obligations of the civilian airport sponsor. As with other reduced-rate leases, these arrangements have been criticized in individual OIG audits.

The Final Policy: The Final Policy provides that leasing of airport property at nominal lease rates to military units with aeronautical missions is not inconsistent with the requirement for a self-sustaining rate structure. The Department of Defense (DOD) has a substantial investment in facilities and infrastructure at these locations, and its operating budgets are based on the existence of these leases. Moving those facilities upon expiration of a lease or the payment of FMV rent for facilities to support military aeronautical activities required for national defense and public safety would be beyond the capability of the DOD without additional legislation and enlargement of the DOD operating budget. In all of the enactments on the self-sustaining rate structure requirement and use of airport revenue and the accompanying legislative history, the FAA can find no indication that Congress intended the airport revenue requirements to be applied in a way to disrupt the United States' defense capabilities or add significantly to the cost of maintaining those capabilities. Moreover, Congress specifically charged the FAA, in 49 U.S.C. § 47103, with developing a national plan of integrated airport systems (NPIAS) to meet, among other things, the country's national defense needs. Inclusion in the NPIAS is a prerequisite for eligibility for AIP funding. Thus, Congress clearly contemplated a military presence at civil airports. Therefore, the FAA will not construe the requirement for a self-sustaining airport rate structure to prohibit nominal leases to military units operating aircraft at an airport.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified military unit as it would any other aeronautical activity in setting rental rates and other fees to be paid by the military unit.

7. Lease of Airport Property at Less Than FMV for Mass Transit Access to Airports

The Supplemental Notice proposed that airport property could be made available at less than fair rental value for public transit terminals, rights-of-way, and related facilities, without being considered in violation of the requirements governing airport finances, under certain conditions. The transit system would have to be publicly owned and operated (or privately operated by contract on behalf of the public owner) and the transit facilities directly related to the transportation of air passengers and airport visitors and employees to and from the airport. Twenty-one responses addressed this issue.

Airport commenters: The airport operators concur with the principle of making airport land available for mass

transit at rates below fair market value. ACI–NA/AAAE stated that the determination to use airport property for a transit terminal, transit right-of-way, or related facilities at less than fair rental value is consistent with the grant assurance requiring airports to be self-sustaining.

Air carriers: The ATA asserted that FAA has exceeded its statutory authority in the proposal. ATA's considers transit facilities to be like commercial business enterprises, because they occupy airport property and charge their customers for their services. ATA also stressed that airport transit facilities are non-aeronautical facilities which are not ''directly and substantially related to the air transportation of passengers or property.''

Other commenters: Transit operators, including a transit operator trade association generally supported the position in the Supplemental Notice.

Another commenter stated that making airport property available at less than fair market rental value or making airport revenue available for transit facilities equates to the airport paying a hidden taxation. This commenter argued that it was not the intention of Congress, when it passed the AAIA, to have grant funds used to subsidize, either directly or indirectly, any activity that provides no benefit to air travel.

The Final Policy: The Final Policy incorporates the provision proposed in the Supplemental Notice, with a technical correction to include transit facilities use for the transportation of property to or from the airport. The FAA does not consider public transit terminals to be the equivalent of commercial business enterprises. Rather, they are more like public and airport roadways providing ground access to the airport. Generally speaking, the FAA does not construe the self-sustaining assurance to require an airport owner or operator to charge for roadways and roadway rights-of-way at FMV.

Moreover, even though publicly-owned transit systems charge passengers for their services, they generally operate at a loss and are subsidized by general taxpayer revenue. Charging fair market value for on airport facilities would thus burden general taxpayers with the costs of providing facilities used exclusively by transit passengers visiting the airport. Therefore, a requirement to charge FMV would not further the purpose of the self-sustaining assurance—to avoid burdening local taxpayers with the cost of operating the airport system.

a. Private Transit

ACI–NA/AAAE and four airport operators commented that private transit operators should have treatment equal to public transit operators. They argued that the concepts of public-private partnerships, and privatization of transportation facilities, may be realities in the not-too-distant future. Moreover, private ownership would not detract in the least from the functions identified in the Notice for these facilities, such as bringing passengers to and from the airport. They also noted that the language in the AIP Handbook (Order 5100.38A, Section 6) does not specifically exclude private operators. The language states transit facilities will be allowable provided they will primarily serve the airport.

One state Department of Transportation also urged that reduced rental rates should be offered to privately-owned and operated transit systems on the same basis as publicly-owned systems.

Final Policy. The Final Policy retains some distinctions between privately and publicly owned systems. In general, privately-owned systems are more analogous to other ground transportation providers—private taxis and limousine services, rental car companies—and even private parking lot operators. These entities are commercial enterprises that operate for profit and are a significant source of revenue for the airport. Most importantly, they are not supported by general taxpayer funds, and charging FMV would not raise questions of burdening local taxpayers with the cost of the airport.

However, the FAA is aware that, in many communities with no publicly-owned bus systems or very limited systems, privately-owned bus systems fulfill the role of providing public transit services to the airport. Accordingly, the FAA is revising the Final Policy to permit an airport operator to provide airport property at less than FMV rates to privately-owned systems in these limited circumstances.

b. Airport Passengers

Nine airport commenters addressed the proposed requirement that transit facilities be directly related to the transportation of air passengers and airport visitors and employees to and from the airport to qualify for less-than-FMV rentals. The commenters argue that the provision is too narrow by restricting the transit service to air-passengers and airport visitors and employees. One airport operator states that airport sponsors must have the flexibility to build airport transit systems that principally serve airport passengers, employees and other users but which may also secondarily transport some nonairport users. Two airport operators with general-use rail transit systems planned or operating on or near their airports argue that the airport benefits from improved ground access, reduced traffic congestion and improved air quality of general use systems and that rent-free property should, therefore, be provided to general use systems.

Final Policy: The Final Policy incorporates the language of the Supplemental Notice. That language does not preclude any use of transit facilities constructed on airport property by nonairport passengers if the property is to be leased at less-than-FMV. The requirement that the facilities be ''directly related'' to the airport does not equate to a requirement that the facilities be ''exclusively used'' for airport purposes. However, if the intended use of a facility is not exclusive airport use, some rental charge may be necessary to reflect the benefits provided to the general public. The determination on whether the facilities are ''directly related'' will be made on a case-by-case basis.

It appears that some of the concern about this issue was generated by the language in the preamble, which referred to transit facilities ''necessary for the transportation of air passengers, airport visitors and airport employees to and from the airport.'' The preamble offered a maintenance/repair facility as an example of facilities that would not qualify. The FAA is not convinced that the benefits to the airport of having such facilities on the airport is sufficient to justify less-than-FMV rental rates. However, as noted, the FAA does not construe the policy language ''facilities directly related the transportation of [airport passengers]'' to require that the facilities be used exclusively by airport passengers.

8. Military Base Conversions Issues

In its comments to the Proposed Policy, one airport operator argued that using airport revenue to assist in development of revenue-generating properties on former military bases that are converted to civil airports should not be considered a prohibited use of revenue.

In addition, ACI–NA/AAAE state that a base closure and conversion to civilian use often results in the existence of significant recreational facilities on property owned by an airport. In regard to these facilities on converted military bases, ACI/AAAE stated, ''[a] leasing

arrangement whereby a municipality assumes all liability and operating expenses in exchange for a no-revenue lease is beneficial to the airport and should not be prohibited.''

Final Policy: The Final Policy provides for no special treatment of converted military bases with respect to airport revenue use, and no special provisions are included in the final policy.

The FAA policy on the use of public and recreational use of property will be consistently applied to airports whether or not they are former military bases. Ordinarily, airport revenue may not be used to finance the costs of public and recreational facilities at the airport, just as airport revenue may not be used to develop other facilities not needed for the airport, even if those facilities will generate revenue for the airport. In addition, unless the recreational facilities qualify under the community-use exception, the airport operator would be expected to receive FMV-based rental payments for the recreational or public property. Operational costs borne by a municipality as a result of a base conversion can be considered in the analysis of whether a reduced rent is justified by tangible or intangible benefits to the airport.

9. Enforcement Policy, Whether to Impose Civil Penalty Even if Funds are Returned

The Proposed Policy provided that if the FAA received information that improper use of airport revenue had occurred, the FAA would investigate the matter and attempt to resolve the issue informally. The matter could be resolved if the sponsor persuaded the FAA that the use of airport revenue was not improper, or if the sponsor took corrective action (which usually would involve crediting the diverted amount to the airport account with interest). The proposed policy provided that the FAA would propose enforcement action only if the FAA made a preliminary finding of noncompliance and the sponsor had failed to take corrective action. The Proposed Policy outlined the enforcement actions available to the FAA as of the date of publication. The actions included: (1) withholding of new AIP grants and payments under existing grants (49 USC §§ 47111(e) and (d), respectively); (2) withholding of new authority to impose PFCs (49 USC 47111(e)); (3) withholding of all Federal transportation funds appropriated in Fiscal Years 1994 and 1995 (as provided in the Department of Transportation appropriation legislation for those years); (4) assessment of civil penalties not to exceed $50,000 (49 USC § 46301); and (5) initiation of a civil action to compel compliance with the grant assurances (49 USC § 47111(f)).

The Proposed Policy outlined the administrative procedural rules applicable to airport compliance matters at the time of publication, 14 C.F.R., Part 13 ''Investigation and Enforcement Procedures.''

Airport operators: ACI–NA and AAAE strongly urged the FAA to provide in the final policy that remittance of any diverted amounts, together with associated interest, should be sufficient to ''cure'' instances of revenue diversion, regardless of how those instances come to the attention of the FAA. In particular, a non-airport party should not be given the capacity, through the filing of a formal compliant, to eliminate an airport's ability to cure the problem.

Air carriers: ATA suggested that the proposed policy should be strengthened, backed up by a stronger enforcement policy and aggressive monitoring and vigorous enforcement action. ATA additionally argued that FAA should promulgate one rule that sets forth in detail the substantive requirements regarding revenue retention and diversion and a separate compliance and enforcement policy document.

ATA objected that the proposed policy continues to provide a passive monitoring procedure and this approach is not sufficient to provide prompt and efficient enforcement. IATA objected that the Proposed Policy does not promote prompt or effective enforcement.

ATA suggested that the FAA establish a formal compliance monitoring and inspection program that includes compliance monitoring and audits/inspections similar to those it conducts at certificated airlines, such as for drug and alcohol testing. Further, ATA stated that FAA's enforcement policy should result in civil penalties being assessed with the same vigor with which they are assessed against airlines for alleged regulatory violations. In addition, ATA urged that FAA should maintain the threat of assessing civil penalties for each day an airport or sponsor is in violation of the revenue-use requirement and for each day a sponsor fails to repay amounts determined to have been diverted unlawfully. IATA similarly supported assessment of the maximum civil penalty for each instance of unlawful revenue use.

The Final Policy: After publication of the Proposed Policy, the FAA Reauthorization Act of 1996 mandated new remedies for improper use of airport revenues and new compliance monitoring programs. The Final Policy has been modified to reflect the new requirements. Implementation of the requirements will result in more active and systematic monitoring of airport revenue use and more systematic resolution of questionable airport practices, as requested by the ATA and the IATA. It should be noted that the FAA had already assumed a more active role in monitoring through the implementation of the financial reporting requirements of the 1994 FAA Authorization Act.

In accordance with the requirements of the 1996 FAA Reauthorization Act, the Final Policy reflects the clear congressional intent that the FAA focus compliance efforts on the lawful use of airport revenue. The FAA will use all means at its disposal to monitor and enforce the revenue-use requirements and will take appropriate action when a potential violation is brought to the FAA's attention by any means. To detect whether airport revenue has been diverted from an airport, the FAA will use four primary sources of information: (1) the annual airport financial reports submitted by the sponsor; (2) findings from a single audit conducted in accordance with OMB Circular A–133 (including the audit review and opinion required by the 1996 Reauthorization Act); (3) investigation following a third-party complaint, and, (4) DOT Office of Inspector General audits.

The FAA will seek penalties for the diversion of airport funds if the airport sponsor is not willing to correct the diversion and make restitution, with interest, in a timely manner. This approach is consistent with the FAA's objective of achieving compliance with a sponsor's obligations. Moreover, it is consistent with section 805 of the 1996 Reauthorization Act, which provides for imposition of administrative and civil penalties only after a sponsor has been given an opportunity to take corrective action and failed to do so.

10. Form of Policy

As is reflected in the Proposed Policy and Supplemental Notice, the FAA proposed to implement section 112 of the 1994 Act by publishing a policy statement, rather than adopting a regulation.

The Comments: The ATA argued that the FAA should promulgate a regulation establishing substantive requirements for use of airport revenue and a separate enforcement policy. The ATA argued that a substantive regulation will provide more clarity on prohibited and permitted practices and be less

susceptible to conflicts over interpretation.

The AOPA also raised concerns over the prompt and effective enforcement of airport revenue diversion within the terms of this Proposed Policy.

The Final Policy: The FAA will publish policy guidance on airport revenue use and enforcement as a policy rather than as a regulation. Section 112 of the 1994 FAA Authorization Act directs the Secretary to ''establish policies and procedures'' to assure ''prompt and effective enforcement'' of the revenue retention grant assurances, which clearly contemplates the issuance of a policy statement for this purpose.

As discussed in connection with specific issues, the wide variation in airport situations makes it impractical for the FAA to promulgate standards with the specificity and inflexibility urged by ATA. Moreover, a regulation is not required to obtain compliance with the revenue-use requirement. Airports are obligated by the statutory assurance in AIP grant agreements pursuant to § 47107(b)(2), or directly under § 47133, and rulemaking is not required to implement those statutes.

On the issue raised by ATA and AOPA concerning the prompt and effective enforcement mechanism to address specific revenue diversion issues, the FAA had been using 14 CFR Part 13. However, on December 16, 1996, 14 CFR Part 16, Rules of Practice for Federally Assisted Airport Proceedings, took effect. Part 16 established new investigation and enforcement procedures for airport compliance matters, including compliance with the revenue-use requirement. Part 16 includes time deadlines and processes to assure that FAA promptly and effectively investigates and adjudicates specific airport compliance matters involving Federally Assisted Airports. The FAA considers the procedural requirements of the Reauthorization Act of 1996 to be self-executing and will apply the statutory provisions in the case of any conflict with Part 16. However, the FAA is in the process of revising Part 16 to incorporate those new procedural requirements.

Paperwork Reduction Act Requirements

The Office of Management and Budget (OMB) has previously approved, pursuant to the Paperwork Reduction Act, the annual airport financial reports described in Section VIII.A of the Final Policy under OMB Number 2120–0569.

Policy Statement

For the reasons discussed above, the Federal Aviation Administration adopts the following statement of policy concerning the use of airport revenue:

Policies and Procedures Concerning the Use of Airport Revenue

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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, Pub.L. No. 103–305, 108 Stat. 1569 (August 23, 1994), 49 USC 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 revenues, 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 USC §§ 47107(b) and 47133, is to provide that an airport owner or operator receiving Federal financial assistance will use airport revenues only for purposes related to the airport. The Policy Statement implements requirements adopted by Congress in the FAA Reauthorization Acts of 1994 and 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 USC § 47133, which took effect on October 1, 1996, applies the airport revenue-use requirements of § 47107(b) to any airport that has received ''Federal assistance.'' The FAA considers the term ''Federal assistance'' in § 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 USC § 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 Improvement Act of 1970, or under Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA).

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 rental value of the airport property. The fair rental value 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 § 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 Authorization 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, this policy statement applies to a privatization of airport property and/or operations.

3. For airport privatization transactions not subject to an exemption under the 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 Authorization 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 non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

2. Section 47107(l)(5), enacted as part of the FAA Authorization Act of 1996, provides that:

(A) 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

(B) Any amount of airport funds that are used to make a payment or

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 utilized 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 Superbowl 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

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 pre-determined 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 non-airport 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

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 non-sponsoring 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 rental/market value, except to the extent permitted by SectionVII.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 non-sponsoring 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 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

to charge fair market 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 rental value 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, and provide services that directly benefit airport operations and safety, such as snow removal and supplementary ARFF capability.

G. Use of Property for Transit Projects

Making airport property available at less than fair market rental 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 rental 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 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 1994 Authorization Act, 49 U.S.C. § 47107(a)(19), requires airport owners or operators to submit to the Secretary

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 1994 Authorization Act requires a report, for each fiscal year, in an 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 Airport Compliance Division, AAS–400.

B. Single Audit Review and Opinion

1. General requirement and applicability. The Federal Aviation 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. § 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, § 520 or an airport improvement program grant identified by FAA as a major program in accordance with OMB A–133 § 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 USC § 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 (AAS–400), 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 program (the Single Audit Act governs only states, local governments and non-profit 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. §§ 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 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 § 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 § 16.109 proposing enforcement action. 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)

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 USC § 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 1994 Authorization Act, 49 USC § 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 USC § 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 USC § 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 USC § 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 USC § 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 USC § 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 USC §§ 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 USC § 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 USC § 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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R-K4 – FAA Order 5100.38D

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ORDER
5100.38D

National Policy

Effective date:
September 30, 2014

SUBJ: Airport Improvement Program Handbook

1. PURPOSE.

This Handbook provides guidance and sets forth policy and procedures used in the administration of the Airport Improvement Program.

2. DISTRIBUTION.

This Handbook is located on the FAA Office of Airports website (see Appendix B for link) where it is available to all interested parties.

3. CANCELLATION.

This Handbook cancels the following two orders:

- FAA Order 5100.38C, Airport Improvement Program Handbook (dated June 28, 2005).
- FAA Order 5100.20C, Programming Control and Reporting Procedures Grant-In-Aid Program (dated December 7, 1999).

4. EXPLANATION OF CHANGES.

This Handbook replaces the above two orders with updated information that reflects current legislation and policy. The Office of Airports has streamlined this Handbook and replaced guidance with references where there is a more appropriate source of guidance (such as in other orders or advisory circulars). This included deleting guidance on airport planning, capital planning, labor rates, and civil rights. The references appear as the basic publication number without any suffix. The intent is for the reader to use the latest version of the referenced publication.

The Office of Airports reorganized and revised this Handbook to incorporate the Plain Language Act of 2010; to differentiate what is required by law and policy; to incorporate program guidance letters issued prior to July 30, 2012; and to incorporate legislation from the FAA Modernization and Reform Act of 2012 (Public Law 112-95).

Elliott Black
Director, Office of Airports Planning and Programming

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Chapter 1. What do I need to know about this order?

1-1. This Order Is Called the *Handbook*.

Throughout this document, we refer to this order (FAA Order 5300-38D, Airport Improvement Program Handbook) as the *Handbook*.

1-2. Purpose of the Handbook.

This Handbook provides guidance and sets forth policies and procedures for the Airport Improvement Program (AIP).

1-3. Handbook Audience.

All FAA organizations that work with the Airport Improvement Program will use this Handbook, in particular, the FAA Office of Airports (ARP) headquarters and field offices. This Handbook will also be publicly available to airports, consultants, state agencies and others associated with the Airport Improvement Program.

1-4. Handbook Location on the Internet.

You can find this Handbook on the FAA Office of Airports website (see Appendix B for link).

1-5. Publications this Handbook Cancels.

a. FAA Order 5100.38C, AIP Handbook, dated June 28, 2005.

b. FAA Order 5100.20C, Programming Control and Reporting Procedures Grant-In-Aid Program, dated December 7, 1999.

1-6. Relevant AIP Legislation (Referred to as the Act).

The contents of this Handbook are based on the AIP related legislation contained in the United States Code (USC). Throughout this Handbook, the AIP related legislation under Title 49 is referred to as the *Act*. This legislation is shown in Table 1-1. Previously, AIP was authorized by the Airport and Airway Improvement Act of 1982 (Public Law 97-248), which Congress repealed in 1994 and recodified as Title 49 § 47171, et seq. (Public Law 103-272).

Table 1-1 AIP Related Legislation

The USC contains…	Which contains…	Which contains…	Which contains…	That Authorizes…	Under Sections (§)…
Title 49 (Transportation)	Subtitle VII (Aviation Programs)	Part B (Airport Development and Noise)	Chapter 471 (Airport Development)	The Airport Improvement Program	49 USC § 47101 through 49 USC § 47175 Most, but not all, sections within this range apply.
Title 49 (Transportation)	Subtitle VII (Aviation Programs)	Part B (Airport Development and Noise)	Chapter 475 (Noise)	Noise compatibility planning and projects	49 USC § 47501 through 49 USC § 47507 Most, but not all, sections within this range apply.
Title 49 (Transportation)	Subtitle VII (Aviation Programs)	Part C (Financing)	Chapter 481 (Airport and Airway Trust Fund Authorizations).	The FAA to have contract authority to issue grants	49 USC § 48103
Title 49 (Transportation)	Subtitle VII (Aviation Programs)	Part A (Air Commerce and Safety)	Chapter 445 (Facilities, Personnel, and Research)	The FAA to install an instrument landing system with AIP funds that can be turned over to the FAA for operation and maintenance	49 USC § 44502(e)

1-7. AIP Transition to 2 CFR 200.

The Office of Management and Budget published the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule, in 78 Federal Register Notice 78590 (December 26, 2013). This final guidance contains the administrative requirements formerly contained in (A-110 and A-102), cost principles (A-21, A-87, and A-122), and audit requirements (A-50, A-89, and A-133) for federal awards.

OMB has required the Department of Transportation to publish a regulation adopting the policies and procedures that are applicable to federal awards by December 26, 2014.

This version of the AIP Handbook uses the current references to published policy, for example to OMB Circular A-87 or 49 CFR part 18. Once 2 CFR 200 is adopted by DOT, this Handbook will be revised to replace the references as applicable.

1-8. Format for References to the Act.

Specific references to sections (§) of the Act are provided in the form of 49 USC § XXXXX. It is useful to note that the first three numbers in the section reference are always the chapter number.

1-9. Broad Objective of the Act.

The Act's broad objective is to help in developing a nationwide system of public-use airports that meets the current needs and the projected growth of civil aviation.

1-10. The Act Is a *Permissive* Statute.

The key nature of the Act is that it is a *permissive statute*, rather than a mandatory or prohibitory one. Put more simply, if the AIP statute does not provide the authority to fund an action or an item, that action or item cannot be funded under AIP.

A permissive statute does not contain a comprehensive list of mandatory or prohibited actions. Rather, a permissive statute gives permission to do certain things. As such, an airport is not required to construct some or all of the items that are allowed under AIP, but may do so provided that the FAA determines that the items are justified at that airport.

This is not a concept exclusive to AIP. This is a rule that stems from federal appropriations law, which applies to federal agencies. The Government Accountability Office's (GAO) Principles of Federal Appropriations Law, Third Edition (commonly referred to as the Red Book) states that "A federal agency is a creature of law and can function only to the extent authorized by law" (*Atlantic City Electric Co. v. Federal Energy Regulatory Commission*, 295 F.3d 1, (D.C. Cir. 2002). The Supreme Court (*United States v. MacCollom*, 426 U.S. 317, 321 (1976)) has upheld this notion by stating "[T]he established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress."

1-11. Aviation Priorities in the Act.

49 USC § 47101 lists the policy directives and aviation priorities of the United States. These priorities include:

a. Providing a safe and secure airport and airway system.

b. Minimizing airport noise impacts on nearby communities.

c. Developing reliever airports, cargo hub airports, and intermodalism.

d. Protecting natural resources.

e. Reducing aircraft delays.

f. Converting former military air bases to civil use or improving joint-use airports.

g. Carrying out various other projects to ensure a safe and efficient airport system.

1-12. List of Handbook References (with Links to the Associated Websites).

Appendix B contains a list of the documents referenced in this Handbook. Links for these references are also provided in the Appendix B (they are not given again in the Handbook) and were current on the Handbook publication date. Each reference is also followed by a brief summary of what the document contains and how it relates to AIP. The versions of these reference documents are not given. The reader should use the current version of the document.

1-13. General Principles of this Handbook.

The contents of this Handbook are based on principles below:

a. The Use of the AIP Handbook is Mandatory. The Handbook is the published policy for AIP. Except where options are specifically noted or where non-mandatory language is used, the procedures and requirements are mandatory. Any deviation from the procedures or requirements must be approved by the Director of the Office of Airport Planning and Programming. All requests for deviations must be sent to the Director of the Office of Airport Planning and Programming for processing.

b. Regional Office Discretion. Unless set procedures are necessary to achieve national standardization in grant program administration, regional offices may adjust procedures that are not dictated by legislation, rule, this Handbook, other published federal policy, or reasons beyond the FAA's control.

c. Reference to Other Guidance. The Handbook summarizes pertinent information from other guidance material when appropriate to relieve users from needing to reference another document. The source documents, rather than this Handbook, are the authoritative technical sources; however, this Handbook is the authoritative source on AIP, including eligibility.

1-14. Warning on Taking Handbook Text Out of Context.

There may be paragraphs in this Handbook that appear to conflict with the general requirements for eligibility, justification, or program administration. This is usually due to legislative exceptions for a specific project or location. These exceptions do not amend, change, or modify the general guidance and requirements. These exceptions do not apply to other situations and must not be taken out of context.

1-15. Use of the Term Airports District Office (ADO).

For the purposes of this Handbook, we are using ADO to reference the FAA Office of Airports office that directly works with the sponsor. In regional offices that do not have ADOs, the use of

the term ADO refers to the FAA Office of Airports branch within the regional office that deals directly with the sponsors.

1-16. Use of the Phrase *ADO has the option*.

For the purposes of this Handbook, the phrase, *the ADO has the option* indicates situations where there is a choice to be made and that the ADO will make the choice.

1-17. FAA Office of Airports Positions/Divisions/Branches Referenced in this Handbook.

A list of the key positions within the FAA Office of Airports is contained in Table 1-2 and a list of the divisions and branches within the FAA Office of Airports is contained in Table 1-3. The routing codes for many of these positions, divisions, and branches are used throughout this Handbook.

Table 1-2 FAA Office of Airports Key Positions

Routing Code	Position Name
ARP-1	Associate Administrator
AAS-1	Director, Airport Safety and Standards
APP-1	Director, Airport Planning and Programming
ACO-1	Director, Airport Compliance and Management Analysis
AXX-600	Regional Division Manager (AXX meaning the regional designation of AAL, AEA, ACE, AGL, ANE, ANM, ASO, ASW, or AWP)

Table 1-3 FAA Office of Airports Divisions and Branches

Routing Code	Organization Name
AAS-100	Airport Engineering Division
AAS-300	Airports Safety and Operations Division
ACO-100	Airport Compliance Division
APP-400	Airport Planning and Environmental Division
APP -500	Airports Financial Assistance Division
APP-510	Financial Analysis and Passenger Facility Charge Branch
APP-520	Airport Improvement Program Branch

1-18. Location of Handbook Definitions.

Definitions are an important part of this Handbook. As with any large program, there are many words and phrases that have specific, defined meanings within the program. Appendix A contains the definitions of terms used in this Handbook.

1-19. Process for Handbook Changes.

APP-500 will continue to issue program guidance letters (PGLs) for short-term policy guidance between Handbook changes. In addition, APP-500 has the option to issue official numbered changes to the Handbook. The ADOs have the option to forward these PGLs to block grant state sponsors or others impacted by the PGLs.

1-20. Supplemental Guidance and Standard Operating Procedures.

The FAA Office of Airports has the option of issuing additional guidance to supplement this Handbook. This additional guidance may contain additional requirements that, per FAA policy, the FAA Office of Airports and the sponsor must meet. The ADOs have the option to forward the additional guidance to block grant state sponsors or others impacted by the PGLs.

1-21. New Handbook Layout and Format.

The format of this version of the Handbook is significantly altered from the last version (FAA Order 5100-38C).

a. Chapters. The chapters are reduced and are organized in question format as shown in Table 1-4. This allows the reader to more easily identify the chapter they need to reference.

b. Appendices. Detailed information and long lists were moved to the appendices to simplify the main body of the Handbook. For instance, while Chapter 3 provides the general requirements that each project must meet in order to be considered for AIP funding, the project specific requirements have been split out into appendices and are in tabular format for easier reference. Where a paragraph from an appendix is referenced, the reference will be in the form, Paragraph X-##.

Table 1-4 Handbook Chapters

Chapters in this handbook include…
Chapter 1. What do I need to know about this order?
Chapter 2. Who can get a grant?
Chapter 3. What projects can be funded?
Chapter 4. What AIP funding is available?
Chapter 5. How does the grant process work?
Chapter 6. What special AIP programs are available?

Chapter 2. Who can get a grant?

2-1. Grant Recipients Are Referred to as Sponsors.

A recipient of an AIP grant is normally called a sponsor.

2-2. Relevant AIP Legislation (Referred to as the Act).

References to the Act in this Handbook are based on the AIP related legislation contained in the United States Code (USC), as defined in Appendix A.

2-3. Type of Sponsors.

For AIP purposes, sponsors are broken down into the specific types shown in Table 2-1. This table also lists each of the entities that may qualify under each sponsor type.

Table 2-1 Types of Sponsors

For the following type of sponsor…	Only the following entities may qualify…
a. Airport sponsors	Public agency owning (or leasing from another government entity) a public-use airport. A state, a political subdivision of a state (such as a city, municipality, or state agency), a tax-supported organization, and an Indian tribe or pueblo are all considered public agencies. Private entity owning a public-use airport. State acting as a sponsor for one or more specific airports in the state. Indian tribe or pueblo owning or leasing a public-use airport. The Secretary of the Interior, during fiscal years 2012-2015 for Midway Island Airport per Section 186(d) of the Section 151 of the Vision 100 – Century of Aviation Reauthorization Act (Public Law 108-176) as amended by Section 151 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95). The Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau (or political subdivision) during fiscal years 2012-2015 (per 49 USC § 47115(j)).
b. Sponsors that are not currently airport owners (in the planning stages of acquiring or constructing the airport)	Public agency not owning or leasing a public-use airport.
c. Sponsors that are not currently airport owners (after the planning is complete and before the airport is open)	Public agency not owning or leasing a public-use airport.

Table 2-1 Types of Sponsors

For the following type of sponsor…	Only the following entities may qualify…
d. Planning agency sponsors	Metropolitan planning agency. State planning agency. Council of governments.
e. Noise compatibility project sponsors that are not airport owners	Public agency not owning or leasing a public-use airport.
f. State block grant sponsor	State approved by the FAA to be in the State Block Grant Program.
g. Sponsors for compatible land use *planning* or compatible land use *projects* per 49 USC § 47141	State or local government around a Medium or Large Hub Airports (if the airport has not submitted a Noise Compatibility Program to the FAA or updated the Noise Compatibility Program within the past ten years).
h. Sponsors that are acquiring airport development rights from a privately-owned public-use airport under the pilot program in 49 USC § 47138(a)	State or a political subdivision of a state (such as a city, municipality, or state agency) in the same state as the airport.
i. Sponsors designated under 49 USC § 47118(h)	Federal agency owning an FAA designated safety critical airport.

2-4. Type of Projects Each Sponsor Type Can Receive in a Grant.

For each sponsor type, Table 2-2 lists the entities that qualify for that sponsor type and the types of projects they may receive in a grant.

Table 2-2 Types of Projects that May be Included in a Grant (by Sponsor Type)

For the following type of sponsor…	Only the following entities may qualify…	And may only receive grants for the following types of projects…
a. Airport sponsors	Public agency owning (or leasing from another government entity) a public-use airport. A state; a political subdivision of a state (such as a city, municipality, or state agency); a tax-supported organization: and an Indian tribe or pueblo are all considered public agencies. Private entity owning a public-use airport. State acting as a sponsor for one or more specific airports in the state. Indian tribe or pueblo owning or leasing a public-use airport. The Secretary of the Interior, during fiscal years 2012-2015 for Midway Island Airport per Section 186(d) of the Section 151 of the Vision 100 – Century of Aviation Reauthorization Act (Public Law 108-176) as amended by Section 151 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95). The Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau (or political subdivision) during fiscal years 2012-2015 per 49 USC § 47115(j).	Airport master planning Airport development Noise compatibility planning Noise compatibility projects *When a state is acting as a sponsor for more than one airport within the state, this is often referred to as a various locations grant.* *Note: Per Public Law 176-108, the Secretary of the Interior may only receive Airport Development grants for Midway Island.*
b. Sponsors that are not currently airport owners (in the planning stages of acquiring or constructing the airport)	Public agency not owning or leasing a public-use airport.	Planning grants associated with acquiring or establishing a public-use airport
c. Sponsors that are not currently airport owners (after the planning is complete and before the airport is open)	Public agency not owning or leasing a public-use airport.	Acquisition of existing airports Acquisition of land in anticipation of constructing a new airport Initial airport development
d. Planning agency sponsors	Metropolitan planning agency. State planning agency. Council of governments.	System planning

Table 2-2 Types of Projects that May be Included in a Grant (by Sponsor Type)

For the following type of sponsor…	Only the following entities may qualify…	And may only receive grants for the following types of projects…
e. Noise compatibility project sponsors that are not airport owners	Public agency not owning or leasing a public-use airport.	Noise compatibility planning Noise compatibility projects
f. State block grant sponsor	State approved by the FAA to be in the State Block Grant Program.	A state block grant for funds to be issued in subgrants to airports in the State Block Grant Program for: Airport master planning Airport development Noise compatibility planning Noise compatibility projects
g. Sponsors for compatible land use *planning* or compatible land use *projects* per 49 USC § 47141	State or local government around a Medium or Large Hub Airports (if the airport has not submitted a Noise Compatibility Program to the FAA or updated the Noise Compatibility Program within the past ten years).	Compatible land use *planning* and compatible land use *projects*
h. Sponsors that are acquiring airport development rights from a privately-owned public-use airport under the pilot program in 49 USC § 47138(a)	State or a political subdivision of a state (such as a city, municipality, or state agency) in the same state as the airport.	Acquisition of airport development rights

Table 2-2 Types of Projects that May be Included in a Grant (by Sponsor Type)

For the following type of sponsor…	Only the following entities may qualify…	And may only receive grants for the following types of projects…
i. Sponsors designated under 49 USC § 47118(h)	Federal agency owning an FAA designated safety critical airport.	A project to preserve or enhance minimum airfield infrastructure if the project meets all of the following criteria: **(1)** The project is necessary to meet the minimum safety and emergency operational requirements established under 14 CFR part 139. **(2)** The project is necessary to support emergency diversionary operations for transoceanic flights in locations that meet the following criteria: **(a)** Locations within United States jurisdiction or control. **(b)** Locations where there is a demonstrable lack of diversionary airports within the distance or flight-time required by regulations governing transoceanic flights.

2-5. Grant Assurances – Definition and Which Ones to Use.

When airport owners or sponsors, planning agencies, or other organizations accept AIP funds, they must agree to certain obligations. These obligations are called grant assurances. The grant assurances require the recipients to maintain and operate their facilities safely and efficiently and in accordance with specified conditions, while some grant assurances state conditions that must occur before a grant is issued, or are specific to implementation of grant projects. These grant assurances are either included in the grant or are specifically incorporated by reference. The assurances are based on the legislation shown in Table 2-3.

Table 2-3 Statutory Basis for Grant Assurances

The following statutory reference…	Does the following…
49 USC § 47105	Gives the requirements for FAA to approve a grant application.
49 USC § 47106	Permits the FAA to give a grant if the FAA is satisfied that a number of specific project requirements will be met.
49 USC § 47107	Requires the FAA to obtain written assurances from sponsors concerning current and future airport operations.

There are three sets of grant assurances (Sponsor, Planning Agency, and Non-Sponsors Undertaking Noise Compatibility Program Projects). The sets include only those assurances that apply to the project and/or sponsor type. For each sponsor type, Table 2-4 lists the entities that qualify for that sponsor type, the types of projects they may receive a grant for, and the set of grant assurances they must follow.

The current version of these three sets of assurances can be obtained from the FAA Office of Airports website (see Appendix B for link). Appendix Z is provided as a place to store printed versions of the assurances as hard copies in this Handbook.

Table 2-4 Applicable Grants Assurances (by Sponsor and Project Type)

For the following type of sponsor…	Only the following entities may qualify…	And may only receive grants for the following types of projects…	And must follow this set of grant assurances…
a. Airport sponsors	Public agency owning (or leasing from another government entity) a public-use airport. A state; a political subdivision of a state (such as a city, municipality, or state agency); a tax-supported organization: and an Indian tribe or pueblo are all considered public agencies. Private entity owning a public-use airport. State acting as a sponsor for one or more specific airports in the state. Indian tribe or pueblo	Airport master planning Airport development Noise compatibility planning Noise compatibility projects *Note: When a state is acting as a sponsor for more than one airport within the state, this is often referred to as a various locations grant.*	Sponsor

Table 2-4 Applicable Grants Assurances (by Sponsor and Project Type)

For the following type of sponsor…	Only the following entities may qualify…	And may only receive grants for the following types of projects…	And must follow this set of grant assurances…
	owning or leasing a public-use airport. The Secretary of the Interior, during fiscal years 2012-2015 for Midway Island Airport per Section 186(d) of the Section 151 of the Vision 100 – Century of Aviation Reauthorization Act (Public Law 108-176) as amended by Section 151 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95). The Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau (or political subdivision) during fiscal years 2012-2015 per 49 USC § 47115(j).		
b. Sponsors that are not currently airport owners (in the planning stages of acquiring or constructing the airport)	Public agency not owning or leasing a public-use airport.	Planning grants associated with acquiring or establishing a public-use airport	Planning Agency
c. Sponsors that are not currently airport owners (after the planning is complete and before the airport is open)	Public agency not owning or leasing a public-use airport.	Acquisition of existing airports Acquisition of land in anticipation of constructing a new airport Initial airport development	Sponsor
d. Planning agency sponsors	Metropolitan planning agency. State planning agency.	System planning	Planning Agency

Table 2-4 Applicable Grants Assurances (by Sponsor and Project Type)

For the following type of sponsor…	Only the following entities may qualify…	And may only receive grants for the following types of projects…	And must follow this set of grant assurances…
e. Noise compatibility project sponsors that are not airport owners	Public agency not owning or leasing a public-use airport.	Noise compatibility planning Noise compatibility projects	Non-Airport Sponsors Undertaking Noise Compatibility Program Projects
f. State Block Grant Program sponsor	State approved by the FAA to be in the State Block Grant Program.	Planning Airport development Noise compatibility planning Noise compatibility projects	Sponsor *Note: These assurances are not included in the state block grant. Instead, the state block grant sponsor is required to include these assurances in each subgrant.*
g. Sponsors for compatible land use *planning* or compatible land use *projects* per 49 USC § 47141	State or local government around a Medium or Large Hub Airports (if the airport has not submitted a Noise Compatibility Program to the FAA or updated the Noise Compatibility Program within the past ten years).	Compatible land use *planning* and compatible land use *projects*	Non-Airport Sponsors Undertaking Noise Compatibility Program Projects
h. Sponsors that are acquiring airport development rights from a privately-owned public-use airport under the pilot program in 49 USC § 47138(a)	State or a political subdivision of a state (such as a city, municipality, or state agency) in the same state as the airport.	Acquisition of airport development rights	None (per FAA policy)

Table 2-4 Applicable Grants Assurances (by Sponsor and Project Type)

For the following type of sponsor…	Only the following entities may qualify…	And may only receive grants for the following types of projects…	And must follow this set of grant assurances…
i. Sponsors designated under 49 USC § 47118(h)	Federal agency owning an FAA designated safety critical airport.	A project to preserve or enhance minimum airfield infrastructure if the project meets all of the following criteria: **(1)** The project is necessary to meet the minimum safety and emergency operational requirements established under 14 CFR part 139. **(2)** The project is necessary to support emergency diversionary operations for transoceanic flights in locations that meet the following criteria: **(a)** Locations within United States jurisdiction or control, or **(b)** Locations where there is a demonstrable lack of diversionary airports within the distance or flight-time required by regulations governing transoceanic flights.	None. 49 USC § 47118(h) specifically exempts these sponsors from normal AIP requirements.

2-6. Grant Assurances – Duration and Applicability.

The duration and applicability for each set of grant assurance (Sponsor, Planning Agency, and Non-Sponsors Undertaking Noise Compatibility Program Projects) is listed in Table 2-5, Table 2-6, and Table 2-7, respectively. Note that the grant assurance numbers (#2, #4, #8, etc.) are different between these three sets of grant assurances.

Table 2-5 Duration and Applicability of Grant Assurances (Sponsor)

Assurances that…	Include (by assurance # if applicable)…
a. Must be met before a grant is issued	#2 Responsibility and Authority of the Sponsor. #3 Sponsor Fund Availability #4 Good Title #6 Consistency with Local Plans #7 Consideration of Local Interest #8 Consultation with Users #9 Public Hearings #12 Terminal Development Prerequisites
b. Apply until the grant is closed	#1 General Federal Requirements (except for 49 CFR part 23) #10 Air and Water Quality Standards #14 Minimum Wage Rates #15 Veteran's Preference #16 Conformity to Plans and Specifications #17 Construction Inspection and Approval #18 Planning Projects #32 Engineering and Design Services #33 Foreign Market Restrictions #34 Policies, Standards, and Specifications #35 Relocation and Real Property Acquisition.
c. Apply for three years after the grant is closed	#13 Accounting System, Audit, and Record Keeping Requirements #26 Reports and Inspections
d. Apply for the useful life of the project (not to exceed 20 years from the grant issuance date) except in the case of a land acquisition grant, for which the useful life is indefinite and the assurance obligations do not expire.	#5 Preserving Rights and Powers #11 Pavement Preventive Maintenance (This applies to all of the airfield pavement on the airport, not just the specific pavement in the grant.) #19 Operations and Maintenance #20 Hazard Removal and Mitigation #21 Compatible Land Use #22 Economic Nondiscrimination #24 Fee and Rental Structure #27 Use by Government Aircraft #28 Land for Federal Facilities #29 Airport Layout Plan

Table 2-5 Duration and Applicability of Grant Assurances (Sponsor)

Assurances that…	Include (by assurance # if applicable)…
	#36 Access by Intercity Buses #37 Disadvantaged Business Enterprises (See 49 CFR parts 23 and 26, since certain program requirements may extend the obligation beyond the 20 year period, while the DBE requirements for the project apply until the project is closed.) #38 Hangar Construction #39 Competitive Access
e. Last for as long as the airport is owned and operated as an airport	#23 Exclusive Rights #25 Airport Revenue #30 Civil Rights #31 Disposal of Land

Table 2-6 Duration and Applicability of Grant Assurances (Planning Agency)

Assurances that…	Include (by assurance # if applicable)…
a. Must be met before a grant is issued	#2 Responsibility and Authority of the Sponsor #3 Sponsor Fund Availability #5 Consistency with Local Plans
b. Apply until the grant is closed	#1 General Federal Requirements (except for 49 CFR part 23) #4 Preserving Rights and Powers #7 Planning Projects #9 Civil Rights #10 Engineering and Design Services #11 Foreign Market Restrictions #12 Policies, Standards, and Specifications #13 Disadvantaged Business Enterprises (See 49 CFR parts 23 and 26, since certain program requirements may extend the obligation beyond the 20 year period)
c. Apply for three years after the grant is closed	#6 Accounting System, Audit, and Record Keeping Requirements #8 Reports and Inspections The three year duration for record keeping is a requirement of The Single Audit Act of 1984, Public Law 98-502 (as amended in 1996, Public Law 104-156, as amended and recodified at 31 USC § 7501 et seq) and 49 CFR § 18.42 (2 CFR § 200.333-200.337, Record Retention and Access).

Table 2-7 Duration and Applicability of Grant Assurances (Non-Airport Sponsors Undertaking Noise Compatibility Program Projects)

Assurances that…	Include (by assurance # if applicable)…
a. Must be met before a grant is issued	#2 Responsibility and Authority of the Sponsor #3 Sponsor Fund Availability #4 Good Title #6 Consistency with Local Plans #7 Consideration of Local Interest
b. Apply until the grant is closed	#1 General Federal Requirements #9 Minimum Wage Rates #10 Veteran's Preference #11 Conformity to Plans and Specifications #12 Construction Inspection and Approval #18 Engineering and Design Services #19 Foreign Market Restrictions #21 Relocation and Real Property Acquisition
c. Apply for three years after the grant is closed	#8 Accounting System, Audit, and Record Keeping Requirements #16 Reports and Inspections
d. Apply for the useful life of the project (not to exceed 20 years from the grant issuance date) except in the case of a land acquisition grant, for which the useful life is indefinite and the assurance obligations do not expire.	#5 Preserving Rights and Powers #13 Operations and Maintenance #14 Hazard Prevention #15 Compatible Land Use #22 Disadvantaged Business Enterprises (See 49 CFR parts 23 and 26, since certain program requirements may extend the obligation beyond the 20 year period), while the DBE requirements for the project apply until the project is closed.
e. Last for as long as the airport is owned and operated as an airport	#17 Civil Rights #20 Disposal of Land

2-7. Sponsor Qualification Criteria.

For an ADO to issue a grant, the FAA must first determine that the sponsor is able to assume the responsibilities defined in the grant. Details of this requirement are outlined in 49 USC § 47105, § 47106 and § 47107. The general sponsorship criteria are different for public agencies and private entities. The criteria for public agencies are listed in Table 2-8 and for private entities are listed in Table 2-9. Additional criteria, requirements, and considerations that apply to specific sponsorship situations are listed in Table 2-10. These requirements do not apply to federal agency sponsors of an FAA designated safety critical airport eligible under 49 USC § 47118(h).

Table 2-8 Legal and Financial Requirements for Public Agencies

The criteria are…	
a.	Per 49 USC § 47105(b)(2), a sponsor must be proposing a project for a public-use airport included in the current National Plan of Integrated Airport Systems (NPIAS).
b.	Per 49 USC § 47106(a)(3), a sponsor must be financially able to assume and carry out the sponsor's duties in the AIP project application and grant agreements. This includes being able to finance the sponsor share of grants. Per FAA policy, if a public sponsor has an open grant from a federal agency that requires compliance with OMB Circulars A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR 200 Subpart E, Cost Principles), and A-102, Grants and Cooperative Agreements with State and Local Governments(2 CFR § 200.416 and §200.417), this requirement is met. Otherwise, the ADO must work with ACO-100 to make this determination.
c.	Per 49 USC § 47106(b)(1), the sponsor, another public agency, or the federal government must have good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft. Per FAA policy, if the good title requirement is not met prior to the grant being issued, the acquisition of good title must be in process. Also per FAA policy, the sponsor can meet this good title requirement by leasing from another public agency that holds good title, provided that the duration of the lease is at least as long as the useful life of the project. (A lease from a private entity does not provide good title.).
d.	Per 49 USC § 47106(a)(5), a sponsor must legally have the authority to act as a sponsor. The sponsor must not be encumbered by any existing agreements that would prevent it from acting as a sponsor. Legal authority to be a public sponsor comes from its state authorizing legislation, also called state enabling legislation. The authorizing legislation must clearly provide the sponsor the authority to carry out the obligations and responsibilities of sponsorship. Per FAA policy, the sponsor must provide a copy of the state authorizing legislation to the ADO prior to the sponsor applying for its first grant. Per FAA policy, the ADO has the option to require an opinion from the sponsor's attorney regarding whether the sponsor has the legal authority to act as a sponsor.
e.	Per 49 USC § 47106(d), if a sponsor has previously received a grant, the sponsor must be in compliance with its current grant obligations. ACO-100 maintains a list of the sponsors that are not in compliance.
f.	Per 49 USC § 47107(d), the sponsor must be able to maintain and operate the airport as a public-use airport to FAA standards.

Table 2-8 Legal and Financial Requirements for Public Agencies

The criteria are…
g. Per 2 CFR part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), a sponsor must not be suspended or debarred by the federal government.

Table 2-9 Legal and Financial Requirements for Private Entities

The criteria are…
a. Per 49 USC § 47105(b)(2), a sponsor must be proposing a project for a public-use airport included in the current National Plan of Integrated Airport Systems (NPIAS).
b. Per 49 USC § 47102(26), the sponsor must be the private owner of a public-use airport. 49 USC § 47102(22)(B) defines a privately-owned airport as a public use airport if it is used or intended to be used for public purposes and: **(1)** Is a reliever airport. The FAA defines which airports are privately-owned reliever airports in the current version of FAA Order 5090.3, Field Formulation of the National Plan of Integrated Airport Systems (NPIAS). **(2)** The airport has at least 2,500 passenger boardings each year and receives scheduled passenger aircraft service.
c. Per 49 USC § 47106(b), the sponsor must have good title to the airport property. Per FAA policy, if the good title requirement is not met prior to the grant being issued, the acquisition of good title must be in process. Also per FAA policy, the sponsor can meet this good title requirement by leasing from a public agency that holds good title, provided that the duration of the lease is at least as long as the useful life of the project.
d. Per 49 USC § 47107(d), the sponsor must be able to maintain and operate the airport as a public-use airport to FAA standards.
e. Per 49 USC § 47106(a)(3), a sponsor must be financially able to assume and carry out the sponsor's duties in the AIP project application and grant agreements. If a private sponsor can provide documentation that a certified public accounting firm has determined they are financially able to assume and carry out the sponsor duties, this requirement has been met. The certified public accounting firm must have reviewed the sponsor's financial documentation and affirmed the sponsor has sufficient funds on hand, or a combination of funds and agreements with airport tenants, that will provide adequate income to finance the sponsor share and costs of operating/maintaining the airport for at least 10 years in the future. Otherwise, the ADO must have obtained concurrence from ACO-100 to proceed.
f. Per 49 USC § 47106, a sponsor must legally have the authority to act as a sponsor. The sponsor must not be encumbered by any existing agreements that would prevent it from acting as a sponsor. The ADO may require an opinion of the sponsor's attorney of its legal authority to act as a sponsor and carry out its responsibilities under the grant agreement.

Table 2-8 Legal and Financial Requirements for Public Agencies

The criteria are…
g. Per 49 USC § 47106(d), if a sponsor has previously received a grant, the sponsor must be in compliance with its current grant obligations. ACO-100 maintains a list of the sponsors that are not in compliance.
h. Per 2 CFR part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), a sponsor must not be suspended or debarred by the federal government.

Table 2-10 Additional Criteria, Requirements, and Considerations for Specific Sponsorship Situations

For the following sponsorship situation…	The additional criteria, requirements, and considerations apply…
a. A state acting as a sponsor for one or more specific airports (*Note: When a state is acting as a sponsor for more than one airport within the state, this is often referred to as a various locations grant.*)	**(1)** 49 USC § 47105(a)(1)(B) allows state sponsorship of development and planning projects for one or more airports provided: **(a)** The sponsor of each airport consents in writing to the state sponsorship. **(b)** There is administrative merit and aeronautical benefit to the state sponsorship. Per FAA policy, the ADO makes this determination. **(c)** There is written documentation that the state will comply with the required grant conditions and assurances. Per FAA policy, the ADO makes this determination. **(2)** 49 USC § 47102(27) defines a state as a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands (Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, the Republic of Palau). **(3)** This sponsorship type is not the State Block Grant Program. **(4)** The state must provide the signed copy of an Agreement on State Sponsorship and Sponsor Obligations (see Appendix V) to the ADO with the grant application and the ADO must approve or disapprove any changes or addendum to the agreement.
b. A state approved by the FAA to be in the block grant program	**(1)** State block grant sponsorship is restricted to states selected for the State Block Grant Program as discussed in Section 2 of Chapter 6. **(2)** Under the State Block Grant Program, the state is the sponsor. The state then issues subgrants to the airports that are included in the program.

Table 2-10 Additional Criteria, Requirements, and Considerations for Specific Sponsorship Situations

For the following sponsorship situation…	The additional criteria, requirements, and considerations apply…
c. A public agency not owning or leasing a public-use airport	**(1)** During the acquisition or establishment of an airport, the regional division manager must have made two separate sponsor designations. **(2)** First, the regional division manager may designate a public agency as a sponsor for a planning grant to acquire or establish a public-use airport. **(3)** Second, if the regional division manager, ADO, and the sponsor decide to continue with the airport acquisition or establishment, the regional division manager must separately designate that the sponsor is legally and financially able to assume the responsibilities of a sponsor. This is because the Planning Agency Grant Assurances are less extensive than the Sponsor Grant Assurances.
d. A metropolitan planning agency or a state planning agency	**(1)** A planning agency sponsor must be authorized by the laws of the state (or states or political subdivisions concerned) to engage in area-wide planning for the areas in which the grant funding is to be used. **(2)** Typical state agencies that may qualify as a planning agency sponsor are planning offices, aeronautics commissions, and departments of transportation. **(3)** Typical metropolitan planning agencies include metropolitan planning organizations, councils of government, and regional planning commissions.
e. Entities acting as sponsor agents (including channeling act states)	**(1)** A public agency may act as an agent of the sponsor without being considered a co-sponsor. These agents are not true sponsors or co-sponsors, but they do play a role in the AIP grant process. **(2)** Channeling is the most common type of agent agreement. State channeling of federal airport grants occurs in various forms within numerous states. Normally, when an airport is in a channeling act state, the sponsor submits payment request information to the state, who then submits the request to the FAA. In this case, the FAA makes payments to the state, and the state then distributes the payment to the sponsor. In some cases the state may also provide technical oversight and review, which may include state submittal of grant applications and/or closeout requests. This is based on state enabling legislation, rather than federal law. In many cases, the state also signs the grant agreements. Channeling agreements based on state enabling legislation do not need approval from the ADO. **(3)** Except for channeling act agreements, other agent-sponsor agreements require prior ADO review and regional division manager approval in order to be valid. These agreements are rare and must include the terms, conditions, powers, responsibilities, and relationship of the agent to the sponsor. The agreement may be in the form of a resolution or ordinance, and a copy of the agreement, along with regional division manager's concurrence, must be kept on file in the ADO.

Table 2-10 Additional Criteria, Requirements, and Considerations for Specific Sponsorship Situations

For the following sponsorship situation…	The additional criteria, requirements, and considerations apply…
f. Two entities acting as co-sponsors	**(1)** Each of the public agencies must be an FAA-approved sponsor. Since the FAA makes each of these sponsorship determinations independently, an additional co-sponsorship determination is not required. The ADO agrees to the co-sponsorship by issuing the grant. **(2)** Both co-sponsors sign the grant agreement. **(3)** The FAA has determined that each of the public agencies must jointly and severally meet the requirements for being a sponsor for the specific grant. As a result, each of the co-sponsors is individually bound to the terms and conditions of the grant agreement. **(4)** Most co-sponsorship arrangements are for planning grants. **(5)** Channeling act states are not considered to be co-sponsors, they are sponsor agents even if they sign the grant agreement. **(6)** Any two or more public agencies may request to co-sponsor a project.
g. Sponsors for compatible land use *planning* or compatible land use *projects* per 49 USC § 47141	**(1)** The sponsor has authority to plan and adopt land use compatibility plans and control measures, including zoning, in the planning area in and around the airport. **(2)** The sponsor and the airport must enter into a written agreement to prepare the compatible land use plan cooperatively.
h. Sponsors that are acquiring airport development rights from a privately-owned public-use airport under the pilot program in 49 USC § 47138(a)	**(1)** The additional sponsor requirements are contained in Chapter 6, Section 8, which covers the airport development rights pilot program.

2-8. State Sponsorship Benefits.

One of the benefits of having a state act as a sponsor for more than one airport (like for various location grants) is that it may reduce ADO, state, or sponsor workload by combining multiple grants into one. It may also provide economies of scale through state sponsorship. For instance, equipment can be acquired in quantity at potentially lower unit cost, several small and similar construction projects can be accomplished or related airport master plans or airport layout plans can be prepared. Co-sponsorship of projects between the airport and the state remains an alternative to this procedure if the airport, the state and ADO believe this to be more efficient.

2-9. Sponsorship Determination Process.

The FAA Office of Airports is responsible for making sponsor determinations for AIP. The process differs by entity type as outlined below. For federal agency sponsors of an FAA designated safety critical airport eligible under 49 USC § 47118(h), this determination will be made by APP-1.

a. Public Agencies. Per the current version of FAA Order 1100.15, Delegations of Authority, Appendix 4, the regional division manager is delegated to take actions with respect to their function and assigned responsibilities, which are detailed in FAA Order 1100.5, FAA Organization – Field. These responsibilities include making sponsorship determinations for public agencies. The regional division manager may document their determination in one of two ways. First, the regional division manager may make a written designation of sponsorship prior to issuing a grant. Second, if there is no controversy or complexity, the regional division manager may make an implicit determination by allowing the ADO to issue a grant to the proposed sponsor. The FAA has determined that it is preferable to have a written determination of sponsorship prior to the regional division manager issuing the first grant to a new sponsor. Therefore, for determinations made by the regional division manager after the publication of this Handbook, the regional division manager must make a written determination prior to issuing the first grant to the new sponsor. The regional division manager and ADO may contact APP-500, ACO-100, or regional legal counsel for assistance with these sponsorship determinations.

b. Private Entities. APP-1 makes the sponsorship determination for a private entity. APP-1 must have made a written designation of sponsorship prior to the ADO issuing the first grant (an implicit determination is not an option).

c. Public Private Entities. In addition, a sponsor may also fall in the rare public-private sponsorship category. This is where an airport privatizes some, but not all, of the management of the airport. In this case, the regional division manager and ADO must consult ACO-100 and APP-500 for direction on how to proceed. APP-1 must have made a written designation of sponsorship prior to the ADO issuing the first grant (an implicit determination is not an option).

d. Changes in Sponsorship. The ADO is not required to make a specific sponsorship determination after a sponsorship determination is made by the FAA Office of Airports. However, if there is a change in sponsorship status, the sponsor must notify the ADO. At that point, the ADO must determine if the current sponsorship determination is valid and if necessary, restart the sponsorship determination process.

2-10. Transfer of Sponsorship.

In order for an existing sponsor to transfer the sponsorship of an obligated airport to another entity, sponsor must obtain pre-approval from the FAA. Per the current version of FAA Order 5190.6, FAA Airport Compliance Manual, the existing sponsor must first obtain ARP-1 pre-approval to release the entire airport. Then and the FAA must make a sponsorship determination for the new entity as discussed in this chapter. If ARP-1 does not approve the release or the FAA does not make a positive sponsorship determination for the new sponsor, the

sponsorship cannot be transferred unless ARP-1 approves the release and the FAA makes a positive sponsorship determination for the new sponsor.

A copy of a sample assumption agreement and a sample FAA letter approving the agreement is included in Appendix V.

2-11. Conflicting Grant Requests from More than One Entity.

Where more than one entity applies for a grant for the same or similar project, and where identification of the appropriate agency empowered to do the project is not clear, the regional division manager will designate the eligible applicant based on which one is best equipped to do the project. This is a rare situation and is generally related to a planning project. APP-400 can provide assistance to the regional division manager and the ADO in these cases.

Chapter 3. What projects can be funded?

Section 1. List of 15 Requirements for Project Funding.

3-1. List of 15 Requirements for Project Funding.

A project must meet the 15 general requirements listed in Table 3-1 in order for the ADO to consider it for AIP funding. The ADO must not approve projects that do not meet these requirements. The remaining sections of this chapter discuss each of these 15 general requirements in greater detail.

Table 3-1 The 15 General Requirements for Project Funding

The general requirements are…	As found in…
a. Is the project eligible?	Section 2
b. Is the project justified?	Section 3
c. Is the project on airport property (with good title)?	Section 4
d. Is the project on the FAA approved airport layout plan?	Section 5
e. Has the sponsor satisfied the intergovernmental review and airport user consultation requirements?	Section 6
f. Has the FAA completed an environmental finding for the project?	Section 7
g. Will the project result in a usable unit of work?	Section 8
h. Will the project be planned, designed, and/or constructed to FAA standards?	Section 9
i. Has the project been procured correctly?	Section 10
j. Are the project costs allowable?	Section 11
k. Are the project costs necessary to accomplish the project (Allowable Rule #1)?	Section 12
l. Were the project costs incurred after the grant was executed (Allowable Rule #2)?	Section 13
m. Are the project costs reasonable (Allowable Rule #3)?	Section 14
n. Is this the only federal grant containing these project costs (Allowable Rule #4)?	Section 15
o. Are the project costs within the allowable federal share (Allowable Rule #5)?	Section 16
p. Can the project be completed without unreasonable delay?	Section 17

Section 2. Project Eligible.

3-2. Relevant AIP Legislation (Referred to as the Act).

References to the Act in this Handbook are based on the AIP related legislation contained in the United States Code (USC), as defined in Appendix A.

3-3. The Act Establishes the General Types of Eligible Projects.

The Act identifies the general types of projects that may be funded with AIP, which are airport planning, airport development, noise compatibility planning, and noise compatibility projects (see 49 USC § 48103).

Only these types of projects are eligible and can be funded. The Federal Appropriations Law prohibits the ADO from funding ineligible projects (as discussed in Paragraph 1-9). If this Handbook does not list a project as eligible, the ADO *must* receive an eligibility determination from APP-500 in order to proceed with the project. This effort will maintain consistency on a national basis.

However, just because a project is eligible under the Act, it does not mean that the ADO can fund the project. The project *must* meet the other requirements further outlined in this chapter.

3-4. Project Requirement Tables (in the Appendices by Project Type).

The tables in the appendices contain project specific requirements for projects that are eligible under the Act. These tables have been broken out into the appendices for ease of use. ADOs *must not* use these appendices independently. They must also apply the 15 general project requirements outlined in this chapter to determine if a project can be funded with AIP.

3-5. Prohibited Project and Unallowable Cost Tables.

Appendix C contains tables that the ADO can use to help determine if the FAA has previously identified a project or cost to be ineligible or unallowable.

3-6. Only Specific Equipment is Eligible under the Act.

49 USC § 47102(3) lists the specific pieces of equipment eligible under AIP. No other pieces of equipment (including associated computer hardware or software for the equipment) are eligible unless AAS-1 has made a written determination that the equipment will contribute significantly to airport safety or security.

3-7. Eligibility of Maintenance, Rehabilitation, Reconstruction, and Replacement Projects.

These concepts cause much confusion. The goal for all of the actions above is to obtain a functioning unit as the final outcome. What differentiates these concepts is the level of effort and the resulting change in useful life. As the work effort for a category increases, the question of whether the work belongs in the category surfaces (for example, determining when timely maintenance is actually rehabilitation.) As a result, the conclusion of which category the project

falls into rests with the specific circumstances. Table 3-2 explains the differences between these concepts and Table 3-3 provides eligibility examples.

Table 3-2 Differences between Maintenance, Rehabilitation, Reconstruction, and Replacement Projects

Item	Explanation	Eligibility
a. Maintenance (including minor repair)	Maintenance includes any regular or recurring work necessary to preserve existing airport facilities in good condition, any work involved in the care or cleaning of existing airport facilities, and any incidental or *minor* repair work on existing airport facilities. Minor repair is a stop gap measure taken by a sponsor to keep a facility operational until the sponsor can complete a rehabilitation, reconstruction, or replacement project. Replacing individual parts and mending portions of a facility are considered minor repair.	Maintenance work is not airport development as defined in the Act. Therefore, it is not eligible for AIP funding except for one specific situation. 49 USC § 47102(3)(H) provides the exception for routine runway, taxiway, or apron pavement maintenance at nonhub primary airports and nonprimary airports. For these airports, this work is eligible. The eligibility of maintenance under 49 USC § 47102(3)(H) is limited to *pavement* maintenance of runways, taxiways and aprons for nonhub primary airports and nonprimary airports. Typical pavement maintenance includes routine cleaning, filling, and or sealing of longitudinal and transverse cracks; grading pavement edges; maintaining pavement drainage systems; patching pavement; and remarking pavement areas.
b. Rehabilitation	Rehabilitation is a more comprehensive restoration of an original functionality that results in a piece of pavement, piece of equipment, or building with a useful life of at least 10 years, or half of the useful life per Table 3-8, whichever is less. This approach deals with the facility or item as a whole and is more far-reaching than the minor repair discussed under maintenance.	Rehabilitation is generally eligible (but must still be justified).
c. Reconstruction	Reconstruction is a complete restoration of an original functionality that results in a virtually new piece of pavement, piece of equipment, or building with a use life as listed in Table 3-8.	Reconstruction is generally eligible (but must still be justified).

Table 3-2 Differences between Maintenance, Rehabilitation, Reconstruction, and Replacement Projects

Item	Explanation	Eligibility
d. Replacement (including replacement of damaged equipment)	Replacement is building a complete new facility or replacing a whole new piece of equipment that has reached the end of its useful life.	Replacement is generally eligible (but must still be justified) provided; **(1)** The facilities or equipment was destroyed, become obsolete, worn out, or otherwise deemed inoperable through no fault of the sponsor under normal use. An example of this may be replacement of EMAS panels that were destroyed by an aircraft, only if the sponsor can prove that there is no other avenue, such as insurance, for funding the replacement. **(2)** The sponsor has determined that there are no other avenues for replacement (such as through insurance or by another federal agency responsible for such disasters).

Table 3-3 Examples of Maintenance, Rehabilitation, Reconstruction, and Replacement Projects

The following project of…	Is considered…	And is…
a. Applying a herbicide on cracks in asphalt pavement	Maintenance	Not eligible at any airport
b. Changing fluid on a scheduled basis to keep a vehicle's engine and parts functional	Maintenance	Not eligible at any airport
c. Mowing the airfield grass	Maintenance	Not eligible at any airport
d. Sweeping airfield pavement	Maintenance	Not eligible at any airport
e. Re-topping trees for approach protection if this work was previously completed in an AIP grant	Maintenance	Not eligible at any airport
f. Replacing airfield light bulbs	Maintenance	Not eligible at any airport
g. Replacing runway lighting fixtures due to snow plow damage	Maintenance	Not eligible at any airport
h. Replacing some of the equipment, like a regulator, in an electrical vault	Maintenance	Not eligible at any airport

Table 3-3 Examples of Maintenance, Rehabilitation, Reconstruction, and Replacement Projects

The following project of…	Is considered…	And is…
i. Replacing carpeting (or other flooring, such as tiles or terrazzo), painting, wall coverings, doors or ceiling tiles in a terminal not required as a result of an eligible terminal project	Maintenance	Not eligible at any airport
j. Replacing public-use seating (including fixed tables and counters) in a terminal that is bolted or affixed to the terminal wall or floor, if the replacement is not associated with a larger terminal project.	Maintenance	Not eligible at any airport
k. Replacing small sections of roofing in terminals and airport buildings	Maintenance	Not eligible at any airport
l. Replacing faded sign panels	Maintenance	Not eligible at any airport (14 CFR § 139.311(d) specifically defines this as maintenance)
m. Minor work or repair on a turf or aggregate runway	Maintenance	Not eligible at any airport The eligibility of maintenance under 49 USC § 47102(3)(H) is limited to **pavement** maintenance (and includes gravel if the runway is gravel).
n. Performing spall repair, crack sealing, or repair of a small portion of the total taxiway, runway or apron pavement	Maintenance	Eligible at a nonhub primary airports or nonprimary airport (subject to adequate justification)
o. Applying seal coats or slurry seal, or resealing of joints for a major portion of a taxiway, runway or apron pavement	Rehabilitation	Eligible at any airport (subject to adequate justification)
p. Rehabilitation of a turf or aggregate runway	Rehabilitation	Eligible at any airport (subject to adequate justification)
q. Replacing panels and replacing all joint seal material on concrete pavement to obtain at least 10 years of useful life	Rehabilitation	Eligible at any airport (subject to adequate justification)
r. Milling and repaving an apron to obtain at least 10 years of useful life	Rehabilitation	Eligible at any airport (subject to adequate justification)
s. Completely renovating the terminal restrooms	Rehabilitation	Eligible at any airport (subject to adequate justification)

Table 3-3 Examples of Maintenance, Rehabilitation, Reconstruction, and Replacement Projects

The following project of…	Is considered…	And is…
t. Performing lid rehabilitation for Engineered Material Arresting System (EMAS) blocks installed with AIP funds prior to fiscal year 2007 (after fiscal year 2007, the manufacturer began fully encasing the blocks, eliminating the need for lid replacement)	Rehabilitation	Eligible at any airport (subject to adequate justification)
u. Bringing a runway down to its subgrade and completely repaving it	Reconstruction	Eligible at any airport (subject to adequate justification)
v. Replacement of sign panels required by a change in airfield geometry or new sign panel specifications	Replacement	Eligible at any airport (subject to adequate justification)
w. Purchasing an ARFF vehicle to replace one paid for with AIP funding	Replacement	Eligible at any airport (subject to adequate justification)
x. Replacement of damaged Engineered Material Arresting System (EMAS) panels that were damaged by an aircraft and the sponsor can prove that there is no other avenue for funding the replacement, such as the aircraft owner's or sponsor's insurance	Replacement	Eligible at any airport (subject to adequate justification)
y. Replacement of terminal escalators	Replacement	Eligible at any airport (subject to adequate justification)

3-8. Difference between AIP and Passenger Facility Charge (PFC) Eligibility.

While closely related, there are differences between project eligibility between AIP and the PFC program. These differences are discussed in the current version of FAA Order 5500.1, Passenger Facility Charge.

Section 3. Project Justified.

3-9. Three Basic Tests for Project Justification.

The ADO must apply the three basic tests in Table 3-4 to determine if a project is justified. The ADO must not fund projects or project elements that are not justified based on the following three tests. Table 3-5 contains examples where one or more of the following tests are not met.

Table 3-4 Three Basic Tests to Determine if a Project is Justified

The three basic tests to determine if a project is justified are…
a. The Project Advances an AIP Policy. The ADO must verify that the project advances at least one of the AIP policies contained in 49 USC § 47101. The basic goals and objectives in these policies include airport safety, airport security, airport capacity, meeting an FAA standard, preserving airport infrastructure through reconstruction or rehabilitation, protecting and enhancing the environment, minimizing aircraft noise impacts, and airport planning. AIP funds must not be used for a project that does not specifically advance one of the AIP policies.
b. There is an Actual Need. Per FAA policy, the ADO must determine if there is an actual need for the project at the airport within the next five years (per the definition near-term development per the current version of Advisory Circular 150/5070-6, Airport Master Plans). This includes all subcomponents of the project.
c. The Project Scope is Appropriate. The ADO must determine that only the elements that are required to obtain the full benefit of the project are included in the project scope. Any elements that do not meet these criteria must stand on their own separate merit and justification. The current version of FAA Order 5100.39, Airports Capital Improvement Plan, discusses this concept in further detail in the discussions on overall development objective.

Table 3-5 Examples of Projects Not Meeting the Basic Justification Tests

For the following situation…	Is not justified because…
a. A sponsor has a runway shown on their ALP and would like to build it to increase capacity. However, the airport already has adequate capacity and will continue to have adequate capacity in the foreseeable future.	This project does not advance an AIP policy. The actual need does not exist.
b. A sponsor would like to build a runway extension to attract a new class of aircraft or for marketing purposes. In this case, the need is speculative and not based on documented future need.	The actual need does not exist.
c. A sponsor would like include dorm rooms and day rooms in an ARFF building expansion for an airport with a class of certification that does not require 24/7 ARFF personnel.	This project scope is not appropriate.
d. A sponsor would like to replace its existing asphalt pavement with concrete even though the pavement section has existing useful life.	The actual need does not exist.

3-10. Justification Requirements for Safety and Security Projects.

Safety and security projects are not automatically justified. In all cases, the ADO must review these projects to determine if the project meets the eligibility and justification requirements outlined in this Handbook. Safety and security projects that require additional review by the ADO include, but are not limited to, those listed in Table 3-6.

Table 3-6 Safety and Security Projects Proposals Requiring Additional ADO Review

Examples of proposals that require additional ADO review for eligibility and justification…
a. A proposal that addresses a14 CFR part 139 violation
b. A written recommendation by a 14 CFR part 139 certification inspector
c. A proposed runway incursion prevention measure
d. A Runway Safety Action Team recommendation
e. An item included in an Airport Emergency Plan
f. An item included in an Airport Certification Manual
g. An item included in a Wildlife Hazard Assessment or Management Plan
h. An item included in an airport's approved 49 CFR part 1542 security program

3-11. Secondary, Crosswind and Additional Runways.

Per FAA policy, the ADO can only fund a single runway at an airport unless the ADO has made a specific determination that an additional runway is justified. The requirements, justification and eligibility for runways are listed in Table 3-7.

Before planning a project on a runway, the ADO must determine the type of runway (primary, secondary, crosswind, or additional).

A runway that is not a primary runway, a secondary runway, or a crosswind runway is considered to be an *additional* runway. It is not unusual for a two-runway airport to have a primary runway and an additional runway, and no secondary or crosswind runway. This is because the ADO can only designate a runway as a secondary runway or crosswind runway if it meets the specific operating and justification parameters in Table 3-7.

Additional runways are not eligible. Any development such as marking, lighting, or maintenance projects on an additional runway is also ineligible.

Table 3-7 Runway Types and Eligibility

For the following runway type…	Must meet all of the following criteria…	And is…
a. Primary Runway	**(1)** A single runway at an airport is eligible for development consistent with FAA design and engineering standards.	Eligible
b. Crosswind Runway	**(1)** The wind coverage on the primary runway is less than 95%.	Eligible if justified
c. Secondary Runway	**(1)** There is more than one runway at the airport. **(2)** The non-primary runway is not a crosswind runway. **(3)** Either of the following: **(a)** The primary runway is operating at 60% or more of its annual capacity, which is based on guidance developed by APP-400 as the threshold for considering when to plan a new runway, or **(b)** APP-400 has made a specific determination that the runway is required for operation of the airfield.	Eligible if justified.
d. Additional Runway	**(1)** There is more than one runway on the airport. **(2)** The ADO has determined that the nonprimary runway does not meet the requirements to be designated a crosswind runway. **(3)** The ADO has determined that the nonprimary runway does not meet the requirements to be designated a secondary runway.	Ineligible.

3-12. The Use of Critical Aircraft for Justification.

For some projects, the ADO must determine if a project is justified based on the applicable critical aircraft for the project. More than one critical aircraft may control the design of any specific airport's different facility features, such as runway length, strength of paved areas or lateral separations in airfield layout. APP-400 maintains guidance on how to determine the critical aircraft for specific projects and airport types. For funding purposes, it is APP-500 policy that the annual operations requirement for critical aircraft must not include military or federally-owned aircraft.

The ADO has the option to determine that a project is justified based on existing activity at the airport or activity that is projected to be at the airport within the next five years. The ADO has the option to require the sponsor to submit letters of support from airport users if the justification is based on projected activity. The letter must describe the airport user's plans or anticipated activity by the most demanding airplane, or critical aircraft.

3-13. Useful Life Test for Equipment and Facilities.

The useful life of the facility or equipment being rehabilitated, reconstructed or replaced must have been met in order for the project to be funded. The exception is when the ADO has determined that the rehabilitation, reconstruction, or replacement is necessary for safety reasons. Table 3-8 provides a list of minimum useful lives.

Although the minimum useful life of facility, equipment or vehicles may have been met, this does *not* automatically mean that the rehabilitation, reconstruction or replacement of the item is needed. Simply meeting the minimum useful life does not justify replacing the item if the facility, equipment, or vehicle is performing as intended.

Table 3-8 Minimum Useful Life

Project Type	Useful Life
a. All construction projects (unless listed separately below)	20 years
b. All equipment and vehicles (unless listed separately below)	10 years
c. Pavement rehabilitation (not reconstruction, which is 20 years)	10 years
d. Asphalt seal coat, slurry seal, and joint sealing	3 years
e. Concrete joint replacement	7 years
f. Airfield lighting and signage	10 years
g. ARFF vehicles	15 years
h. ARFF structural gear (firefighting suits), which has less heat insulation than proximity gear (per the National Fire Protection Association 1971 Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting)	7 years
i. ARFF proximity gear (firefighting suits), which is also referred to as slicks, bunker, or turn out gear (per the National Fire Protection Association 1971 Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting)	5 years
j. NAVAIDs	15 years
k. Buildings	40 years
l. Land	Unlimited
m. Loading Bridges	20 years

3-14. Benefit-Cost Analysis (BCA) for NAVAIDs and Weather Reporting Equipment.

If a BCA is required for a NAVAID or weather reporting equipment, this requirement is listed in the appendices for that specific project. The ADO must contact APP-500 for the latest tools and procedures for this process.

3-15. BCAs for Capacity Projects Using Discretionary Funds.

A BCA is a tool to determine if a project's benefits outweigh its costs. If the ADO is considering funding a capacity project with AIP discretionary funding, 49 USC § 47115(d) requires that the FAA review a BCA. It is FAA policy that, as of October 28, 2011, a BCA is only required if the sponsor is requesting more than $10 million in discretionary funding over the life of the project. This is a key change to the detailed BCA preparation guidance contained in the document titled FAA Airport Benefit-Cost Analysis Guidance (see Appendix B for link). A few of the more important highlights from this document are included below.

a. Capacity Project Definition. This definition is included in Appendix A. Except for the two types of projects listed in Table 3-9, it is FAA policy that the ADO must obtain a joint APP-400 and APP-510 concurrence on whether the project is considered capacity and therefore requires a BCA.

Table 3-9 Projects Where the FAA Has Determined if a BCA is Required

For the following project…	A BCA is…
a. Construct a new airport that is not replacing an existing airport.	**Required.** By definition, the airport will create capacity where none currently exists.
b. Rehabilitate/reconstruct eligible airfield infrastructure with no increase to the original functionality.	**Typically Not Required, although the FAA may require a BCA.** Although the FAA Airport Benefit-Cost Analysis Guidance (see Appendix B for link) requires that the FAA make this determination on a case by case basis, the FAA has determined that these projects are cost beneficial and typically do not require a separate BCA.

b. Associated Work. When preparing the BCA, the sponsor must include all of the development items directly associated with the capacity project in the BCA. The sponsor cannot pull out pieces of the associated work, even if the sponsor believes the associated work is not capacity related, without the express approval of the FAA.

c. Estimates of Future AIP Funding. Since the BCA must occur before the project is planned in detail, the financial analysis may be incomplete, or not detailed enough to identify all the funding sources for the project. A sponsor may be uncertain about its future entitlement funds and is unable to predict accurately the discretionary funds needed to fund the project. In cases like these, the sponsor and the FAA must jointly agree on a reasonable amount of discretionary funding, given the best information available at the time.

d. BCA Process. The BCA process, per FAA policy, is outlined in Table 3-10.

Table 3-10 BCA Process

The BCA process steps include…	
a.	**ADO Notification to Region and APP-500.** ADOs must notify the regional office and APP-500 promptly when the ADO determines that a sponsor will be submitting a BCA in the near future. Preliminary information provided to APP-500 must include a general description of the project, the estimated cost, and the project's justification.
b.	**APP-500 Guidance to Region and ADO.** Based on the project, APP-500 will indicate whether a BCA is required and provide the ADO and regional office with the appropriate review method, internal coordination, appropriate samples, and other necessary information.
c.	**Sponsor Preparation of BCA**. Sponsors must use FAA Airport Benefit-Cost Analysis Guidance (see Appendix B for link) when preparing a BCA for a capacity project.
d.	**Sponsor Submittal**. Sponsors must submit one hard copy and one electronic copy of the BCA to the ADO. Sponsor must submit BCAs far enough in advance of any requested grants or LOI offers in order to avoid potential delays in funding decisions.
e.	**FAA Determination**. In most cases, APP-500 will prepare the official FAA determination, which may include internal coordination with other FAA offices, and forward a copy of the official determination to the ADO and regional office.
f.	**ADO Notification to Sponsor**. The ADO will send the official FAA determination to the sponsor and will place a copy in the project files.

3-16. BCAs for All Other Projects.

The FAA also reserves the option to require a BCA for any AIP funded project, regardless of project type, funding type, or funding amount.

Section 4. Project on Airport Property (with Good Title).

3-17. On-Airport Property Requirements.

The Act provides the specific cases where AIP funds can be used for an off-airport project. Therefore, unless noted in this Handbook that the project can be off-airport, all airport projects must be located within the airport boundary. Table 3-11 provides the list of eligible off-airport projects.

As discussed in Table 2-8, leasing from a private entity does not meet the requirements for good title.

Table 3-11 Eligible Off-Airport Projects

Eligible off-airport projects are limited to…	And the sponsor, at a minimum, must have…
a. Removal of obstructions.	**An easement.** The easement must be shown on the Exhibit A (property inventory map).
b. Marking or Lighting obstructions.	**An easement or a written agreement.** If the sponsor executes an easement, the easement must be shown on the Exhibit A (property inventory map). If the sponsor wants to use a written agreement, the ADO has the option to contact APP-400 to ensure that the written agreement is adequate. The agreement must also transfer the responsibility of maintaining the development to the property owner once the project is complete.
c. Outfall drainage ditches.	**An easement.** The easement must be shown on the Exhibit A (property inventory map).
d. Relocation of roads and utilities constituting airport obstructions or to allow eligible airport development.	**A written agreement.** The sponsor must have a formal written agreement with the property owner that allows the work to be done. The agreement must also transfer the responsibility of maintaining the development to the property owner once the project is complete.
e. Installation or relocation of NAVAIDs.	**An easement.** The easement must be shown on the Exhibit A (property inventory map).
f. Construction or installation of eligible utilities.	**An easement.** The easement must be shown on the Exhibit A (property inventory map).
g. Airport waste-water treatment plants.	**An easement.** The easement must be shown on the Exhibit A (property inventory map).
h. Noise program implementation projects.	**A written agreement (property improvements).** The sponsor must have a formal written agreement with the property owner that allows the work to be done. The agreement must also transfer the responsibility of maintaining the development to the property owner once the project is complete. **An easement (placement of sponsor owned equipment).** The easement must be shown on the Exhibit A (property inventory map).

Table 3-11 Eligible Off-Airport Projects

Eligible off-airport projects are limited to…	And the sponsor, at a minimum, must have…
i. Environmental mitigation measures required as a condition of environmental approval (such as wetlands replacement or installation of noise monitors)	**A written agreement (property improvements).** The sponsor must have a formal written agreement with the property owner that allows the work to be done. The agreement must also transfer the responsibility of maintaining the development to the property owner once the project is complete. **An easement (placement of sponsor owned equipment).** The easement must be shown on the Exhibit A (property inventory map).
j. Aircraft Rescue and Fire Fighting Training Facility	**A written agreement.** The sponsor must have a formal written agreement with the property owner that allows the work to be done. The agreement must also outline who is responsible for maintaining the project when it has been completed.

Section 5. Project on Airport Layout Plan.

3-18. Airport Layout Plan Requirement.

For AIP projects that impact the airport layout plan (ALP), the sponsor must obtain an FAA airspace determination through an aeronautical study to add the project to the ALP. This stems from two of the requirements found in 49 USC § 47107(a)(16). The first requirement is that the sponsor must maintain a current ALP. The second is that the sponsor must not make an alteration to the airport unless the ADO has determined that it will not adversely affect the safety, utility, and efficiency of the airport. The sponsor meets these two requirements for the project by obtaining an airspace determination and ALP approval from the ADO to add the project to the airport layout plan.

In order to complete the ALP review, the ADO must follow the ALP review process established by the FAA Office of Airports, including coordination with other FAA lines of business.

Per FAA policy, the ADO must not program the project that needs to be added to the ALP unless the ADO has approved the associated airspace determination. In limited cases where directed by APP-500, the ADO may program the project without airspace determination approval; however the ADO must complete the airspace determination prior to issuing the grant per 49 USC § 47107(a)(16)(C).

Section 6. Intergovernmental Review and Airport User Consultation Complete.

3-19. Intergovernmental Review.

The current version of FAA Order 1200.21, Intergovernmental Review of FAA Programs and Activities contain intergovernmental review requirements for AIP projects. This satisfies the requirement in 49 USC § 47106(a)(1) that the project be consistent with plans (existing at the time the ADO issues the grant offer) of public agencies around the airport.

Sponsors are required to coordinate projects through the appropriate state contact for projects listed in Table 3-12. The state contact information is available on the Intergovernmental Review page of the Office of Management and Budget (OMB) website (see Appendix B for link). Table 3-13 contains key requirements.

Table 3-12 Projects Requiring Intergovernmental Review

The sponsor must coordinate projects through the appropriate state contact for…
a. Projects that significantly affect state or local governments beyond airport boundaries.
b. Projects specifically requested under a state's review process.
c. Projects at a medium or large hub airport that involve the siting of the airport location, a new runway or a major runway extension. In this case, 49 USC § 47106(c)(1)(A) requires that the sponsor must also provide airport layout plan amendments (and an associated master plan) upon request by the relevant Metropolitan Planning Organization (MPO).

Table 3-13 Key Requirements for Intergovernmental Review

Some of the key requirements are…
a. **Sponsor Notification.** The regional office is responsible for informing new sponsors of the required intergovernmental project review process per the current version of FAA Order 1200.21, Intergovernmental Review of FAA Programs and Activities, however the regional office may delegate this to the ADO. The ADO must also notify all affected sponsors when a federal change is made to the review process.
b. **Review Timeline.** It normally takes state and local agencies 60 days to complete their review. The sponsor must not submit a grant application before this coordination is complete. The ADO must not issue a grant before the 60 day review period is over.
c. **Early Project Review.** If an interagency review was completed in the environmental or planning stage of the project, it normally will not need to be repeated during the implementation stage unless the scope of work has changed, substantial new information has become available, or significant time has passed.

Table 3-13 Key Requirements for Intergovernmental Review

Some of the key requirements are…
d. Process Changes. The ADO must forward formal changes in a state's intergovernmental project review process to the Department of Transportation (DOT) Assistant Secretary for Administration. All affected DOT offices must implement the process changes submitted by the state within 90 days of receipt from the state.
e. Establishment of State Process. States, in consultation with local elected officials, have the option to establish their own process for reviewing and commenting on federal programs and activities.
f. Treatment of Comments. The ADO has the option to accept the comments, reach a mutually agreeable solution with the state or local agency, or reject the comments. While the ADO is not required to accept comments or discuss another solution, the ADO has the option to provide a written explanation of the final decision as a courtesy to the single point of contact at the state. The explanation should be provided at a minimum of 15 days before beginning work on a project. If no single point of contact for the state exists, the ADO has the option to send the written explanation to the parties that initially provided comments. When 49 USC § 47106(c)(1)(A) is triggered, the ADO must send the MPO a written explanation of the final decision. When the ADO provides a written explanation of the final decision to a state or MPO, the ADO must also send an informational copy to the DOT Assistant Secretary for Administration.

3-20. Consultation with Airport Users.

Per 49 USC § 47105(a)(2), a sponsor must consult with the airport users that will be affected by the project. The consultation process does not require users to provide input or agree with the proposal. Other consultation requirements are included in Table 3-14.

Table 3-14 Airport User Consultation Requirements

Requirements per FAA policy include…
a. The affected parties must be given a reasonable opportunity to provide input to proposals for airport development.
b. The consultation must take place prior to submittal of the grant application. Since consultation is part of planning project, separate pre-grant consultation is not required.
c. The consultation must include all project considerations that bear on the decision to proceed and which impact users' charges or operations.
d. At a minimum, the consultation must cover the general nature of the development proposed, its estimated cost, and its estimated start and stop dates.

Section 7. FAA Environmental Finding Complete.

3-21. Environmental Finding Requirements.

Per 49 USC§ 47106(c), any airport project funded with AIP funds requires an environmental finding (Categorical Exclusion, Finding of No Significant Impact, or Record of Decision) prior to initial grant programming. The requirements for environmental analysis and findings are included in the current version of FAA Order 5050.4, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects.

Per FAA policy, the ADO must not program a project until the environmental finding is complete.

Section 8. Usable Unit of Work Obtained.

3-22. Usable Unit Requirements (and Phased Project Conditions).

AIP grants that are given must result in a complete project. Partial construction or incomplete acquisition does not result in a complete project and therefore is not a usable unit of work. The required usable unit of work by project type is included in the project requirement appendices for that project.

There is one exception to this, and it is often referred to as a phased project. The FAA may issue a grant for a portion of a project when conditions in Table 3-15 are met.

Examples of acceptable and unacceptable grant descriptions are listed in Table 3-16.

Table 3-15 Requirements for Grants that will Not Result in a Usable Unit of Work

The project must meet all of the following requirements…
a. The ADO must include a special condition in the grant. This special condition must require that the sponsor complete a safe, useful, and usable unit of development in a reasonable timeframe whether or not additional federal funding becomes available. APP-520 maintains a current list of special conditions that must be used for specific project or airport situations.
b. The grant description must clearly define the specific portion of the work being done in the grant, not the work that will be completed in all of the phases. The ADO can accomplish this by referencing the dimensions of the work or the specific contracts being funded.
c. Where the grant is for reimbursement of work, the requirements that the grant describe the work specifically in each phase must be met.

Table 3-16 Examples of Acceptable and Unacceptable Grant Descriptions

The description is…	For the following grant description for a multi-phase terminal building project…
a. Unacceptable.	Construct Terminal (Phase 1 - Building) Construct Terminal (Phase 2 - Building) Construct Terminal (Phase 3 - Building) Construct Terminal (Phase 4 - Building) Construct Terminal (Phase 5 - Building) Construct Terminal (Phase 6 - Building)
b. Acceptable.	Construct Terminal (Phase 1 - Site work) Construct Terminal (Phase 2 - Building- Foundation) Construct Terminal (Phase 3 - Building –Structure) Construct Terminal (Phase 4 - Building -Electrical, HVAC, Plumbing) Construct Terminal (Phase 5 - Building - Finishes, Interior and Exterior) Construct Terminal (Phase 6 - Building) - Passenger Boarding Bridges)

Section 9. FAA Standards Met.

3-23. Mandatory FAA Standards.

a. General Requirement. Per 49 USC § 47105(b)(3), a project must be planned, designed and constructed in accordance with current FAA standards unless the FAA has approved a modification to the standard for the specific project. Advisory Circular 150/5300-1F, Modification to Agency Airport Design, Construction, and Equipment Standards provides the standards as airport design standards, construction standards, and equipment procurement standards.

b. Safe Approaches for Runway Projects (Clear Approaches). The FAA has interpreted 49 USC § 47105(b)(3) to mean that safe approaches are part of the FAA standards that must be met for runway projects. Per FAA policy, the ADO must not fund the rehabilitation, construction, or extension of any section of a runway that the ADO has determined will not be usable due to unsafe approaches using the latest version of Advisory Circular 150/5300-13, Airport Design.

c. List of Advisory Circulars. The FAA standards consist of the current version of the advisory circulars listed in the document titled Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects. This list, which is available online (see Appendix B for link), is published to comply with Grant Assurance 34, regulations, published guidance, and FAA policy.

d. Timing of Advisory Circulars. If an FAA standard changes while a project is in progress, the sponsor must contact the ADO to determine whether the new standard must be met. Generally:

(1) If a project *has not* been bid, it is the sponsor's responsibility to ensure that the finished design meets the latest published standard, unless the ADO and the sponsor agree that the latest published standard does not have to be included.

(2) If the project *has* been bid, the ADO will not normally require the sponsor to meet the revised standard. The ADO has the option to require the sponsor to meet the revised standard when:

(a) The requirements can be easily incorporated.

(b) The ADO has determined that the old standard will negatively impact the airport.

(c) The ADO and sponsor mutually agree to include the new standard.

e. Other Standards. The ADO may incorporate other standards into a project as a special condition in the grant agreement. These standards then become mandatory by their inclusion in the grant. APP-520 maintains a current list of special conditions that must be used for specific project or airport situations.

3-24. Modification to FAA Standards (or Specifications).

Where the FAA has published specifications for specific items, it is FAA policy that sponsors must use the specifications as written, with no changes from the specifications, except where explicitly allowed in the specification.

The sponsor must obtain an FAA modification to standards approval for any changes that is not specifically allowed, no matter how minor it may seem to the sponsor. This is necessary to ensure that the change will not unduly limit competition, eliminate FAA approved vendors, or negatively impact the project.

To request a modification, a sponsor must follow the FAA process, which is outlined in current version of FAA Order 5300.1, Modifications to Agency Airport Design, Construction, and Equipment Standards.

Per the current version of FAA Order 5300.1, the FAA can only approve a modification to standards if it justified by unusual local conditions. Cost savings or standardization of the equipment type is not considered to be an unusual local condition.

Per the current version of FAA Order 5300.1, the FAA will not issue a Modifications to Standards for nonstandard runway safety areas.

3-25. Standards that Exceed those of the FAA.

FAA policy is that if the project meets the FAA standards, then the public need has been fully met. Therefore a project that is designed or built to a more rigorous standard is considered to exceed FAA standards. Except in limited circumstances for select projects as outlined in Table 3-17, the ADO must not fund work exceeding FAA standards with AIP.

The ADO also has the option of allowing the sponsor to pay for the cost to exceed the FAA standards if the procurement requirements in Paragraph 3-42 are met for inclusion of ineligible and/or non-AIP work in a contract. Funding examples are provided in Table 3-18.

Per FAA policy, sponsors must obtain written ADO concurrence prior to either to designing or bidding AIP funded projects that will include work that exceeds FAA standards. The ADO must put a copy of their determination in the grant file.

Per FAA policy, if the ADO allows the sponsor to pay for the added cost of a project or equipment, the sponsor is not allowed to use the bid process to determine the non-AIP costs.

Table 3-17 Limited Circumstances Where Work Exceeding FAA Standards May be Funded with AIP

The limited circumstances include…
a. Meeting a Local Standard. 49 USC § 47110(b)(1) gives the ADO the option to consider funding a cost if the cost is necessary to allow the project to proceed. Therefore if there is added cost to meet a local permitting standard, the ADO has the option to consider funding the added cost.
b. Rehabilitating an Airfield Facility (or Piece of Equipment). The ADO has the option of funding a project to rehabilitate (not reconstruct) an airfield facility (or piece of equipment) that exceeds FAA standards if the project meets the following criteria. **(1)** The project component is normally an eligible cost. **(2)** The sponsor has demonstrated a continuing need for the existing facility or equipment. This can either be based on past aeronautical activity or use, or to accommodate the aircraft of a current tenant based at the airport. **(3)** The ADO has determined that the added cost is reasonable compared to the benefit being obtained. The ADO has the option to request a life cycle cost analysis, benefit-cost analysis, or other applicable analysis to support this determination. Sponsor guidance on life cycle cost analysis is discussed in Paragraph U-13 and sponsor guidance on benefit-cost analysis is contained in the document titled FAA Airport Benefit-Cost Analysis Guidance (see Appendix B for link).

Table 3-18 Funding Examples for Work Exceeding FAA Standards

If a sponsor requests…	The ADO has the option to…
a. A project to construct a parallel taxiway at 400 feet from the runway when the FAA standard (based on the critical aircraft and approach minimums) is 300 feet based. The extra costs for normal site preparation and pavement construction (there are no large extra expenses). In this case, no cost analysis would be required because the FAA has already determined that the long term benefit of locating the taxiway far outweighs the potential cost of relocating the taxiway in the future. This applies regardless of whether the airport shows the need for the 400 feet within the 20 year planning period.	Fund the added cost with AIP.
b. A project for reconstruction of a runway to a width wider or length longer than required by the critical aircraft. Because the project is reconstruction, it is considered similar to construction of a new runway.	Allow the sponsor to pay for the added cost if the procurement requirements in Paragraph 3-42 are met for inclusion of ineligible and/or non-AIP work in a contract.
c. A project for rehabilitation or overlay of a runway to a width wider or length longer than required by the current critical aircraft.	Fund all or a portion of the added cost with AIP.
d. A project for construction of a 75 foot wide taxiway when the justified width is 50 feet. This project is designed for a critical aircraft that will not be met for five or more years.	Allow the sponsor to pay for the added cost if the procurement requirements in Paragraph 3-42 are met for inclusion of ineligible and/or non-AIP work in a contract.
e. A project for construction of a 75 foot wide taxiway when the justified width is 50 feet. This project is designed for a critical aircraft that the ADO has determined will be met within five years.	Fund the added cost with AIP.
f. An apron construction project that includes fire hydrant installation that is required to receive a building permit determined that the cost of the fire hydrant installation is necessary to allow the project to proceed.	Fund the added cost with AIP.
g. A project that has an extended warranty period of 36 months, and the FAA standard is 12 months.	Allow the sponsor to pay for the added cost if the procurement requirements in Paragraph 3-42 are met for inclusion of ineligible and/or non-AIP work in a contract.
h. A project to rehabilitate an ARFF building that includes a weight training room that requires the ventilation system in the building be replaced. The weight training room is not required by FAA standards. The ADO has determined the weight training room and the ventilation system are ineligible costs.	Allow the sponsor to pay for the added cost if the procurement requirements in Paragraph 3-42 are met for inclusion of ineligible and/or non-AIP work in a contract.

Table 3-18 Funding Examples for Work Exceeding FAA Standards

If a sponsor requests…	The ADO has the option to…
i. A project to rehabilitate an ARFF vehicle that is larger than required by 14 CFR part 139 index. The ADO has determined that rehabilitation of the larger ARFF vehicle is less expensive than acquiring a new vehicle that is correctly sized.	Fund the added cost with AIP.
j. A project to remove obstructions, including land acquisition, to meet the clearance requirements for an approach category that is greater than the aircraft category (for example clearing to C standards where the airport is designated as a B-II airport on its ALP for the entire planning period.)	Allow the sponsor to pay for the additional costs, including the costs of the land acquisition. AIP cannot be used for the additional land or clearing because the work is not necessary.

3-26. Eligibility Differences between the Handbook and the Advisory Circulars.

Advisory circulars are written to cover a broad range of airport design, construction, and equipment standards. There are recommendations in many advisory circulars that exceed what is justified under AIP. However, just because an item is discussed in an advisory circular, this does not make it eligible or justified. This Handbook, not the advisory circular, provides the guidance for determining eligibility and justification for any project that is AIP funded.

3-27. Approval and Use of State Standards.

Per 49 USC § 47105(c), a sponsor may request to use state standards for nonprimary airport development that are different from FAA standards. Per 49 USC § 47114(d)(5), a sponsor may also request to use state highway construction and material specifications for full strength airfield pavement construction at a nonprimary airport. The requirements for these two uses of state standards are different, and are discussed in detail in the current version of Advisory Circular 150/5100-13, Development of State Standards for Nonprimary Airports.

In order for the ADO issue grants using any type of state standards on a project in the grant, the requirements in Table 3-19 must be met.

Table 3-19 Requirements for the Use of State Standards

In order for an ADO to permit the use of state standards on an AIP funded project, the following requirements must be met…
a. Modification to Standard Approved. AAS-1 must have approved the modification to standards according to the current version of FAA Order 5300.1, Modifications to Agency Airport Design Construction and Equipment Standards prior to the ADO issuing the grant.
b. Advisory Circular Requirements Met. The sponsor's request for use of the modification to standards must comply with all requirements contained in the current version of Advisory Circular 150/5100-13, Development of State Standards for Nonprimary Airports.
c. Additional Restriction #1 for Airfield Pavement Built Using State Highway Specifications Met. Per 49 USC § 47114(d)(5)(A), the runway cannot currently be greater than 5,000 feet or currently be serving aircraft that are greater than 60,000 pounds gross weight.
d. Additional Restriction #2 for Airfield Pavement Built Using State Highway Specifications Met. Per 49 USC § 47114(d)(5)(A), the life of the pavement must not be less than the life of the pavement built using FAA standards. Because the FAA standard for pavement life is at least 20 years, the pavement must have a design life of 20 years or more.
e. Additional Restriction #3 for Airfield Pavement Built Using State Highway Specifications Met. Per 49 USC § 47114(d)(5)(B), the ADO must not issue another AIP grant to rehabilitate or reconstruct the airfield pavement for a period of 10 years after the pavement construction is completed. The only exception to this requirement is if AAS-1 has determined rehabilitation or reconstruction is required for safety reasons.
f. Additional Restriction #4 for Airfield Pavement Built Using State Highway Specifications Met. Because 49 USC § 47114(d)(5)(A) limits the runway length and aircraft weight, the airport layout plan must not show a future extension (in the 20 year planning period) that will result in a runway greater than 5,000 feet or serve aircraft that are greater than 60,000 pounds gross weight.

3-28. Projects with No FAA Standard.

Some eligible projects have no corresponding FAA standards, procedures, policy, plans, and/or specification.

The ADO must contact APP-520 for assistance on project eligibility and AAS-100/300 to obtain the FAA standards and requirements for the project. Until the FAA standard is published, APP-520 will provide eligibility of these projects and AAS-100/300 will provide the standards to which the project must be constructed on a case-by-case basis.

In some cases, the FAA has specifically adopted the standards of another federal agency or of an industry group. The ADO can obtain a current list of these adopted standards from AAS-100/300 and APP-520.

3-29. ADO Review of Plans and Specifications.

Sponsors must prepare plans and specifications to meet FAA standards as discussed in this section of the Handbook. In addition, sponsors are required to prepare an engineer's report that contains the information in Table 3-20. The ADO must follow the FAA policy for reviewing plans and specifications outlined in the latest version of the Plans and Specifications Review Implementation Memorandum published by the FAA Office of Airport Safety and Standards.

If the ADO reviews the plans and specifications and engineer's report, the ADO is not required to issue an approval. Instead, the ADO has the option to provide comments to the sponsor. In reviewing the plans and specifications and engineer's report, the ADO also has the option to request input from affected FAA lines of business. If the ADO provides a written response, the ADO must file a copy of the response in the project file. The ADO must not fund any project the ADO has determined does not meet FAA standards.

Sponsor certification of plans and specifications does not relieve the sponsor of the requirement to obtain prior FAA approval for modifications to standards or to notify the ADO of any limitations to competition within the project.

Table 3-20 Required Content for Engineer's Reports

Engineer's reports must include…
a. Design Computations. The report must include a summary of the design computations used in the design of major development items. Use of FAA Form 5100-1 for the design pavement thickness is required. A summary of computations and a description of the method used to conduct the drainage design must be presented. Earthwork cross-sections and mathematical calculations for designs are not required to be included in the design report unless requested by the ADO.
b. Selections of Design Materials and Equipment and Proposed Modifications to Standards. The engineer's choices and recommended modifications will, in most cases, be influenced by service records for comparable construction and by cost comparisons. The report must include concise statements and cost comparisons that justify selections made and the proposed modifications to standards proposed in the project. The current version of FAA Order 5300.1, Approval Level for Modification of Agency Airport Design and Construction Standards, provides additional information on modifications to design and construction standards.
c. Sole-Source, Proprietary, or other Competition-Limiting Specifications or Design Elements. The report must list all such items, including the reason for the limitation, impacts of limiting competition, and the benefits to the federal government for the proposal.
d. Other Elements. The report must outline related project work elements to be done without AIP assistance, including details on how the work is to be accomplished, and how it relates to the AIP work. Work to be done by utility companies must be described in sufficient detail to verify adequate funding for the work.
e. Support Data. The report must also include supporting data and itemized project cost estimates with source information. Any unique circumstances that may influence adjustments of existing project cost estimates must be explained.

Section 10. Project Procured Correctly.

3-30. Importance of 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards).

Sponsors must follow 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) when making procurements under an AIP grant. This regulation contains the policies and procedures for AIP project actions such as construction, equipment purchases, and selection for professional services. If a sponsor fails to meet any of the procurement requirements for their AIP funded project, it may result in the ADO determining a normally allowable cost to be unallowable.

3-31. Sponsor Procurement Requirements.

The sponsor, not the ADO, is responsible for meeting all procurement requirements. The sponsor establishes, enforces, and administers the contract agreements and is responsible for all contractual matters, including evaluation and award of contract, resolution of claims and disputes, and settlement of litigation issues. The ADO is not a party to the contracts that a sponsor executes under an AIP grant.

Per 49 CFR § 18.36(b)(11) (2 CFR § 200.318(k)), the ADO cannot substitute their judgment for the sponsor unless the matter is primarily a federal concern. However, the ADO still has a defined role in procurement oversight per 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) as further defined in this chapter.

Sponsor procurement requirements are discussed in more detail in Appendix U.

3-32. Summary Table of Mandatory/Optional ADO Procurement Review.

There are only certain situations where the ADO is required by 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) to review the sponsor's procurement process. Otherwise, 49 CFR § 18.36(g)(3)(ii) (2 CFR § 200.324(c)(2))allows the ADO to accept sponsor certification that the sponsor is following 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards). This certification is included in the grant assurances signed by the sponsor and therefore, no additional action is required by the ADO.

There are also certain situations where FAA policy or legislation requires the ADO to review the sponsor's procurement process. Table 3-21 contains a summary of the mandatory and optional ADO procurement review responsibilities. The ADO always has the option of reviewing any sponsor procurement documents and systems at any time during the grant process.

Table 3-21 Summary Table of Mandatory/Optional ADO Procurement Review

For the following situation…	ADO review is…	The associated 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) general reference is…	And the requirements are in Paragraph…
a. Bid Protests and Appeals.	Mandatory (but limited in nature)	49 CFR § 18.36(b)(12) (2 CFR § 200.318(k))	3-32
b. Procurement Protests and Appeals after the Contract Award.	Mandatory (but limited in nature)	N/A	3-33
c. Bonding that Does Not Meet the Minimum Requirements.	Mandatory (or can rely on sponsor's written assurance)	49 CFR § 18.36(h) (2 CFR § 200.325, Bonding requirements)	3-34
d. Airfield Lighting Control and Monitoring System and Single-Certified Airfield Lighting Equipment.	Mandatory	49 CFR § 18.36(c)(1) (2 CFR § 200.319(a))	3-35
e. Procurement and Installation of Sponsor's Preferred Airfield Lighting Manufacturer's Equipment.	Mandatory	49 CFR § 18.36(c)(1) (2 CFR § 200.319(a))	3-36
f. Airfield Lighting Procurement Requirements	Mandatory	N/A	3-37
g. Airfield Lighting Reimbursement Requirements.	Mandatory	N/A	3-38
h. Noncompetitive Proposals (Including Sole Source and Inadequate Number of Qualified Sources).	Mandatory	49 CFR § 18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals)	3-39
i. Change Orders, Supplemental Agreements, and Contract Modifications.	Mandatory (but not required until the ADO is issuing an amendment or closing the grant)	49 CFR § 18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals)	3-40

Table 3-21 Summary Table of Mandatory/Optional ADO Procurement Review

For the following situation…	ADO review is…	The associated 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) general reference is…	And the requirements are in Paragraph…
j. Contract Clauses and Provisions Required for AIP Grants.	Optional (ADO responsibility is limited to notifying new sponsors of requirements)	49 CFR § 18.36(i) (2 CFR § 200.326, Contract provisions)	3-41
k. Contracts Containing Ineligible and/or Non-AIP Funded Work.	Mandatory	N/A	3-42
l. Contracts Containing Work that May Reduce the Number of Potential Bidders.	Mandatory	N/A	3-43
m. Contracts Containing Work that Exceeds FAA Standards.	Mandatory	N/A	3-44
n. Consultant Contracts (Qualifications Based with Negotiated Price).	Optional with Sponsor Certification (unless sponsor deviates from requirements, then mandatory)	49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) Procurement by competitive proposals)	3-45
o. Design-Build and Construction Manager-at-Risk Contracts.	Mandatory	49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) Procurement by competitive proposals)	3-46
p. Engineering Materials Arrestor System (EMAS).	Mandatory	49 CFR § 18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals)	3-47
q. Bid Alternates (Including Life Cycle Cost Analysis Alternates) and Bid Additives.	Optional with Sponsor Certification	N/A	3-48
r. Buy American Requirements.	Mandatory (if a waiver is required)	N/A	3-49

Table 3-21 Summary Table of Mandatory/Optional ADO Procurement Review

For the following situation…	ADO review is…	The associated 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) general reference is…	And the requirements are in Paragraph…
s. OIG Notification of Potential Procurement/Bid Improprieties.	Mandatory	N/A	3-50
t. Escalator Clauses.	Mandatory	N/A	3-51
u. Plans and Specifications Review.	As required in "Plans and Specifications Review Implementation Memorandum" published by FAA Office of Airport Safety and Standards.	49 CFR § 18.36(g)(1) (2 CFR § 200.324(a))	3-52
v. Pre-award Review of Contracts.	Optional with Sponsor Certification	49 CFR § 18.36(g)(2) (2 CFR § 200.324(b))	3-53
w. Sponsor's Procurement System.	Optional with Sponsor Certification	49 CFR § 18.36(g)(3) (2 CFR § 200.324(c))	3-54
x. Force Account Work.	Mandatory	N/A	3-55
y. Value Engineering.	Mandatory	N/A	3-56
z. Indefinite Delivery (Task Orders) Extensions for Construction Services.	Mandatory	N/A	3-57
aa. Indefinite Delivery (Task Orders) Extensions for Construction Services.	Mandatory	N/A	3-58
bb. Sponsor Furnished Materials or Supplies.	Mandatory	N/A	3-59
cc. Suspension or Debarment of Persons or Companies.	Optional with Sponsor Certification (mandatory if a problem is identified)	N/A	3-60

3-33. Bid Protests and Appeals.

The sponsor requirements for bid protests and appeals is contained in 49 CFR § 18.36(b)(12) (2 CFR § 200.318(k)) (see Paragraph U-9). Table 3-22 contains the ADO specific review requirements. Many bid protests result from a sponsor's improper modification of project specifications or solicitation package to include a sponsor's preference. In those situations, the ADO must not rely on the sponsor to resolve the protest, but must treat the protest as a federal concern. Table 3-23 contains additional requirements for bid protests that are a federal concern.

Table 3-22 ADO Review Requirements for Bid Protest and Appeals

The following applies…
a. Protest Sent Directly to the FAA by the Protester. If a protest is sent directly to the FAA, the FAA must send a copy of the protest to the sponsor per 49 CFR § 18.36(b)(12)(ii) (2 CFR § 200.318(k)). The ADO must notify the protester that the protest has been forwarded to the sponsor and they must deal directly with the sponsor. In addition, the ADO must request the sponsor to send a copy of the sponsor's protest procedures to the ADO. Per 49 CFR § 18.36(b)(12) (2 CFR § 200.318(k)), the sponsor is responsible for handling bid complaints and protests. The ADO's review responsibility at this point is limited to a cursory review of the protest to determine if there is a federal concern and establishing that the sponsor has protest procedures in place. If there is a federal concern, the ADO must notify the sponsor and request the sponsor immediately send a copy of the sponsor's proposed resolution. The ADO must not issue AIP funding until the ADO is satisfied the sponsor resolved the issue and correctly addressed any federal concerns.
b. Copies of Protests Sent to the ADO by the Sponsor. After the sponsor's mandatory and timely submittal of the bid protests *and a copy of the sponsor protest procedures* to the ADO, the ADO's review responsibility at this point is limited to scanning the protest to determine if there is a federal concern and establishing that the sponsor has protest procedures in place.
c. Protests that are a Federal Concern. 49 CFR § 18.36(b)(11) (2 CFR § 200.318(k)) cautions that the federal agencies (the ADO) not substitute their judgment for that of the sponsor unless the matter is a federal concern. If there is a federal concern, the ADO must notify the sponsor and request a resolution. The ADO must not issue AIP funding until the ADO is convinced the sponsor resolved the issue and correctly addressed any federal concerns.
d. Cancelation of Prior Approval or Sponsor Certification. The ADO approval of the plans and specification or acceptance of the sponsor's certification is automatically canceled by the receipt of the bid protest.
e. Restrictions on AIP Funding Pending Resolution. The ADO must not issue AIP funding until the ADO has received the sponsor's written notification of how the issue was resolved and the ADO is satisfied the sponsor resolved the issue and correctly addressed any federal concerns. By issuing the associated grant, the ADO is documenting their determination that the bid protest has been resolved.
f. Protester Appeals. Per 49 CFR § 18.36(b)(12) (2 CFR § 200.318(k)), a protester may pursue a protest with the federal agency after exhausting all administrative remedies with the sponsor. By this point, the ADO should have already scanned the protest to determine if there was a federal concern and established if the sponsor has protest procedures in place. The ADO has the option to respond to the protester, but is not required to by 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards).

Table 3-23 Additional Actions for Bid Protests that are a Federal Concern

The following applies…
a. Determining a Federal Concern. Federal concerns include violation of federal law or regulations. It includes allegations that the project plans or specifications have been altered to give preference to a manufacturer, to exclude a product, or otherwise limit competition. This is because limiting competition may violate 49 CFR § 18.36(c) (2 CFR § 200.319, Competition). Modification of specifications without receiving an FAA Modification of Standards is also a federal concern.
b. Copies of Red-Lined Specifications and Solicitation Package Sent to the ADO by the Sponsor. The sponsor must send the ADO a copy of the as-bid specifications and the complete solicitation package, detailing where changes to the FAA standard specification have been made and which aspects of the solicitation are being protested.
c. Protests that must be forwarded. If the bid protest involves another FAA line of business, such as the Office of Civil Rights, the ADO must forward all documentation regarding the protest to the affected office. The ADO must notify the sponsor of the transfer and must advise the sponsor that the ADO will not issue AIP funding until the issue is resolved.
d. Cancelation or rebidding a Project. If the ADO determines that the protest was a result of improper modification of the specifications or an otherwise defective solicitation package, the ADO must advise the sponsor that additional costs incurred fixing the package and soliciting the project are not eligible for reimbursement.
e. Documenting ADO Actions. Where the bid protest is a federal concern, the ADO must document steps in the project file that the ADO takes to ensure that the sponsor properly resolves the protest.

3-34. Procurement Protests and Appeals after the Contract Award.

The ADO review requirements for protest and appeals that occur after the contract is awarded is the same as the requirements for bid protests and appeals in Paragraph 3-32. However, since the project may already be under grant, the ADO must notify the sponsor that the sponsor must not request payments for the disputed costs.

3-35. Bonding that Does Not Meet the Minimum Requirements.

The sponsor requirements for bonding are contained in 49 CFR § 18.36(h) (2 CFR § 200.325, Bonding requirements) (see Paragraph U-19). Table 3-24 contains the ADO specific review requirements for bonding that does not meet the minimum requirements in 49 CFR § 18.36(h) (2 CFR § 200.325, Bonding requirements).

Table 3-24 ADO Review Requirements for Bonding that Does Not Meet the Minimum Requirements

For…	The following applies…
a. Bonding that Does Not Meet the Minimum Requirements.	The ADO is allowed to rely on the sponsor's written assurance that the federal interests are adequately protected under the proposed bonding method. As long as the ADO has not issued a written negative determination, it is implicitly implied that the ADO has issued a favorable determination for all future procurement actions using the proposed bonding method.
b. Combined Payment and Performance Bonds.	The ADO is allowed to rely on the sponsor's written assurance that the federal interests are adequately protected under the combined payment and performance bonding proposal. As long as the ADO has not issued a written negative determination, it is implicitly implied that the ADO has issued a favorable determination for all future procurement actions using the proposed bonding method.

3-36. Airfield Lighting Control and Monitoring System and Single-Certified Airfield Lighting Equipment.

FAA policy requires a sponsor to conduct two separate procurements when an AIP project includes the acquisition of airfield lighting equipment that is available from only a single manufacturer or the modification of an existing separate Airfield Lighting Control and Monitoring System (ALCMS). The sponsor must separately procure the ALCMS or single-certified airfield lighting equipment using noncompetitive procurement requirements. The sponsor must also have received the manufacturer's price quotation for the ALCMS or the lighting equipment before starting the procurement for AIP.

The reason for this policy is that the FAA determined that ALCMS modification (or the acquisition of certified airfield lighting equipment for which there is only one manufacturer) may negatively impact the 49 CFR § 18.36(c)(1) (2 CFR § 200.319(a)) requirement of full and open competition, if this work is included in a sealed bid procurement for a broader project. This negative impact stems from the fact that the manufacturer of the equipment may be perceived to have an advantage over other manufacturers. In addition, the manufacturer might be perceived to be able to offer more favorable pricing to a contractor who agrees to use only that manufacturer's equipment on other parts of the project, creating a strong pricing incentive to use that manufacturer's equipment for the rest of the project.

3-37. Procurement and Installation of Sponsor's Preferred Airfield Lighting Manufacturer's Equipment.

Because AIP funded projects must meet the procurement requirements in 49 CFR §18.36(c)(1) (2 CFR § 200.319(a)), sponsors are not allowed to select their preferred manufacturer of airfield lighting equipment and pay for that equipment with AIP grant funds.

Previously, the FAA policy did not explicitly allow a sponsor to provide airfield lighting equipment on an AIP-funded project. The FAA determined that a sponsor may be allowed to buy the preferred equipment (using sponsor funds) and use AIP funds to pay for the installation of the sponsor-preferred equipment, provided all AIP requirements are met for the installation. The ADO must not approve a sponsor's request for AIP funds to pay for a sponsor's preferred manufacturer's equipment. The requirements for sponsored furnished equipment are in Paragraph 3-59.

The ADO must not consider this situation as equivalent to sponsor force account or donated materials. While the sponsor must use its own funds to pay for the equipment, AIP may be able to fund the installation costs provided the steps and requirements in the following sections are met.

Sponsors are prohibited from using the costs of sponsor-preferred airfield lighting equipment as part of the sponsor's share of a grant.

By FAA policy, the use of AIP for certain costs associated with the use of non-AIP funded sponsor furnished equipment is limited to a sponsor's preferred airfield lighting manufacturer's equipment.

3-38. Airfield Lighting Procurement Requirements.

The requirements for this special noncompetitive procurement situation are listed in Table 3-25.

Table 3-25 Requirements for Procurement

For the following…	The requirements are…
a. Advance ADO Notification by the Sponsor	**(1)** The sponsor must notify the ADO in writing before the procurement begins. **(2)** The notification must include the schedule for the equipment procurement, the schedule for the overall bid project procurement. These schedules must indicate that the equipment procurement will be completed before the overall bid project procurement begins. **(3)** For sponsor-preferred equipment, the sponsor must include an acknowledgement in the notification that the cost of the sponsor-preferred equipment will not be eligible for AIP funding and that the sponsor will pay for the costs of the procurement and the sponsor-preferred equipment with non-AIP funding.

Table 3-25 Requirements for Procurement

For the following…	The requirements are…
b. ADO Response to the Sponsor	**(1)** The ADO must review the sponsor notification to see if the three items listed above have been included. **(2)** It is not necessary for the ADO to acknowledge the sponsor's notification. **(3)** The ADO must keep a copy of the sponsor's notification and any ADO acknowledgement in the project file. **(4)** The ADO has the option to review the sponsor's procurement documents.
c. Procurement Process	**(1)** For ALCMS modification or single-certified equipment, the sponsor must procure this equipment or ALCMS modification outside of the overall contract procurement using the noncompetitive proposal process described in 49 CFR §18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals), if the sponsor anticipates requesting AIP funds for the modification or equipment.
d. Procurement Timing	**(1)** The manufacturer must have submitted its price quotation to the sponsor before the overall project procurement begins.
e. Prohibited Equipment	**(1)** The equipment is not certified equipment that is prohibited for use on AIP projects.

3-39. Airfield Lighting Reimbursement Requirements.

Provided the requirements listed in Table 3-26 are met, the ADO may approve AIP funds for ALCMS modification or Single-Certified Airfield Lighting Equipment. Although the cost of the sponsor-preferred airfield lighting equipment is not eligible for AIP funding, in some cases, the ADO may approve AIP funds for other costs associated with sponsor-preferred airfield lighting equipment. The requirements are also listed in Table 3-26.

Table 3-26 Rules for AIP Reimbursement of Sponsor Furnished Materials or Equipment

If the Sponsor furnished materials or supplies is…	And…	The eligibility determination is…
a. ALCMS modification or Single-Certified Equipment Procured per 49 CFR § 18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals)	**(1)** Meets all required federal contract provisions for equipment procurement, including Buy American, 49 U.S.C. § 50101. **(2)** Meets all requirements of Table 3-25. **(3)** Meets all applicable FAA technical standards for material or supply.	The equipment is AIP eligible. The installation, testing and inspection of the equipment are AIP eligible (provided all AIP requirements are met).
b. ALCMS modification or Single-Certified Equipment Procured per 49 CFR § 18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals)	**(1)** Does not meet all required federal contract provisions for equipment procurement, including Buy American. **(2)** Meets all requirements of Table 3-25. **(3)** Meets all applicable FAA technical standards for material or supply.	The equipment is not AIP eligible. The installation, testing and inspection of the equipment are AIP eligible (provided all AIP requirements are met).
c. Sponsor-preferred airfield lighting equipment	**(1)** Meets all of the requirements of Table 3-25. **(2)** Meets all applicable FAA technical standards for material or supply.	The equipment is not AIP eligible. The installation, testing and inspection of the equipment are AIP eligible (provided all AIP requirements are met).
d. ALCMS Modification, Single-Certified, or Sponsor-preferred airfield lighting equipment	**(1)** Does not meet all applicable FAA technical standards for material or supply.	None. The equipment cannot be used on the AIP funded project.

3-40. Noncompetitive Proposals (Including Sole Source and Inadequate Number of Qualified Sources).

Sponsors are only allowed to use a noncompetitive procurement process for the extremely limited circumstances outlined in 49 CFR § 18.36(d)(4)(i) (2 CFR § 200.320(f) Procurement by noncompetitive proposals) (see Paragraph U-15).

Per FAA policy, the ADO must not issue a grant that includes noncompetitive proposals unless the ADO has reviewed the proposal and concurs that the requirements of 49 CFR § 18.36(d)(4)(i) (2 CFR § 200.320(f) Procurement by noncompetitive proposals)have

been met (see Paragraph U-15). The exception is for change orders, supplemental agreements, and contract modifications which are discussed in Paragraph 5-34.

The ADO has the option to document their concurrence either by notifying the sponsor in writing (with a copy to the grant file) or issuing the grant.

3-41. Change Orders, Supplemental Agreements, and Contract Modifications.

The requirements for change orders, supplemental agreements, and contract modifications are contained in Paragraph 5-34.

3-42. Contract Clauses and Provisions Required for AIP Grants.

The sponsor requirements for AIP required contract clauses and provisions are contained in 49 CFR § 18.36(i) (2 CFR § 200.326, Contract provisions) (see Paragraph U-20). The ADO responsibility is limited to making sure that new sponsors are aware of these requirements.

3-43. Contracts Containing Ineligible and/or Non-AIP Funded Work (Including Proration).

The sponsor requirements for contracts containing ineligible and/or non-AIP funded work (including how to determine the low bidder) are contained in Paragraph U-11. Table 3-27 contains the ADO specific review requirements.

Table 3-27 ADO Review Requirements for Contracts Containing Ineligible or Non-AIP Funded Work

For…	The following applies…
a. Contracts Containing Ineligible Work or Work not Funded with AIP	It is FAA policy that a sponsor must not combine ineligible work and/or non-AIP funded work within the same contract unless the sponsor provides a compelling reason documenting that it is in the federal governments best interest to the ADO and the ADO has concurred with the sponsor's request in writing. Examples of situations that may be in the best interest of the federal government are included in Table 3-28. The FAA does not consider the fact that including ineligible of non-AIP funded work is at *no additional cost to the federal government* to be a benefit to the federal government.

Table 3-27 ADO Review Requirements for Contracts Containing Ineligible or Non-AIP Funded Work

For…	The following applies…
b. ADO Concurrence	In order to concur with the sponsor's request, the ADO must determine that including the work is in the best interest of the federal government, and that this will not result in an increase to the cost of the AIP funded work and that the cost of ineligible and/or non-AIP funded work can be easily identified. This is because 49 CFR § 18.20(a)(2) (2 CFR § 200.302(a)) requires that the ADO know what was paid for under the grant. The ADO must put a copy of their determination in the grant file. If the field of potential bidders will be reduced by the inclusion of the ineligible or non-AIP funded work, this may reduce competition and affect the cost. Therefore the ADO cannot conclusively determine that there will be no increase in cost. Table 3-29 includes examples of where potential bidders may be reduced.
c. ADO Determination of Federal Participation	The ineligible and/or non-AIP funded work must be clearly separated from the AIP funded work. This is the preferred method for the ADO to determine federal participation. If the ADO determines the ineligible and/or non-AIP funded cannot be feasibly separated from the AIP funded work, the ADO can prorate the work to determine federal participation. **Example of Prorating:** A project will extend an off-airport drainage box culvert through the airport. This box culvert will also serve the neighborhood adjacent to the airport. The airfield runoff is 25 acres and the neighborhood runoff is 75 acres. The eligible federal participation would be one fourth (25 acres divided by 100 acres) of the total cost to extend the culvert through the airport (including associated design, inspection, etc.).

Table 3-28 Examples of Being in the Federal Government's Best Interest

Examples include…
a. The inclusion of ineligible and or non-AIP work will result in an overall reduction in the amount of construction workers and vehicles on the airfield. This is of benefit to the FAA because it reduces the potential risk of runway incursions.
b. The inclusion of ineligible and or non-AIP work will result in the runway being closed for construction for a significantly shorter period of time. This is of benefit to the FAA because it maintains system capacity.
c. The inclusion of a significant amount of non-AIP pavement will reduce the overall unit cost of the pavement, thus reducing the AIP project costs.
d. The inclusion of the ineligible portion of a hydrant fueling system in an AIP funded apron project that includes hydrant fueling pits will allow a functioning fueling system to be completed.

3-44. Contracts Containing Work that May Reduce the Number of Potential Bidders.

It is FAA policy that a sponsor must not include requirements that reduce the number of potential bidders unless the sponsor must provide a compelling reason to the ADO and the ADO has concurred with the sponsor's request in writing.

Table 3-29 Examples Where the Number of Potential Bidders May be Reduced

Examples include…
a. A project that has a warranty requirement to store spare parts in a manufacturer's warehouse within 15 miles of the airport that has been in operation for at least one year.
b. A project specifying highway compliant snow removal equipment.
c. An ARFF vehicle that is required to be equipped with specialized extraction equipment that is only available as standard equipment on one manufacturer's vehicles.
d. A requirement for equipment to support remote maintenance monitoring.

3-45. Contracts Containing Work that Exceeds FAA Standards.

It is FAA policy that a sponsor must not include work that exceeds FAA standards in a contract unless the sponsor provides a compelling reason to the ADO and the ADO has concurred with the sponsor's request in writing. The requirements for ADO concurrence (as well as the associated funding rules) are contained in Paragraph 3-24.

3-46. Consultant Contracts (Qualifications Based with Negotiated Price).

The sponsor requirements for competitive proposals (which includes consultant contracts) are contained in 49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) Procurement by competitive proposals.) (see Paragraph U-14). The current version of Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects, provides sponsor requirements for consulting contracts, including the unique contract methods listed in Table 3-30.

The ADO review of procurement of these types of proposals is optional if the sponsor has submitted the associated sponsor certification.

However, if the sponsor is proposing to deviate from the sponsor procurement requirements per the above Advisory Circular, the ADO must not issue the associated grant unless the ADO has reviewed the contract and concurs with the deviations. The ADO has the option to document their concurrence either by notifying the sponsor in writing (with a copy to the grant file) or issuing the grant.

Table 3-30 Unique Consultant Contract Methods

Some unique contract methods include…
a. Retainers
b. Cost-plus-a-fixed-fee
c. Cost-plus-a-percentage-of-cost (note that is prohibited by 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) and must not be used)
d. Indefinite delivery (also called task orders and work authorizations)

3-47. Design-Build and Construction Manager-at-Risk Contracts.

The sponsor procurement requirements for these types of competitive proposals are contained in Paragraph U-14.

Although not it does not appear to be required by 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards), 49 CFR § 18.4(a) requires compliance with all applicable federal statutes and regulations and 49 USC § 47142 makes ADO pre-review and concurrence of design-build proposal mandatory in order for the project to be funded with AIP. ADO pre-review and concurrence is also required by FAA policy for any AIP-funded project using construction manager at risk proposals or other competitive proposals that do not involve qualifications based selection with negotiated prices.

In order for the ADO to concur with the proposal, the ADO must be satisfied that the requirements of 49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) Procurement by competitive proposals) have been met (see Paragraph U-14) prior to the sponsor awarding the contract.

The ADO has the option to document their concurrence either by notifying the sponsor in writing (with a copy to the grant file) or issuing the grant.

3-48. Engineering Materials Arrestor System (EMAS).

An EMAS project is considered a non-competitive proposal because due to the nature of the project, sponsors must award the proposal based on price and other factors, and as of the publication date of this Handbook, the EMAS was available from only a single source. The sponsor procurement requirements for these types of competitive proposals are contained in Paragraph U-15.

It is FAA policy that the ADO must pre-review and concur with EMAS proposals in order to fund an EMAS with AIP.

In order for the ADO to concur with the proposal, the ADO must be satisfied that the requirements of 49 CFR § 18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals) have been met (see Paragraph U-15) prior to the sponsor awarding the contract.

The ADO has the option to document their concurrence either by notifying the sponsor in writing (with a copy to the grant file) or issuing the grant.

3-49. Bid Alternates (Including Life Cycle Cost Analysis Alternates) and Bid Additives.

The sponsor requirements for contracts containing bid alternates (including the use of life cycle cost analysis) and additives are contained in Paragraph U-13. The ADO has the option to request and review the bid package to ensure that the sponsor has correctly established how the award will be made within the bid package (commonly referred to as the basis for award). Otherwise, the ADO has the option to accept sponsor certification.

The ADO has the option to document their determination either by notifying the sponsor in writing (with a copy to the grant file) or issuing the grant.

3-50. Buy American Requirements.

The Buy American Preferences under 49 USC § 50101 require that all steel and manufactured goods used in AIP funded projects are produced in the United States. Detailed sponsor and ADO requirements are included in Appendix Y.

3-51. OIG Notification of Potential Procurement/Bid Improprieties.

In the following three circumstances contained in Table 3-31, the ADO must notify the DOT Office of Inspector General (OIG) that there is the potential for procurement or bid improprieties. The contact numbers for the OIG regional offices are available on the OIG website (see Appendix B for link).

Table 3-31 Circumstances Requiring OIG Notification

Circumstances include…	
a.	All three of the following conditions exist: There are five or fewer bidders on a construction project, the low bid is greater than the engineer's estimate, and the bid is $500,000 or more.
b.	Both of the following conditions exist: There is only a single bidder on a construction contract and the bid is $250,000 or more.
c.	Any procurement actions that the ADO feel contains any unusual or suspicious procurement patterns or activity.

The ADO is not required to provide the bid package to the OIG unless the OIG requests it. In addition, the ADO is not required to delay the grant award unless specifically requested to by the OIG.

The ADO's notification to the OIG is a required action by the ADO. The purpose of the notification is for the OIG to identify trends and take appropriate action if necessary. The ADO does not have the authority to substitute their judgment over that of the OIG by determining a

notification to be unnecessary. The ADO may only deviate from these requirements if the ADO, regional office, or APP-500 obtains prior written OIG concurrence.

The above requirement was originally implemented based on a 1983 OIG finding and a subsequent meeting between the OIG and the FAA Office of Airports (the 1983 values have been adjusted for inflation by the FAA). The ADO can find definitions and more discussion on bid rigging, collusion, and unbalanced bidding in a paper called Suggestions for the Detection and Prevention of Construction Contract Bid Rigging (see Appendix B for link).

3-52. Escalator Clauses.

Per FAA policy, sponsors must send their request to the ADO and obtain written APP-1 approval before awarding contracts containing an escalator clause (see Paragraph U-17).

Per FAA policy, the FAA will not fund any costs in a contract that are subject to an escalator clause unless specifically approved by APP-1. Generally, APP-1 has not approved AIP funding for escalator clauses because AIP project grant amendments are limited by statute and because the construction projects are usually of short duration.

If APP-1 does not approve the sponsor's request, the ADO has the option of allowing the sponsor to keep the escalator clause in the contract as a non-AIP funded work item provided that the requirements in Paragraph 3-42 are met.

The ADO must provide a copy of the written determination to the sponsor and place a copy in the file.

3-53. Plans and Specifications Review.

Per 49 CFR § 18.36(g)(1) (2 CFR § 200.324(a)), the ADO has the option to review the sponsor's technical specifications (including plans and specifications, engineer's report, and any other items within the procurement package) at any time during the process. However, the FAA policy on ADO review is discussed further in Paragraph 3-28.

3-54. Pre-award Review of Contracts.

49 CFR § 18.36(g)(2) (2 CFR § 200.324(b)) gives the ADO the option to conduct a pre-award review for the situations contained in Table 3-32. Otherwise, the ADO has the option to accept sponsor certification.

It is FAA policy that sponsors notify the ADO when any of these situations exist. If the ADO conducts the review, the ADO has the option to provide the sponsor with a written response containing the ADO finding. If the ADO provides a written response, the ADO must file a copy of the response in the project file.

Table 3-32 Situations Where the ADO has the Option to Conduct a Pre-Award Review

Situations include…
a. A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards).
b. The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition, or only one bid or offer is received in response to a solicitation.
c. The procurement, which is expected to exceed the simplified acquisition threshold, specifies a *brand name* product.
d. The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement.
e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold. Note that although the ADO is not required to conduct a pre-award review, the ADO must conduct a review prior to the grant being amended or closed as discussed in Paragraph 5-34.

3-55. Sponsor's Procurement System.

Per 49 CFR § 18.36(g)(3) (2 CFR § 200.324(c)) (see paragraph U-18), the ADO must review a sponsor's procurement system unless the sponsor has submitted a sponsor certification that the system meets the requirements of 49 CFR part 18 (2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards).

If the ADO must conduct a review, the ADO has the option to provide the sponsor with a written response containing the ADO findings and/or keep a copy available for future reference.

3-56. Force Account Work.

Sponsor force account work is planning, engineering, or construction work done by the sponsor's employees. Unlike other such work, it is done without the benefit of a construction or consultant contract obtained through the normal procurement process rules in 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards). Force account work is allowable OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR 200 Subpart E, Cost Principles), which is codified at 2 CFR part 225.

Per FAA policy, in order for the sponsor to use force account work, the sponsor must request the use of force account work in writing and the ADO must have approved the request *in advance of the grant offer*. In addition, it is in the best interest of the sponsor to obtain ADO approval *prior to the sponsor starting the work* to ensure that the work is allowable. The sponsor's written request must meet the requirements in Table 3-33.

Per FAA policy, the sponsor must provide the ADO with detailed documentation of all force account costs incurred as outlined in Table 3-34. In addition, the sponsor must follow the additional requirements in Table 3-35. The ADO must provide a copy of the written determination to the sponsor and place a copy in the file.

The ADO must not approve the use of force account for environmental work if the FAA is responsible for performing or procuring the work per the current version of FAA Order 5050.4, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects.

Table 3-33 Sponsor Force Account Submittal Requirements

Sponsors must include the following in their written request…
a. Project Scope. The sponsor must provide adequate details showing the nature and extent of the work to be performed using force account.
b. Justification. The sponsor must provide justification for doing the work by force account rather than by contract. The sponsor must clearly show that the benefits, including benefits to the federal government, of using force account override the federal policy of competitive bidding or negotiated contracts.
c. Personnel Qualifications. The sponsor must provide information on the ability of their personnel to perform the force account work.
d. Detailed Cost Estimate. The sponsor must provide estimate of costs, including wage rates, non-salary expenses, indirect costs, and comparison of costs between the sponsor's force account and normal procurement methods.
e. Sponsor's Resources. The sponsor must provide information on sponsor's resources (labor, material, equipment, and financing) and workload as they affect capacity to do the work, date by which the work will be complete, or dates within which the work will take place. Enough funds must be available to the sponsor to carry payrolls and any necessary purchases of materials and rental equipment.
f. Cost Analysis. The sponsor must prepare a cost analysis per 49 CFR § 18.36(f) (2 CFR § 200.323, Contract cost and price) (see Paragraph U-17) and submit a copy to the ADO. The cost analysis can be used by the ADO to determine is the costs are reasonable.

Table 3-34 Sponsor Force Account Documentation Requirements

Sponsors must document actual costs as follows…
a. Personnel. Because sponsor employees often work on multiple projects, or on activities outside the project in the AIP grant, sponsors must submit timesheets (or a suitable report from an automated payroll accounting system) to the ADO to support these salaries and wages. A sponsor must base their charges upon actual payroll information documented under their agency's generally accepted practice. This payroll information must be reviewed and approved by the sponsor's responsible official. The timesheets must properly document all of the hours worked by the employees, regardless if they were on the AIP project or not. These above requirements are discussed in more detail in Attachment B, Paragraph 8, of OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR § 200.430, Compensation—personal services.). The expense must be directly related to the AIP project. Arbitrary or prorated costs are not allowable.
b. Equipment. Equipment rental rates applicable to the construction on force account development vary widely. It is recommended that sponsors use the U.S. Army Corps of Engineers Construction Equipment Ownership and Operating Expense Schedule (EP-1110-1-8) to determine the equipment rates. The purchase price of equipment bought by the sponsor for use on a force account project is *not* allowable, only this calculated rental and operating rate.
c. Supplies and Material. All supplies and materials must follow the procurement requirements in 49 CFR part 18 (2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards) (see Appendix U) and the sponsor must keep records to document these costs.

Table 3-35 Other Sponsor Force Account Requirements

Other requirements include…
a. Reporting. Construction and project reporting requirements are the same as those under a traditional contract
b. FAA Standards. Force account work must meet the same engineering and construction standards that are required under a traditional contract.
c. Labor Standards. Cost of labor and supervision must be in accordance with state and local standards.
d. Insurance. It is the sponsor's responsibility to comply with state and local insurance requirements.
e. Project Changes. The sponsor must obtain prior ADO approval to change the scope of the force account work. Sponsors must make these requests in writing.

3-57. Value Engineering.

Value engineering is the systematic application of recognized techniques that identify the function of a project or service and provide the best function reliably at lowest overall cost.

The sponsor requirements for value engineering are contained in Paragraph U-9, which, by FAA policy, is required for new primary airports. In addition, ADOs have the option to require sponsors to use value engineering for unusually complex projects of greater than average costs (or require cost-benefit studies, present worth analysis, the study of alternatives, tactical planning, or other forms of technical evaluation).

The ADO must have concurred in writing with the use and scope of services for the value engineering prior to the work commencing. The ADO must place a copy of the concurrence in the project file.

ADO's are cautioned that significant advance preparation may be needed to comply with the current version of Advisory Circular 150/5300-15, Use of Value Engineering for Engineering and Design of Airport Grant Projects.

3-58. Indefinite Delivery (Task Orders) Extensions for Construction Services.

Per FAA policy, a sponsor may not extend a task order contract for construction services beyond a one-year duration (without re-advertising the contract) unless the ADO concurs with this action. This is because AIP funded construction must be based on current Davis-Bacon wage rates, which are updated at least on a yearly basis.

For the ADO to concur with the extension, the sponsor must provide compelling justification and the ADO must be able to agree that the economic conditions and wage rates and project costs have remained unchanged. Per FAA policy, the ADO must not concur with more than four extensions to the same task orders.

3-59. Indefinite Delivery (Task Orders) Extensions for Consultant Services.

Per FAA policy, a sponsor may not extend a task order contract for consultant services beyond a total overall contract duration (without re-advertising the contract) of more than five years.

3-60. Sponsor Furnished Materials or Supplies.

The sponsor requirements for using sponsor furnished materials or supplies within an AIP funded project are contained in Paragraph U-3.

The ADOs ability to concur with the use of sponsor furnished materials or supplies and use AIP funding on these items (and/or associated installation) depends on whether the material or supplies have been procured per 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) (see Appendix U) and meet all applicable federal contract provisions (see the FAA Office of Airports website) as shown in Table 3-36. The ADO has the option of relying on the sponsor's written statement regarding the sponsor's ability to meet these requirements. The ADO also has the option of requiring the sponsor to provide additional support documentation.

The ADO must provide a copy of the written determination (including the approval of force account work, if applicable) to the sponsor and place a copy in the file. As discussed in Paragraph 4-11, per Paragraph 12 in Attachment B of OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR § 200.434, Contributions and Donations),

sponsors are prohibited from using sponsor furnished materials or supplies against the sponsor's share of a grant, unless approved as part of force account work.

Table 3-36 Rules for Sponsor Furnished Materials or Supplies

If the sponsor furnished materials or supplies…	The following can be funded with AIP…
a. Meets all of the following: **(1)** Meets the procurement requirements of 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards). **(2)** Meets all required federal contract provisions for equipment procurement, including Buy American. **(3)** Meets all applicable FAA technical standards for material or supply. **(4)** Is approved by the ADO for force account work (see Paragraph 3-55).	The materials or supplies and the associated installation.
b. *Only* meets the applicable FAA technical standards for material or supply. An example of this is where a sponsor furnishes its preferred brand of certified airfield lighting equipment.	Installation only (the cost of the materials or supplies is not eligible).
c. *Does not* meet all applicable FAA technical standards for material or supply.	Neither the materials or supplies nor the associated installation (both ineligible). In addition the materials may not be used on the project.

3-61. Suspension or Debarment of Persons or Companies.

Suspension and debarment are actions that a federal agency takes to prohibit certain person or company from bidding on projects, receiving contracts or grants, or participating in federally funded contracts or grants. If a person or company is suspended or debarred by a federal agency, the suspension or debarment extends to all federal programs and procurement.

Suspension and debarment applies to contractors and subcontractors at any level, including suppliers, fee appraisers, inspectors, real estate agents, consultants, architects, engineers, and attorneys. It also applies to any others that are associated with the suspended or debarred person or company.

Additional information on suspension and debarment is available on the FHWA Construction Program Guide/Suspension and Debarment and the current version of DOT Order 4200.5, DOT Suspension and Debarment Procedures and Ineligibility. Note APP-500 is the Suspension and Debarment Official for AIP.

Paragraph U-5 contains the requirements sponsors must follow regarding persons or companies that have been excluded from working on AIP funded projects. Table 3-37 contains the ADO requirements.

Table 3-37 ADO Requirements Regarding Suspension or Debarment

For the following…	The ADO requirements include…
a. The sponsor is awarding a contract.	Per FAA policy, the ADO has the option to accept sponsor certification that the sponsor did the appropriate checks to assure that contracts or subcontracts are not awarded to suspended, debarred, or excluded firms or individual. Per FAA policy, the ADO also has the option to request additional information from the sponsor so the ADO can conduct a more thorough review. If the ADO believes the sponsor requirements were met, no further action or documentation by the ADO is required. If the sponsor requirements were not met, the ADO must contact their regional contact in the FAA Office of the Chief Counsel - Airports and Environmental Law Division (AGC-600) to determine the course of action.
b. A person or company currently working on an AIP project is suspended or debarred.	If the ADO becomes aware of this situation, per FAA policy, the ADO must contact their regional contact in the FAA Office of the Chief Counsel - Airports and Environmental Law Division (AGC-600) to determine the course of action.
c. It appears that a person or company might need to be suspended or debarred.	If the ADO becomes aware of this situation, per FAA policy, the ADO must contact their regional contact in the FAA Office of the Chief Counsel - Airports and Environmental Law Division (AGC-600) to determine the course of action.

Section 11. Cost Allowable.

3-62. Allowable Cost Legislation and Policy.

The documents listed in Table 3-38 provide guidance to the ADO on how to determine what costs are allowable and necessary within AIP funded projects.

49 USC § 47110(b) contains the five basic requirements that must be met for an ADO to determine that a cost is allowable. These five basic requirements are discussed in further detail in the following sections, as listed in Table 3-39.

In addition, the FAA has made a number of policy decisions on specific project cost items, which are discussed in further detail in the rest of this section.

Table 3-38 Resources to Determine if a Project Cost is Necessary and Allowable

The resources include…
a. The Act. 49 USC § 47110(b) contains the basic five requirements that must be met for an ADO to determine that a cost is allowable.
b. 49 CFR § 18.22 and OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR 200 Subpart E, Cost Principles)**.** 49 CFR § 18.22 requires that this OMB circular be followed for AIP funded projects. OMB Circular A-87 (2 CFR 200 Subpart E, Cost Principles) provides the principles that the ADO must use to determine if a cost is allowable.
c. The Single Audit Act of 1984. The Single Audit Act of 1984, Public Law 98-502 (as amended in 1996, Public Law 104-156, as amended and recodified at 31 USC § 7501 et seq.) is implemented by OMB Circular A-133 (2 CFR 200 Subpart F), Audits of State, Local Governments, and Nonprofit Organizations. Although it is not this document's primary purpose, the Single Audit Act of 1984 provides valuable information about how to make allowable cost determinations.

Table 3-39 Five Basic Requirements to Determine a Cost is Allowable

For the following basic requirement…	The requirements are in…
a. Costs Necessary (Allowable Cost Rule #1).	Section 12
b. Costs Incurred after Grant Executed (Allowable Cost Rule #2).	Section 13
c. Costs Reasonable (Allowable Cost Rule #3).	Section 14
d. Costs Not in Another Federal Grant (Allowable Cost Rule #4).	Section 15
e. Costs within Federal Share (Allowable Cost Rule #5).	Section 16

3-63. Unallowable Cost Table.

Appendix C contains tables that the ADO can use to help determine if the FAA has previously identified a project or cost to be ineligible or unallowable.

3-64. Administrative Costs.

The ADO may determine that administrative costs are allowable direct charges to a grant if the administrative costs are required to carry out the grant project. Examples of common administrative costs and their requirements are included in Table 3-40.

Administrative costs must not include planning, engineering, or construction work and are not force account work. Administrative costs may include work done by a sponsor or by another entity, such as an attorney. Administrative costs must be supported by vouchers, receipts,

personnel activity reports, or other verifiable documentation. Administrative costs must not represent a pro-rated allocation of time or expenses.

By FAA policy, a line item for *estimated* administrative costs can be included in the grant application if the sponsor cannot accurately calculate the total administrative costs. However, these estimated administrative costs must exceed 2% of the grant amount or $10,000, whichever is less.

Once a grant is issued, the payment requests for administrative costs must represent actual costs and must be supported by appropriate documentation. Claims may not represent an estimated, allocated, or prorated cost.

Table 3-40 Administrative Costs Examples and Requirements

For the following example…	The following requirements apply…
a. Sponsor Employee Time. The cost for a sponsor's employee's time directly related to administrative tasks that are required to complete an AIP project The cost for a sponsor's employee's time includes the employee hourly salary; and costs related to the hourly rate such as Medicare, Social Security, federal/state/local taxes, and Indirect Cost rate, if applicable.	**(1)** The ADO must determine that the work that is going to be accomplished by the sponsor's employees is *required* to carry out the AIP project. This is required because 49 USC § 47110(b) limits reimbursement to costs that are, "necessarily incurred in carrying out the project in compliance with the grant agreement," and establishes that costs must be "reasonable in amount". **(2)** The sponsor must have a time tracking system in place that tracks all hours that its employees work. **(3)** Because sponsor employees often work on multiple projects, or on activities outside the project in the AIP grant, sponsors must submit timesheets (or a suitable report from an automated payroll accounting system) to the ADO. **(4)** The timesheets must properly document all of the hours worked by the employees, regardless if they were on the AIP project or not. **(5)** A sponsor must base their charges upon actual payroll information documented under their agency's generally accepted practice. This payroll information must be reviewed and approved by the sponsor's responsible official. **(6)** A copy of the sponsor's responsible official's written approval must be provided to the ADO. **(7)** These above requirements are discussed in more detail in Attachment B, Paragraph 8, of OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR § 200.430 Compensation—personal services and § 200.431 Compensation—fringe benefits). **(8)** The expense must be directly required by and related to the AIP project. Costs that are not directly related, or are prorated are not allowable. **(9)** Costs to administer the AIP *program* are not allowable.

Table 3-40 Administrative Costs Examples and Requirements

For the following example…	The following requirements apply…
b. Sponsor Employee Expenses (such as tolls, mileage, and parking).	**(1)** The expense must be reasonable, be directly related to the AIP project, and be supported by a receipt or voucher.
c. Legal Fees.	**(1)** The expense must be reasonable, be directly related to the AIP project, and be supported by an invoice.
d. Independent Fee Estimates.	**(1)** The expense must be reasonable, be directly related to the AIP project, and be supported by an invoice.
e. Newspaper Advertisements/ Announcements in Publications.	**(1)** The expense must be reasonable, be directly related to the AIP project, and be supported by an invoice.
f. Audit Fees.	**(1)** The expense must be reasonable, be directly related to an AIP project (in this grant or in a prior grant), and be supported by an invoice. **(2)** The audit must be required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. **(3)** If the audit includes other federal programs beyond AIP, the costs are prorated to include only the AIP portion. **(4)** It is the opinion of the FAA that sponsors that are issued subgrants under a state block grant are responsible for obtaining the single audit and for the payment of the audit costs. Therefore, the request for reimbursement of these costs is tied to the subgrant.

3-65. Indirect Costs.

The FAA's policy allows a sponsor's indirect costs to be charged to the sponsor's employee's hourly salary for time working on an AIP grant if the indirect cost rate (IDC) was calculated from an approved Indirect Cost Allocation Plan (ICAP). The FAA policy allows indirect costs to be applied only to the direct wages and salaries of a sponsor's employees (not to other project costs). Table 3-41 identifies the FAA's policies for sponsors who claim indirect costs.

Table 3-41 Requirements for Indirect Costs

The following requirements apply…
a. Indirect or Overhead Costs. Costs incurred by a sponsor for other than employee's direct time. Allowable items of cost that make up indirect costs may include costs for support services such as accounting, billing, building rent, and utilities that cannot be attributed to one specific project or activity can be allocated via federally-sanctioned formula to the grant.
b. Required Documentation. These indirect or overhead costs are allowable only if the sponsor has a Cost Allocation Plan approved by the cognizant federal agency and an executed indirect cost rate agreement developed in accordance with OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR 200 Subpart E, Cost Principles). These two documents are needed to determine by the ADO what percentage of the costs, if any, can be allocated to the AIP project.
c. Cognizant Federal Agency. The cognizant agency of the federal government that must approve or disapprove the Cost Allocation Plan. This agency is generally the federal agency that has the greatest dollar involvement with a given sponsor. The ADO must contact APP-500 if it ADO has a question regarding whether the FAA is the cognizant agency for a sponsor. For the most part, the FAA is the cognizant agency for airport authorities. The Federal Highway Administration is the cognizant agency for many state departments of transportation and in that role, negotiates the indirect cost rate on behalf of the FAA.
d. FAA Determinations. For those sponsors for which the FAA is the cognizant agency, responsibility for approving or disapproving cost allocation plans and negotiating and executing the indirect cost rate agreement is delegated to the regional division manager. The ADO has the responsibility for review of the cost allocation plan, for signature by the regional division manager, and must use the following documents to make their recommendation: **(1) OMB Circular A-87.** Cost Principles for State, Local and Indian Tribal Governments (2 CFR 200 Subpart E, Cost Principles). **(2) ASMB C-10**. Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government (developed by the United States Department of Health and Human Services and dated April 8, 1997). **(3) Financial Assistance Guidance Manual.** This DOT guidance, dated March 2009, replaces DOT Order 4600.17A, Financial Assistance Management Requirements.
e. Application of Rate. The rate approved under the cost allocation plan (also referred to as the indirect cost allocation plan rate, or ICAP rate) is applied only to the costs associated with sponsor's employees' hourly rate, exclusive of employer paid costs, such as Medicare, Social Security, and federal, state, and local taxes. For example, if the employee earns $10/hour (not including employer paid taxes or benefits) and the rate is 14%, the allowable overhead is $10/hour multiplied by 14%. The rate is not a multiplier on anything but the employee's hourly rate.
f. IDC Rate Documentation. Sponsors that intend to claim reimbursement for indirect costs must include a signed copy of the approved indirect cost rate and the indirect cost proposal for the grant year in the grant application.

3-66. Architectural Enhancements Costs.

It is FAA policy to support projects that contribute to the architectural and cultural heritage of local communities. In accordance with this policy, sponsors are encouraged in their early planning procedures to use design, art, and architecture to reflect local customs and history of the community or other cultural emphasis as long as this can be accomplished without impairing function, safety, and efficiency of the facility.

Architectural treatment of the inside and outside of buildings to reflect local custom, style, or cultural attitudes is an allowable cost. The work must be architectural in nature (it cannot be for the sole purpose of aesthetic enhancement) and must be in an area accessible by the public.

Table 3-42 Allowability Examples for Architectural Treatments

The cost to…	Is…
a. Apply an adobe finish on the exterior and public interior walls of a terminal in the Southwest.	**Allowable.**
b. Acquire and install terrazzo floors (depicting local scenes) in a non-public area of the terminal.	**Not Allowable.** The type of work is allowable, but because it is not in a public area, it is unallowable.
c. Purchase and install a free standing sculpture in the terminal.	**Not Allowable.** This is a work of art for the sole purpose of aesthetic enhancement. It is not an architectural treatment.

3-67. Benefit-Cost Analysis (BCA) Costs.

Per FAA policy, the costs incurred to prepare a BCA are only allowable as a grant formulation cost for the specific project (not as a stand-alone grant). In addition, these costs cannot be reimbursed until after the BCA shows that the project is justified.

3-68. Construction Costs.

Construction costs are only allowable if they are necessary to complete the project according to the plans and specifications.

3-69. Construction Project Signs Costs.

Project signs at an airport construction sites are not required, but if erected may be an eligible cost if the construction includes at least $200,000 of federal funds and will be underway for at least three months. The allowable cost of the sign is limited to $1,000. The sign must contain a brief description of the project and the following statement: Part of the funding for this project is being provided by a grant from the Airport Improvement Program, which is administered by the Federal Aviation Administration and financed through the Airport and Airway Trust Fund.

3-70. Computer Software and Data Subscription Costs.

The ADO may approve sponsor requests, on a case-by-case basis, to include a specifically allocated portion of the costs of software acquisition, licensing and/or subscription. The ADO may only approve the portion of the cost that is directly attributable to a specific, FAA-approved AIP project, only for the duration of the approved AIP project, and only for the entity that is actually doing the work for which the software is required.

These costs may include customized commercially available software, but only if the customized software becomes public domain and the sponsor makes it available to any user without cost beyond handling costs.

It is anticipated that the costs of this software will normally be incurred by the sponsor's consultant because the consultant is performing the technical work. The cost for sponsor acquisition of software is not allowable unless it is approved by the ADO for force account work (see Paragraph 3-55).

The costs of ongoing data subscription services, such as those needed for a noise monitoring program, are not allowable. The sponsor is also responsible for the costs of any ongoing vendor service costs that may be needed to access FAA surveillance tracking data.

3-71. DBE Plan Updates.

DBE plan updates are required if the sponsor will be awarding prime contracts exceeding $250,000 in federal funding during a federal fiscal year per Paragraph 5-10. Therefore, updating the DBE plan is an allowable cost of the project that triggers the need to update the plan.

3-72. Drainage Costs.

The drainage improvements are allowable to the extent the work serves eligible areas and facilities. If the drainage improvement will serve both eligible and ineligible areas/facilities, the allowable cost is limited to prorated share for the eligible portion. The ADO will determine the method of proration. Table 3-43 contains a proration example. In addition, the requirements for including ineligible or non-AIP funded work in the contract in Paragraph 3-42 must be met.

Drainage projects are eligible as stand-alone projects as discussed in Appendix D.

Table 3-43 Drainage Proration Example

For the following situation…	The allowable prorated amount would be…
a. A project will extend an off-airport drainage box culvert through the airport. This box culvert will also serve the neighborhood adjacent to the airport. The airfield runoff is 20 acres and the neighborhood runoff is 100 acres.	One fifth of the total cost to extend the culvert through the airport (including associated design, inspection, etc.).

3-73. Duct Bank Costs for Ineligible Facilities.

Normally, the cost to install, modify, or enlarge duct banks to support an existing or future ineligible facility is not allowable. There is one exception. These costs are allowable as part of an AIP funded pavement project only if the ADO has determined that they will reduce the need to disturb the AIP funded pavement at a later date.

The acquisition and installation cost of the ineligible utilities and equipment remains unallowable.

3-74. Energy Efficiency (Green/Sustainable) Improvement Costs.

Per 49 USC § 47110(b)(7), the costs to improve the energy efficiency of a building, sometimes referred to as green or sustainable improvements, are allowable. Energy efficiency improvement costs must meet the criteria in Table 3-44.

Note that the requirements for a project for improving the energy efficiency of airport **power sources** are discussed in Chapter 6, Section 7.

Table 3-44 Criteria for Energy Efficiency Improvement Costs

In order for an energy efficiency improvement cost to be allowable…
a. The cost must be incurred on a measure to improve the efficiency of an airport building (such as a measure designed to meet one or more of the criteria for being considered a high-performance green building as set forth under section 401(13) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17061(13))).
b. Any increases in initial project costs must be offset by expected savings over the life cycle of the project. The sponsor must follow the published FAA guidance for calculating the life cycle cost.
c. For building projects, the cost must be incurred on an otherwise eligible and justified airport building project (improving energy efficiency cannot be the justification). A project to improve a building's energy efficiency is not eligible as a stand-alone project.
d. The cost must only include costs which are necessary for the project, such as those for design, construction, testing, and inspection (not for obtaining LEED or similar certification or credits – which is not a necessary cost of the project).
e. For a building which contains eligible and ineligible areas, all costs associated with the measure (such as design, construction, testing, and inspection) must be prorated accordingly. In addition, the requirements for including ineligible or non-AIP funded work in the contract in Paragraph 3-42 must be met.
f. The sponsor must submit the initial project costs, the expected savings over the life of the project, the life cycle cost calculations, and the proration calculations (for building contains eligible and ineligible areas) to the ADO.

Table 3-44 Criteria for Energy Efficiency Improvement Costs

In order for an energy efficiency improvement cost to be allowable…
g. The costs to redesign or to modify ongoing construction to incorporate energy efficiency measures into the project are only allowable to the extent that the previously incurred design costs are removed from the AIP-funded project.

3-75. Engineering and Architectural (A/E) Costs.

Engineering and architectural costs are only allowable if they are necessary to complete an AIP eligible project. If only part of the project is eligible, the engineering and architectural costs are limited to the prorated eligible amount. Table 3-45 provides examples of some engineering and architectural costs that may be necessary for an AIP project.

Table 3-45 Examples of Engineering and Architectural Costs

Some examples include costs to…
a. Prepare plans and specifications (stand-alone design grants are discussed in Appendix D)
b. Establish and report on *project specific* DBE goals
c. Conduct initial field investigations
d. Conduct preliminary design
e. Conduct testing
f. Prepare construction management plans and the final test and quality control reports required for projects with pavement costs of $500,000 or more
g. Provide engineering cost estimates
h. Prepare bid documents
i. Evaluate bid proposals
j. Conduct construction inspection
k. Provide technical consulting services
l. Surveying and data collection (see Paragraph 3-81 for guidance on Geographic Information System (GIS) data collection)

3-76. Environmental Finding Costs.

Environmental finding costs are only allowable if they are necessary to complete the project per the current version of FAA Order 5050.4, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects.

3-77. Equipment Leasing (instead of Purchase) Costs.

The Act only allows eligible equipment to be purchased, not leased. The exception is when equipment is leased for temporary use to complete an AIP eligible project (either by a contractor or through ADO approved sponsor force account).

In the case of lease/purchase agreements, only the purchase portion of the arrangement is an allowable AIP cost, and the ADO cannot issue the grant for the equipment until after the sponsor executes the option to purchase the equipment.

3-78. Facility Impeding an AIP Project – Costs to Rebuild or Relocate in Another Location.

The definition of allowable costs is expenses necessary to complete the project (49 USC § 47110 (b)). Normally, only *demolition* of facilities impeding an AIP project is considered necessary. However, there are situations where the cost of rebuilding an impacted facility (or paying to physically relocate it to another location) is an allowable cost. This depends on the ownership and type of the impacted facility. Table 3-46 provides detailed guidance and Table 3-47 provides examples.

Table 3-46 Allowability of Costs to Rebuild or Relocate Facility Impeding an AIP Project

If the impacted facility is…	The cost to rebuild or relocate the facility in a new location is…
a. FAA-owned NAVAID or federally owned (other than FAA-owned NAVAID) and is *on airport* property.	**Allowable** only if all of the following criteria are met: **(1)** The ADO has determined: **(a)** The new building or piece of equipment is the same size and function of the original; **(b)** It is not feasible to relocate the original facility or equipment; and **(c)** The allowable cost to construct a new facility to existing construction standards (per 49 USC § 47110(b)(1) does not exceed the cost of relocation of the existing facility. **(2)** If the facility is FAA-owned, the ADO must complete all required coordination with AJW. **(3)** If the ADO determines that the relocation of the facility is feasible: **(a)** The allowable costs are limited to the relocation costs, the site preparation, and utility installation at the new location. **(b)** AIP participation must not include refurbishing, enhancing or

Table 3-46 Allowability of Costs to Rebuild or Relocate Facility Impeding an AIP Project

If the impacted facility is…	The cost to rebuild or relocate the facility in a new location is…
	upgrading the impacted facility. **(4)** For FAA facilities, the relocation costs or costs of a new building or piece of equipment must demonstrate a passing (greater than 1.0) benefit-cost ratio.
b. Sponsor-owned facility *on airport.*	**Not allowable.** The only costs that are allowable are the removal or demolition of the facility (minus salvage value). The sponsor also has the option to physically move the facility to another location on the airport up to the demolition costs of the facility. The reason that the cost to rebuild the impacted facility is not allowable is because the sponsor has control of on-airport development and is therefore responsible if a facility is in the way of new development.
c. Not sponsor-owned and is *on airport* property.	**Not allowable.** The only costs that are allowable are the removal or demolition of the facility (minus salvage value). The sponsor also has the option to physically move the facility to another location on the airport up to the demolition costs of the facility. The reason that the cost to rebuild the impacted facility is not allowable is because the sponsor has control of on-airport development and is therefore responsible if a facility is in the way of new development.
d. Not sponsor-owned and is *off airport* property.	**Allowable.** Detailed guidance on allowable costs is provided in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects.
e. Sponsor-owned and is an AIP eligible stand-alone project.	**Allowable** if the new facility is justified in the same way as if it were a stand-alone project. In other words, if the impacted facility is eligible and justified under AIP regardless of the impacting project, it is allowable to rebuild the facility in another location to the current size justified. The ADO must follow the same funding rules for the demolition that exist for the associated development project. In addition, the cost to rebuild the facility in a new location must follow the funding rules (and any other AIP requirements) that would exist if this were a stand-alone project. The ADO must also determine that there is no other reasonable way to avoid rebuilding the facility and that the sponsor is not trying to knowingly impact a facility so that AIP funds can be used to rebuild it.

Table 3-46 Allowability of Costs to Rebuild or Relocate Facility Impeding an AIP Project

If the impacted facility is…	The cost to rebuild or relocate the facility in a new location is…
f. Sponsor-owned, is not an AIP eligible stand-alone project, and is required by an FAA change to FAA design standards per 49 USC § 47110(d).	**Allowable** only if all of the following criteria are met: (1) APP-500 has advised the ADO and regional offices that a change has been made to FAA design standards that may trigger the provisions of 49 USC § 47110(d). The advisory circular contains both FAA design standards and recommendations. This provision only applies to changes in FAA design standards, not updated or new recommendations. (2) The ADO determines that the relocation or replacement is required due to a change in the FAA design standards that were published after February 14, 2012 (the date of enactment of FAA Modernization and Reform Act of 2012, Public Law 112-95). (3) This is not a change in category or FAA design standard for the airport due to increased traffic or other circumstances. Rather this is a change in the actual physical dimension that is required for an airport to meet FAA design standards. (4) The ADO determines that the change is beyond the control of the airport sponsor. (5) The ADO determines that the new FAA design standard clearly infringes on the sponsor's facility. (6) Only passenger entitlements, state apportionment, or nonprimary entitlements are used. (7) If the facility is replaced (rather than relocated), the new facility must have an equivalent type and functionality as the existing facility. (8) The change must not be simply a sponsor's preferred alternative. For example, a change in FAA design standards requires reconfiguration of an apron and the sponsor's *preferred alternative* impacts a sponsor-owned hangar. If the ADO determines that there are other design alternatives that will not impact a sponsor-owned hangar (whether or not those are the sponsor's preferred alternative), the cost to rebuild is not allowable. (9) The ADO must also determine that there is no other reasonable way to avoid rebuilding the facility and that the sponsor is not trying to knowingly impact a facility so that AIP funds can be used to rebuild it.
g. Sponsor-owned, is not required by a change to FAA design standards, and is *not* an AIP eligible stand-alone project.	**Not allowable.** The demolition of the facility is the only allowable cost. This includes ineligible portions of terminals that are in the way of new terminal development. For tenant-owned improvements within a sponsor owned building, the demolition of the tenant improvements is the only allowable cost. The reason that the cost to rebuild the impacted tenant space is not allowable is because the sponsor has control of airport development and is therefore responsible if a tenant area is in the way of new development.

Table 3-47 Examples of Allowability of Costs for Facilities Impeding an AIP Project

For the following impacted facility…	The following costs are allowable…
h. An FAA-owned air traffic control tower with a cab that accommodates six controller positions. The existing structure cannot be dismantled and relocated.	The costs to rebuild the cab based on the current square foot per controller standards needed to accommodate six controller positions up to the cost of relocating the existing facility. Even though this may result in a larger cab, this cost is allowable because the facility has to be built to the same functionality. However if the FAA Air Traffic Organization (ATO) wants to upgrade the facility above the current functionality, the ATO is allowed to pay for the increase in cost. (This combination of AIP and ATO funding is allowable.) Note that all air traffic control tower relocations must be sited through the Airport Facilities Terminal Integration Laboratory (AFTIL) based on the current version of FAA Order 6480.4, Air Traffic Control Tower Siting Process.
i. An existing FAA-owned approach lighting system equipment shelter. The ADO has determined that the shelter can be relocated. ATO wants to take the opportunity to also refurbish the interior electrical system of the shelter.	The cost to relocate the equipment shelter. ATO is responsible for any upgrades to the shelter as a separate project.
j. An existing FAA-owned Visual Approach Slope Indicator (VASI). ATO proposes that the ADO pay to replace the VASI with a precision approach path indicator (PAPI). The ADO has determined that it *is* feasible to relocate the existing VASI.	The cost to relocate the VASI or the cost to install the new ATO-provided precision approach path indicator PAPI (up to but not exceeding the cost of the VASI relocation cost). If a new ATO-provided PAPI is installed, any cost above the VASI relocation cost (per engineering estimates) must be paid for directly by ATO. (This combination of AIP and ATO funding is allowable.) The sponsor must obtain the PAPI from ATO through a reimbursable agreement. This is because the PAPI may not be supported by ATO if the sponsor uses the normal procurement process.
k. An existing FAA-owned VASI. ATO proposes that the ADO pay to replace the visual approach slope indicators (VASI) with a precision approach path indicator (PAPI). The ADO has determined that it is *not* feasible to relocate the existing VASI.	The cost to purchase and install a new PAPI. Even though the PAPI is an upgrade, because the FAA no longer purchases and installs VASIs, a PAPI is the only option to provide equivalent functionality and is therefore allowable. The sponsor must obtain the PAPI from ATO through a reimbursable agreement. This is because the PAPI may not be supported by ATO if the sponsor uses the normal procurement process.

Table 3-47 Examples of Allowability of Costs for Facilities Impeding an AIP Project

For the following impacted facility…	The following costs are allowable…
l. An airport administration office in the sponsor-owned terminal.	The cost to demolish the office area. The terminal is airport owned and the airport administration office is not AIP eligible, therefore rebuilding the office in a new location is not allowable.
m. A passenger holding area at a non-exclusive use gate in the sponsor-owned terminal.	The cost to demolish the passenger holding area and rebuild it in another location. The costs can include an area up to the size the ADO would consider eligible if it were a stand-alone project.
n. A sponsor-owned T-Hangar at a GA airport. The ADO has determined that the AIP project impacting the T-Hangar could be located elsewhere on the airport.	The cost to demolish the T-Hangar. Sponsor is choosing to unnecessarily impact the T-Hangar, so the cost to rebuild the T-Hangar in another location is unnecessary and is not allowable.
o. A sponsor-owned T-Hangar at a GA airport. The ADO has determined that the AIP project impacting the T-Hangar could not be located elsewhere on the airport and that the sponsor is not trying to knowingly impact the building so that AIP funds can be used to rebuild it.	The cost to demolish the T-Hangar and rebuild (or relocate) it in a new location up to the size and specifications the ADO would consider to be eligible if it were a stand-alone project. However, since this is a revenue-producing aeronautical support facility, only non-primary entitlements can be used to rebuild the T-Hangar. In addition, the sponsor is restricted from using all but non-primary entitlements for that fiscal year as well as the next two fiscal years.
p. An ARFF building. The existing building does not meet the current construction standards for earthquake protection, nor, based on the ADOs calculations, is it big enough to address the existing 14 CFR part 139 requirements. The ADO has also determined that there is no other reasonable way to avoid rebuilding the facility and that the sponsor is not trying to knowingly impact the building so that AIP funds can be used to rebuild it.	The costs to demolish the ARFF building, rebuild it in a new location, enlarge it to meet the 14 CFR part 139 requirements, and bring it up to the current construction standards for earthquake protection.

Table 3-47 Examples of Allowability of Costs for Facilities Impeding an AIP Project

For the following impacted facility…	The following costs are allowable…
q. A sponsor-owned T-Hangar at a primary airport that is directly impacted by a change in FAA design standards. The ADO has determined that the only reason the T-Hangar must be relocated is due to a change in FAA dimensional design standards issued after February 14, 2012.	The cost to demolish the T-Hangar and rebuild (or relocate) it in a new location if all of the other requirements in Table 3-46 for this type of project have been met.
r. A sponsor-owned T-Hangar at a primary airport. The sponsor has decided to reconfigure an apron because of an FAA *recommended design practice* issued after February 14, 2012. The sponsor has proposed also relocating a sponsor-owned hangar to achieve the optimum apron configuration.	The cost to demolish the T-hangar is allowable. The cost to rebuild the hangar is not allowable because the hangar is not *required* to be demolished and relocated.

3-79. Flight Check.

If a flight check is required by the FAA to commission an AIP-funded NAVAID, the costs of the initial flight check are allowable under a reimbursable agreement with the FAA.

3-80. Force Account Costs.

Sponsor force account work is planning, engineering, or construction work done by the sponsor's employees. These costs are only allowable if they are necessary to complete the project and have been approved by the ADO as discussed in Paragraph 3-55.

3-81. Historic Building Costs.

If a structure is being impacted as part of an eligible AIP project (including land acquisition and noise mitigation) and the structure is on (or eligible for listing on) the National Register, as amended, the associated costs required by Section 106 of the National Historic Preservation Act of 1966, Public Law 89-665 (codified as amended at 16 USC § 470h-2) are allowable.

3-82. Geographic Information System (GIS) Data Collection.

Surveying and data collection in support of the Airports GIS program is eligible as an allowable cost of an AIP project under any one of the three circumstances listed in Table 3-48. The Airports GIS program is part of the FAA's plan to implement GIS and related standards into all parts of the FAA.

Table 3-48 Circumstances Where GIS Data Collection Costs are Allowable

Data collection costs are allowable under any of the following circumstances…
a. Required by an AIP Funded Project or Master Plan. The scope of the data collection is directly required by a specific AIP-funded project or master planning project, and the collection of the data is required to complete the project.
b. Data Collection Prior to Transition Policy Requirement. Limited data collection for anything beyond the scope of the AIP-funded project, before being required to do so by the Airports Geographic Information System (Airports GIS) Transition Policy for Non-Safety Critical Projects, August 23, 2012, (located on the GIS page under planning on the FAA Office of Airports Website - see Appendix B for link), may be eligible only if all of the following conditions are met: **(1)** The airport is already collecting data for a specific AIP funded project. **(2)** The ADO includes any applicable GIS special conditions in the grant in which the data collection is to be included. APP-520 maintains a current list of special conditions that must be used for specific project or airport situations. **(3)** The extent of data collection that will be funded with AIP must be limited to the collection of data required for an electronic airport layout plan. Data collection beyond that is not allowable and the costs associated with collecting these data are not allowable. **(4)** The airport has received approval in advance of issuing the grant from ADO to collect data beyond the scope of the AIP project. In order to approve a sponsor's request, the ADO must have determined that the scope of work associated with the data collection effort to ensure that only allowable items are included for grant funding and that any proposed proration of common items is fairly prorated. The scope of work must specifically identify the proposed data collection that is beyond the needs of the safety-critical data requirements. **(5)** The ADO must initial and date a note to the file indicating that they have reviewed and concur with the scope of work and cost proration.
c. A Project under the Airports GIS Pilot Program. The airport was given a grant under the Airports GIS Pilot Program and the work is part of that grant. Note that the work code PL PL GI for Airports GIS Pilot Program projects is no longer available because the pilot program has ended, and that no new grants can be issued for Airports GIS under the pilot program.

3-83. Hydrant Fuel Lines and Pit Costs.

The incidental cost of installing aircraft fuel lines and pits as part of an aircraft apron project is an allowable cost. Per FAA policy, the costs must be prorated to include only the portion of the lines and pits physically under the AIP funded apron project. These costs are allowable because they will reduce the need to disturb the AIP funded apron at a later date. The requirements for including ineligible or non-AIP funded work in the contract in Paragraph 3-42 must be met.

3-84. Land Acquisition Costs.

It is FAA policy that costs associated with a land acquisition (such as appraisals, legal fees, etc.) are not allowable until *after* the sponsor has submitted evidence satisfactory to the ADO that the sponsor will obtain good title to the land. Typical examples of this evidence are a binding

purchase agreement that will convey good title, evidence of a condemnation deposit, a condemnation award, or a court settlement. Until the sponsor meets this requirement, there is no guarantee that the land acquisition will be completed. Therefore, while the ADO may issue a grant for land acquisition before the sponsor submits satisfactory evidence that good title will be acquired, sponsors must not submit payment requests until these conditions are met.

Some of the common allowable land costs and their associated restrictions are listed in Table 3-49. All of these costs need to be necessary and reasonable in amount. The ADO must only fund cost allowed under 49 CFR part 24 and may contact APP-400 for assistance.

3-85. Legal Fees and Settlement Costs.

Legal fees and settlement costs are allowable if the ADO has determined that all of the criteria in Table 3-51 have been met. The ADO has the option to request the assistance of their regional legal counsel in making these determinations. The ADO also has the option to request the assistance of APP-400 for environmental or land related legal fees and settlement costs.

The ADO cannot find associated administrative expenses or consultant fees to be allowable if the ADO has determined that the legal fees or settlement costs are unallowable.

The ADO has the option to either implicitly concur with the legal fees and/or settlement costs by issuing the grant or make a written determination. In either case, the ADO must place the documentation used to support this determination in the project files.

Table 3-49 Common Allowable Land Costs and Associated Restrictions

For the following cost…	The following restrictions apply…
a. Appraisals	One appraisal of each property to be acquired is allowed unless the ADO concurs that a second, full appraisal is justified. Generally a property with potential fair market value over $500,000 may require a second appraisal. Complex appraisal assignments may also require two appraisals to ensure adequate market research and analysis is secured to support appraised values. The sponsor must ensure all appraisal reports to establish the just compensation offer to the property owner are reviewed by qualified review appraiser and approved as required under 49 CFR part 24.
b. Title Evidence	The reasonable and necessary cost of title evidence (title search and acquisition closing procedures to ensure marketable clear title to property is conveyed to the airport) is allowable. The sponsor's attorney must certify to ADO that good title has been acquired and may rely on title insurance (title company commitment of insurance of marketable title), or title abstract or an attorney's certificate of title. Per FAA policy, AIP reimbursement of the title insurance costs must not exceed $1000 per parcel.
c. Exhibit A Update	Per FAA policy, the sponsor is required to maintain a current Exhibit A (property inventory map). The cost to update the Exhibit A is both a required and an allowable cost in a land project. An airport property map is not a substitute for an Exhibit A.

Table 3-49 Common Allowable Land Costs and Associated Restrictions

For the following cost…	The following restrictions apply…
d. Condemnation Awards	The ADO may accept the cost of land or property interest established by the courts in a condemnation proceeding as a reasonable cost, even though it is above current appraised value. Reasonable attorney fees, delay interest, and acceptable incidental expenses included in a court award to land owners in a condemnation action are allowable costs. If the sponsor and their legal counsel determine that the award was excessive or unreasonable, they must evaluate whether to appeal the award. The sponsor and their legal counsel are encouraged to appeal an unfavorable award if there is good reason to believe that the amount of the award will be significantly reduced on appeal or retrial.
e. Relocation Assistance Costs	Relocation assistance and eligible payment requirements are described in 49 CFR part 24. These are required both for all FAA assisted projects and programs where acquisition or relocation is required or contemplated, and for projects to reimburse the sponsor for prior acquisition or relocation. The cost incurred by the sponsor to meet the requirements of 49 CFR part 24 is allowable. Examples include, but are not limited to: **(1)** Moving expenses. **(2)** Reestablishment expenses. **(3)** Replacement housing payments. **(4)** Related non-residential expenses. **(5)** Rent supplements. **(6)** Down payments. **(7)** Mortgage interest differentials or mortgage buy downs. **(8)** Incidental expenses in connection with the acquisition of replacement housing. **(9)** Advisory services. **(10)** Preparation of feasibility studies and relocation plans.
f. Appraisal (Highest and Best Use) for Acquisition of an Airport not in the NPIAS	The acquisition of a private airport by a public sponsor will normally include acquiring all of the airport property, including improvements. The appraised highest and best use of the land may either be continued airport use, or market development of the land to a more valuable land use, but not a mix of the two. The ADO must contact APP-400 for additional guidance on the appraisal requirements for the acquisition of a private owned airport.
g. Facilities on AIP Acquired Land	When land is acquired using AIP funding and there are existing facilities on the land, the ADO must determine if the cost for these facilities is allowable. Table 3-50 provides the allowability requirements the ADO must use to make these allowability determinations.

Table 3-50 Allowability of Costs for Facilities on AIP Acquired Land

If the facility will be …	Then the cost of acquiring the facility is…
a. Demolished	**Allowable.**
b. Used for an AIP eligible purpose (such as a general aviation terminal)	**Allowable** up to the justified size or use of the AIP eligible purpose (all other project and project related funding requirements apply).
c. Demolished at a later date (not to exceed three years)	**Allowable.** The sponsor may use the structure for any incidental purposes it deems desirable provided it does not interfere with the purpose of the airport. However, any revenue at fair rental value received during the period between acquisition and demolition of the structure constitutes airport revenue and is to be used according to sponsor Assurances. If a decision is ultimately made not to demolish the structure, then the sponsor must reimburse the federal share of the current appraised value of the structure to the grant. The sponsor must completely reimburse this cost as soon as the decision is made, or within three years of the purchase, whichever is earlier.
d. Used for a purpose that is not AIP eligible (such as administrative offices)	**Not Allowable.**
e. Relocated from its present site	**Partially Allowable.** This cost is only allowable up to the lesser of the relocation costs or the demolition costs.

Table 3-51 Requirements for Legal Fees and Settlement Costs

All of the following criteria must be met for the costs to be allowable…
a. The legal fees and/or settlement costs are a necessary part of the project or are needed to avoid shutdown of the project. Examples include legal costs to file the title at the courthouse, legal costs to review contracts before they are signed by the sponsor, and settlement costs required by a court finding to avoid a project being shut down.
b. The costs are not associated with defending a specification or federal provisions. This is because the cost to defend a federal provisions or specification is not a necessary part of the project and is not needed to avoid shutdown of the project.
c. The costs are reasonable.
d. The costs are documented in an invoice.

Table 3-51 Requirements for Legal Fees and Settlement Costs

All of the following criteria must be met for the costs to be allowable…	
e.	The costs can be paid for within the existing grant (or any proposed amendment). A separate grant cannot be issued if the costs are more than the amendment limit.
f.	If the total legal fees and/or settlement costs within the grant (and any proposed amendments) will exceed $100,000, the ADO has provided their recommendation up through the regional office and APP-500 to APP-1, and APP-1 has provided written concurrence.
g.	The ADO has determined that costs are not due to negligence on the part of the sponsor or consultant (including bidding defective plans or improper payments) and the sponsor did not violate contract provisions.
h.	The ADO has determined that the costs are not associated with the recoveries of improper payments. Under 49 USC § 47110(b)(1), all costs paid with AIP funds must be *necessary* to carry out the project. It is the sponsor's responsibility to recover improper payments without using AIP funding to carry out the work effort.
i.	The sponsor has exhausted all other avenues available to pay for the costs or resolve the issue.

3-86. Lighted X's and Other Runway Closure Markings Costs.

The cost for a contractor to furnish runway closure markings during a project is an allowable cost. However, a sponsor *cannot* require the contractor to purchase lighted X's and then turn it over to the airport as part of the project. If a sponsor would like to acquire a lighted X, they must request this as a separate AIP project and justify the need to the ADO (see Appendix J).

3-87. Normally Unallowable Costs that are Necessary to Carry Out the Project.

The ADO has the option of finding a normally unallowable cost allowable if the associated project cannot proceed without it. However, the ADO also has the option to require the sponsor to pay for these costs. Examples of these types of costs are included in Table 3-52. If no precedent for these costs exists, the ADO must consult APP-500.

Table 3-52 Examples of Unallowable Costs Necessary to Carry Out a Project

Some examples include…	
a.	Planting trees that are required as an environmental mitigation measure in an FAA approved environmental finding. Landscaping is normally an unallowable cost, but in this case it would be allowable.
b.	Fire hydrant installation required to obtain a local building permit for an apron project. Otherwise, fire hydrants are not a necessary for an apron project and would not be allowable.

3-88. Project Formulation Costs.

Project formulation costs must be directly related to the project. These are costs that are normally incurred before the project starts and would not have been incurred otherwise. The ADO may only approve these costs must be charged as direct costs to the grant and indirect costs may not be assessed on costs other than those that reflect direct salaries and wages of sponsor employees for hours spent working specifically on the project. Table 3-53 contains some examples of project formulation costs.

Table 3-53 Examples of Project Formulation Costs

Some examples include…
a. Field surveys
b. Soil borings
c. Plans and specifications (if not a stand-alone design grant)
d. Project related airport layout plan revisions
e. Land acquisition
f. Aeronautical studies
g. Grant administrative expenses for the projects in the grant
h. Benefit-cost analyses
i. Safety risk management (SRM) analysis for the specific project
j. Environmental studies (if not a stand-alone environmental study grant)
k. Land appraisals and review appraisals, title examination, and relocation plans
l. Construction and equipment procurement costs such as bid advertisement

3-89. Reimbursable Agreements with Other Federal Agencies.

The cost for reimbursable agreements between the sponsor and a federal agency is allowable if the cost is necessary for the project and the other federal agencies statutes allow this action. For instance, 49 USC § 106(l)(6) allows the FAA to enter into reimbursable agreements in order to carry out the functions of the FAA. An example of this is a reimbursable agreement between a sponsor and the FAA Air Traffic Organization (ATO) for the purpose of having the ATO relocate an FAA-owned navigational aid that is required by an AIP funded project (as allowed under 49 USC § 44502(a)(2)).

3-90. Safety Management System (SMS) and Safety Risk Management (SRM) Costs.

An SMS manual and implementation plan covers a wide range of projects and operations at a specific airport. The requirements an ADO must follow to issue a grant for an SMS manual and implementation plan are contained in Appendix E.

In addition, the sponsor may be required to participate in an SRM panel for specific projects or operations. If the specific project is one that will be funded by AIP, then certain costs are potentially allowable per Table 3-54.

Table 3-54 Allowable SRM Costs

The following are allowable SRM costs…
a. SRM Panel Costs. SRM panel costs are only allowable if they are specifically for the project in the grant and are required and conducted per the current version of FAA Order 5200.11, FAA Airports (ARP) Safety Management System. Allowable costs are limited to the reasonable costs of a consultant to support the SRM, including the costs to obtain a third party facilitator, prepare presentations, and provide meeting notes. The costs for airport employees, tenants, or FAA employees are not allowable.
b. SRM Project Costs. The recommendations from an SRM panel are not automatically eligible or justified. The reason is that many SRM panel recommendations will be operational or involve work that is funded under another federal program. The ADO must review these recommendations on a case by case basis to determine if the recommendation is a project or project cost that meets the eligibility and justification requirements outlined in this Handbook. The ADO may determine that the recommendation is either a stand-alone project or is an allowable cost under another eligible and justified project.

3-91. Secondary Electrical Power Supply Costs.

The primary electrical power supply is an allowable cost for any eligible project as outlined in Paragraph 3-97. In *extremely* limited circumstances the ADO also has the option to find the cost for a secondary, or redundant, power supply allowable.

The ADO may find a secondary power supply allowable if the primary power supply for the eligible areas/facilities of the airport is extremely unreliable due to any of the reasons listed in Table 3-55.

The secondary power supply must be in the form of an electrical service provided by a power company. Generators are not considered secondary electrical power supplies under this paragraph. (Generators are discussed in Appendix M.)

Table 3-55 Reasons for an ADO to find a Primary Power Supply Extremely Unreliable

Reasons include…
a. An extensive, documented, history of cable cuts.
b. Extraordinary meteorological conditions.
c. An extensive, documented, record of commercial utility interruptions.

3-92. Seismic Standards.

On June 14, 1993, the DOT published a final rule, 49 CFR part 41 implementing the provisions of Executive Order 12699, Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction, effective July 14, 1993. The result of the final rule is that that any building constructed with AIP funds must be designed and constructed in accordance with seismic standards of 49 CFR part 41. In addition, the sponsor must provide a certification of compliance with the seismic design and construction requirements of the rule.

3-93. Site Preparation Costs for Ineligible Work.

a. Prorating Ineligible Site Preparation Costs. In some cases, a sponsor may determine that it is beneficial to undertake site preparation for both eligible and ineligible development through one construction contract. The sponsor cannot include this ineligible site preparation work unless the sponsor has obtained approval from the ADO in advance (see Paragraph 3-42 for the rules regarding ADO approval of contracts containing ineligible costs).

b. Funding Incidental Site Preparation Costs. There is only one situation where site preparation for ineligible facilities is allowable. This situation is when clearing, grading, grubbing, or related work for an eligible AIP project inadvertently overlaps the site preparation area for an ineligible facility. Examples are included in Table 3-56.

Table 3-56 Allowability Examples of Site Preparation for Ineligible Facilities

For the following situation…	The extra site preparation costs are…
a. A project to improve a runway safety area overlaps the grading work needed for an FAA-owned approach lighting system.	**Allowable.** This is because the sites overlap.
b. A project to build an eligible apron is adjacent to the proposed site for an exclusive use maintenance facility. The sponsor has requested minor site preparation for the maintenance facility be included in the apron project.	**Not allowable.** The sites do not overlap.

3-94. Spare Part Costs.

FAA policy allows sponsors to acquire spare parts in very limited circumstances. The cost for spare part is allowable if the criteria in Table 3-57 can be met.

Table 3-57 Spare Part Requirements

All of the following criteria must be met…	
a.	The spare parts are for eligible airport visual aids listed in the current version of Advisory Circular 150/5340-26, Maintenance of Airport Visual Aid Facilities.
b.	The spare parts are included in the same grant that installs the airport visual aid.
c.	The cost of the spare parts does not exceed 10% of the total cost of the airport visual aid.
d.	The total cost for the spare parts does not exceed $10,000.
e.	The spare parts are minor components of the airport visual aid.
f.	The sponsor can replace the spare parts using their own staff.
g.	The ADO believes the sponsor will be able to store or accurately account for the spare parts inventory.

3-95. Temporary Construction Costs.

If the ADO makes a determination that uninterrupted operation of the airport is necessary and that such operation could not be continued without temporary construction, costs of temporary construction are allowable even though a portion of the work cannot be salvaged. The costs of the temporary construction must be determined by the ADO to be both necessary and reasonable. Costs that are unreasonable are not allowable and the ADO has the option of requiring the sponsor to use lesser cost alternatives if these alternatives meet the project need. In general, temporary construction that includes new airfield pavement such as a temporary visual runway or a runway extension is unallowable without extraordinary and significant justification. The ADO must coordinate with, and obtain APP-400 and APP-500 approval to include new airfield pavements as temporary construction measures.

Examples of allowable temporary construction are included in Table 3-58.

Temporary construction often results in pavement, facilities, or NAVAIDs that may have value to the airport once the construction is complete. The ADO has the option to concur with a sponsor's request to keep the temporary improvement in place (or relocate it to another location on the airport). However, relocation, rehabilitation, maintenance, and/or replacement of the improvement is not automatically justified for AIP funding unless the improvement would have been eligible and justified as a stand-alone project.

For items that have salvage value, such as NAVAIDs, the sponsor must follow the disposal requirements outlined in Paragraph 5-66. In addition, the ADO has the option of requiring the sponsor (normally through a special condition in the grant agreement) to transfer the item to an airport that is eligible for the item. APP-520 maintains a current list of special conditions that must be used for specific project or airport situations.

Table 3-58 Examples of Allowable and Unallowable Temporary Construction

Some examples include…	
a.	Temporary measures required to protect air and water quality.
b.	The acquisition and installation of interim non-federal NAVAIDs if the ADO determines they are necessary to provide visual or instrument capability during an extended period of time during the construction of the AIP project.
c.	The acquisition and installation of interim federal NAVAIDs if the FAA Air Traffic Organization (ATO) determines they are necessary to provide visual or instrument capability during an extended period of time during the construction of the AIP project. These costs are normally included in the reimbursable agreement between the ATO and the sponsor.
d.	Construction of a haul road to avoid runway and/or taxiway crossings.
e.	Measures to designate a taxiway as temporary runway in accordance with the current version of FAA Order 7110.19, Designation Taxiways as Temporary Runways.
f.	An interim terminal facility if there is no other reasonable way to accomplish the project. The interim facilities must be only that necessary to keep the operations in motion. The facilities must only be built for this interim use. Costs to develop the facility into a follow on use are not allowable.

3-96. Thermoplastic Markings.

The FAA standard specifications allow a sponsor to select and use thermoplastic markings instead of paint for airfield markings. However, as of the publication date of this Handbook, thermoplastic materials cost more than paint, both on a first cost and a life cycle cost basis (based on a life cycle for paint of approximately 3 years and thermoplastic markings of up to 7 years). In order to determine that the use of thermoplastic markings meet the statutory requirement for reasonable costs, the sponsor must provide a life cycle cost comparison that demonstrates that the costs are reasonable and verification that there are more than one manufacturer of thermoplastic markings. The ADO must retain a copy of the sponsor's successful life cycle cost analysis in the project files.

3-97. Used Equipment Costs.

The acquisition of used equipment is allowable provided it meets FAA specifications and has an acceptable useful life based on the proposed purchase price.

The GSAXcess program is an excellent source for free used equipment. The GSAXcess website and the current version of Advisory Circular 150/5150-2, Federal Surplus Personal Property for Public Airport Purposes, are good resources for a sponsor to learn more about this program.

3-98. Utility Costs.

The installation, improvement, reconstruction, or repair of water, gas, and electric (primary power supply only) is allowable to the extent the work serves eligible areas and facilities. If the utility installation will serve both eligible and ineligible areas/facilities, the allowable cost is limited to prorated share for the eligible portion. The ADO will determine the method of proration. Table 3-59 contains an example of prorated utility costs. If the utility work is required for the AIP portion of the airport, as well as for other non-AIP portions of the airport, the ADO can presume that the determination of the best interest of the federal government required in Paragraph 3-42 has been met. However, the other requirements for including ineligible or non-AIP funded work in the contract in Paragraph 3-42 must be met.

Per FAA policy, utility projects are not eligible as stand-alone projects.

Table 3-59 Utility Costs Proration Example

For the following situation…	The allowable prorated amount would be…
a. A project to run electrical lines to a T-Hangar area also contains an ineligible office building. The T-Hangars are estimated to use 2/3 of the electrical load and the ineligible office building will use the remainder.	Two thirds of the total cost of the electrical line installation (including associated design, inspection, etc.).

3-99. Value Engineering.

The cost for value engineering is allowable if all of the sponsor requirements in Paragraph U-9 and the ADO requirements in Paragraph 3-56 are met.

Section 12. Costs Necessary (Allowable Cost Rule #1).

3-100. Requirements for Costs to be Necessary.

Per 49 USC § 47110(b)(1), the ADO must only approve costs that are directly necessary to accomplish the project. All other costs are considered unallowable.

Section 13. Costs Incurred after Grant Executed (Allowable Cost Rule #2).

3-101. Rules for Reimbursing Project Costs Prior to the Grant (or LOI) Execution Date.

Unless specifically allowed in the Act, 49 USC § 47110(b)(2) requires that all project costs must be incurred after the grant execution date. Table 3-60 list the entire set of rules regarding when project costs can be incurred in relationship the grant execution date, the type of funding, and the type of project.

Table 3-60 Rules for Reimbursing Project Costs Prior to the Grant Execution Date

For…	The following rules apply…
a. Allowable costs using any or all of the following types of funds: • Passenger Entitlement • Cargo Entitlement • Nonprimary Entitlements	Per 49 USC § 47110(b)(2)(C), project costs must have been incurred after 9/30/1996. All allowable costs after this date may be reimbursed with these types of funds, regardless of whether they were incurred before the grant was executed as long as all other applicable AIP requirements have been met.
b. Allowable costs using any or all of the following types of funds: • Discretionary • State Apportionment (including Insular) • Alaska Supplemental	Per 49 USC § 47110(b)(2)(A), project costs must have been incurred after the grant execution date. The only exception for these three types of funding are (these exceptions are statutory and are the only exceptions allowed): **(11)** 14 CFR part 150 Projects. Per 49 USC § 47110(b)(2)(B), if the project is specifically contained in an FAA approved 14 CFR part 150 program, all of the project costs can be reimbursed. This does not apply to schools or medical buildings unless they are approved within an FAA approved 14 CFR part 150 program. **(12)** Project Formulation (Development Projects). Per 49 USC § 47110(c), project formulation costs must be directly related to the project. These are costs that are normally incurred before the project starts and would not have been incurred otherwise. Examples of allowable project formulation costs are included in Paragraph 3-87. Per FAA policy, only land acquisition may be reimbursed under a stand-alone grant. **(13)** Project Formulation (Planning Projects). Per 49 USC § 47110(c), costs necessary and directly incurred in developing the work scope of a planning project can be reimbursed. **(14)** Land Acquisition. Per 49 USC § 47110(c), land acquisition is considered a project formulation cost and can therefore be reimbursed with all types of funding. The sponsor must have purchased the land after May 13, 1946. Per FAA policy, land acquisition may be reimbursed under a stand-alone grant for land acquisition. **(15)** Letters of Intent. Per 49 USC § 47110(e), all costs incurred after the LOI execution date, and only project formulation costs incurred before the LOI execution date, may also be reimbursed with any type of

Table 3-60 Rules for Reimbursing Project Costs Prior to the Grant Execution Date

For…	The following rules apply…
	funding. **(16)** Design-Build Projects. The FAA believes that under 49 USC § 47142(b), the design and construction costs may be reimbursed with these types of funds if this contracting method is approved in advance by the ADO and all other applicable AIP requirements have been met. ADO approval is not a commitment of funds. Approval in advance by the ADO does not guarantee that the project will be considered or given priority for discretionary by the ADO. Therefore, the sponsor must have an alternative funding source available to fund the project without discretionary funding. **(17)** Certain MAP Projects. Per 49 USC § 47118(f)(2), the FAA has the option to use discretionary to reimburse approved MAP projects if the sponsor incurred the costs during fiscal years 2003 and 2004. **(18)** Climate-Related Conditions. In very limited circumstances, 49 USC § 47110(b)(2)(D) provides the FAA with the option to allow reimbursement for a project if the project meets all of the conditions in Table 3-61 through Conditions Table.

Table 3-61 Sponsor Assumption of Risk

The sponsor acknowledges that it assumes all risk by…
Sponsor Assumes All Risk. The sponsor must include a statement in the request for FAA acknowledgement of its request to be considered for reimbursement that includes the following sponsor assumption of risk: *"Because the FAA cannot guarantee the availability of any types of AIP funding on the project, the sponsor must be prepared to complete the project using other sources of funds even if the sponsor meets all of the requirements for discretionary reimbursement. There are no circumstances under which the sponsor can infer that the project will be funded with discretionary funds."*

Table 3-62 Legislative Requirements that Must be Met for FAA to Consider Reimbursement Based on Climate-Related Conditions

The ADO has determined that the sponsor has met all of the following legislative requirements…
a. Per 49 USC § 47110(b)(2)(D), construction of the project must have started in the same fiscal year as execution of the grant agreement. A construction project for which construction started in a prior fiscal year cannot be reimbursed with discretionary funding.
b. Per 49 USC § 47110(b)(2)(D)(i), the airport must be in an area that experiences a shortened construction season due to climatic conditions, which the FAA has determined to mean cold weather. To make this determination, the FAA reviewed reports from the American Association of State Highway and Transportation Officials (AASHTO) and the Federal Highway Administration on construction impacts due to weather and found that shortened construction season was understood to be related to work such as earthwork that is shut down or suspended during the winter cold weather.
c. Per 49 USC § 47110(b)(2)(D)(ii), all other applicable AIP requirements have been met.
d. Per 49 USC § 47110(b)(2)(D)(iii), the sponsor must notify the Airports District Office or regional office (ADO) in advance of starting the work of the sponsor's intent to request discretionary funding for this project. The sponsor must complete the attached Request for FAA Acknowledgement of Requirement to Issue Notice to Proceed prior to Grant Award for a Cold Weather Construction Project form and include it with the request, and a grant application, at least 30 calendar days prior to issuing a Notice to Proceed. The ADO must forward the sponsor's request to APP-500 for processing.
e. Per 49 USC § 47110(b)(2)(D)(iv), the sponsor must have an alternative funding source available to fund the project. Because the sponsor has agreed to fully fund the complete project if AIP discretionary funding is not provided, the sponsor's alternative funding plan may include AIP future year entitlement funding or Passenger Facility Charge funding. If the sponsor's alternative funding plan does include future AIP entitlement funding which then impacts other future project requests, the sponsor will need to consider other options of funding those future projects.
f. Per 49 USC § 47110(b)(2)(D)(v), the sponsor's decision to proceed with the project in advance of execution of the grant agreement does not raise the priority assigned to the project by the FAA.
g. Per 49 USC § 47120, the FAA will give lower priority to discretionary project requests if the sponsor is using its entitlement funds for projects that have a lower priority than the projects for which discretionary funds are being requested. Therefore, this cold weather provision cannot be requested in a year when the sponsor is using its entitlement funds on a lower priority project.

Table 3-63 Implementation Requirements that Must be Met for FAA to Consider Reimbursement Based on Climate-Related Conditions

The requirements that APP-500 will consider are…
a. The request is not due to short-term disruptions. Short-term disruptions that prevent construction from occurring, including but not limited to rain, wind, tropical weather, fog, snowfall, ice, or high temperatures do not satisfy the requirement of a shortened construction season due to climatic conditions. This is because construction project specifications, including the FAA standard specifications, include provisions for inclement weather and temporary shutdowns.
b. The request is not due to operational considerations. Operational or coordination considerations, such as the desire to reopen before winter, to allow planned construction sequencing, or to meet a particular aeronautical chart publication date do not satisfy the requirement of a shortened construction season due to climatic conditions.
c. The request is for a project that may be impacted. The FAA has generally identified paving projects or pavement rehabilitation projects as those that are most likely to be impacted by a shortened construction season due to climatic conditions. In reviewing the request, APP-500 will consider the type of construction included in the project, the duration of the construction activities that may be impacted by a shortened construction season and the date by when the sponsor indicates that construction must begin to avoid impacts of a shortened construction season.
d. The airport is in an impacted area. Generally, the APP-500 will consider issuing an acknowledgement if there is at least one month in the average calendar year with an average high temperature below 40 degrees Fahrenheit and specific construction activities required for the project would be impacted by the cold temperatures.
e. An early start may be justified. The sponsor has demonstrated that the project requires an early start in order to fit the construction schedule into the construction season by providing the length of the construction project, date by which construction must begin in order to avoid being negatively impacted by cold weather conditions. **(1)** For example, this provision would not likely be justified for a 90-day paving project where the ADO anticipates that a grant could be issued in May. **(2)** The ADO may determine that this provision is justified for a 180-day paving project and grants are not expected to be able to be issued until July.

Table 3-64 Alternative Funding Requirements that Must be Met for FAA to Consider Reimbursement Based on Climate-Related Conditions

The sponsor's alternative funding plan includes…
a. The sponsor may include future year entitlements in the alternative funding plan. However, if the sponsor's Capital Improvement Program (CIP) previously identified projects that the sponsor planned to fund with those entitlements, the sponsor must revise their CIP accordingly.
b. If the sponsor proposes using future year entitlements, in those future years, the requested reimbursement may impact the sponsor's ability to fund other projects that year with discretionary funds, based on the requirement to fund the highest priority projects first with the sponsor's entitlement funds.
c. If the sponsor has started construction and discretionary funding is not provided in the year in which the construction started, the project is ineligible for discretionary funding in this, or future years.
d. For phased projects, the requirements of this PGL must be applied individually to each phase or grant request. Funding of one phase of a phased project under this PGL does not establish eligibility for funding either prior or subsequent phases.

Table 3-65 Request Requirements that Must be Met for FAA Consideration of Reimbursement Based on Climate-Related Conditions

The requirements are…
a. The sponsor must submit the written request to the ADO before contract award and before issuing Notice to Proceed to the selected contractor.
b. The sponsor must allow at least 30 calendar days following the submittal of a complete and accurate submittal to the ADO to receive a determination from APP-500.
c. Upon receipt of a sponsor's request for consideration, the ADO must review the request for completeness. If the request is incomplete, the ADO must return the request to the sponsor for correction. If the request is complete, the ADO must forward the request to APP-500. The ADO must submit the completed sponsor request, with ADO Staff Recommendation to APP-500 within nine business days of receiving the sponsor request.

Table 3-66 APP-500 Acknowledgement Process for Requests for Reimbursement Based on Climate-Related Conditions

The requirements are…
a. APP-500 will notify the ADO whether or not the proposed project can be considered for reimbursement based on climate related conditions.
b. After APP-500 notifies the ADO whether or not the proposed project can be considered under this limited exception, the ADO must advise the sponsor of the determination. The ADO notification to the sponsor may be in writing or by e-mail. The determination is *solely* a determination as to whether the sponsor has met the necessary requirements for the FAA to be able to consider AIP discretionary funding subsequent to contract award or NTP, and does not in any way represent an actual commitment of discretionary funds.
c. APP-500 will attempt to respond to a sponsor's request within 30 days after receipt of the request. However, only actual receipt by a sponsor of an APP-500 determination that the project will be acknowledged by the FAA as having been requested for consideration for discretionary funding for a Cold Weather Construction Project constitutes FAA acknowledgement. The sponsor cannot consider lack of a response within 30 days is the equivalent of APP-500 acknowledgement.

Section 14. Costs Reasonable (Allowable Cost Rule #3).

3-102. Sponsor Requirements.

Per 49 CFR § 18.36(f)(1) (2 CFR § 200.323(a)), sponsors must perform a cost or price analysis in connection with every procurement action, including contract modifications. Table 3-67 and Table 3-68 list the type of analysis that the sponsor must perform and the documents the sponsor must submit for various procurement scenarios. Paragraph U-17 contains guidance to sponsors on how to perform price and cost analyses.

Table 3-67 Sponsor Requirements for Cost Reasonableness

For the following…	The sponsor must perform a…	And the sponsor must submit all of the following…
a. Land and easement acquisition	Cost Analysis	**(1)** Appraisals and review appraisals. **(2)** A statement signed by the sponsor that the cost analysis was performed that includes the sponsor's recommendation that the FAA accept the statement and analysis as evidence of cost reasonableness. **(3)** Negotiated agreements amount. **(4)** Copy of the signed negotiated agreement only if requested by the ADO. **(5)** Any other support documentation requested by the ADO.

Table 3-67 Sponsor Requirements for Cost Reasonableness

For the following…	The sponsor must perform a…	And the sponsor must submit all of the following…
b. Equipment acquisition and construction where there is adequate competition (two or more bidders by sealed bids)	Price Analysis	**(1)** Engineer's estimate. **(2)** A statement signed by the sponsor that the price analysis was performed that includes the sponsor's recommendation that the FAA accept the statement and analysis as evidence of cost reasonableness. **(3)** Bid tabulations. **(4)** Copy of the signed contract only if requested by the ADO. **(5)** Any other support documentation requested by the ADO.
c. Equipment acquisition and construction where there is not adequate competition (one bidder, sole source, design/build, small purchase, construction manager-at-risk, etc.)	Cost Analysis	**(1)** Engineer's estimate. **(2)** A statement signed by the sponsor that the cost analysis was performed that includes the sponsor's recommendation that the FAA accept the statement and analysis as evidence of cost reasonableness. **(3)** Bid tabulation (one bidder), proposal (sole source, design/build, construction manager-at-risk), or winning quote (small purchase). **(4)** Copy of the signed contract (or full set of quotes for small purchase) only if requested by the ADO. **(5)** Any other support documentation requested by the ADO.
d. Negotiated professional services (such as consultant costs or contract modifications to a professional services contract)	Cost Analysis	**(1)** Independent fee estimate. **(2)** A statement signed by the sponsor that the cost analysis was performed that includes the sponsor's recommendation that the FAA accept the statement and analysis as evidence of cost reasonableness. **(3)** Amount of contract. **(4)** Copy of the signed contract only if requested by the ADO. **(5)** Any other support documentation requested by the ADO.

Table 3-67 Sponsor Requirements for Cost Reasonableness

For the following…	The sponsor must perform a…	And the sponsor must submit all of the following…
e. Non-negotiated services (such as newspaper advertisements and rental of facilities for a public hearing)	Price Analysis	**(1)** Advertised pricing. **(2)** A statement signed by the sponsor that the price analysis was performed that includes the sponsor's recommendation that the FAA accept the statement and analysis as evidence of cost reasonableness. **(3)** Quote for services (or sponsor's estimate based on advertised price). **(4)** Any other support documentation requested by the ADO.
f. Non-negotiated service based on law or regulation (such as utility work by the utility company or a reimbursable agreement with the FAA Air Traffic Organization (ATO))	Price Analysis	**(1)** A statement signed by the sponsor that the price analysis was performed that includes the sponsor's recommendation that the FAA accept the statement and analysis as evidence of cost reasonableness. **(2)** Quote or signed contract. **(3)** Any other support documentation requested by the ADO.
g. Sponsor force account planning, engineering or construction	Cost Analysis	**(1)** All of the documentation required in Paragraph 3-55.

Table 3-68 Sponsor Requirements for Cost Reasonableness (Contract Changes)

For the following…	The sponsor must perform a…	And the sponsor must submit…
a. Change Orders and Supplemental Agreements (to Construction and Equipment Contracts)	Cost Analysis	**(1)** Change order or supplemental agreement request from the contractor. **(2)** Justification for the change. **(3)** A statement signed by the sponsor that the cost analysis was performed that includes the sponsor's recommendation that the FAA accept the statement and analysis as evidence of cost reasonableness. **(4)** Any other support documentation requested by the ADO.

Table 3-68 Sponsor Requirements for Cost Reasonableness (Contract Changes)

For the following…	The sponsor must perform a…	And the sponsor must submit…
b. Contract Modification or Supplemental Agreements (to Negotiated Professional Service Contracts)	Cost Analysis	**(1)** Contract modification or supplemental agreement request from the consultant or company providing the service. **(2)** Justification for the change. **(3)** A statement signed by the sponsor that the cost analysis was performed that includes the sponsor's recommendation that the FAA accept the statement and analysis as evidence of cost reasonableness. **(4)** Any other support documentation requested by the ADO.

3-103. ADO Review Requirements.

In order to fund a project or make payment on a grant, 49 USC § 47110(b)(3) requires a cost reasonableness determination. Per FAA policy, the ADO, not the sponsor, makes the determination that the project costs are reasonable. This reasonableness determination is not an action that is covered by sponsor certification.

In order for the ADO to make a cost reasonableness determination, the ADO must review the documents submitted by the sponsor per Paragraph 3-101.

3-104. Documentation of ADO Determination.

Table 3-69 contains the documentation requirements for ADO cost reasonableness determinations. If an ADO determines that any of the costs are unreasonable, the ADO has the option to document this in writing in to the sponsor and/or the project file, however, this documentation is not mandatory.

Table 3-69 Documentation of ADO Cost Reasonableness Determinations

For…	The ADO must document its determination by…
c. Grants not based on estimates.	If the ADO finds the documentation acceptable, the ADO may issue the grant. By issuing the grant, the ADO is documenting that they have found the costs to be reasonable. In the specific instance of a state block grant that is not based on estimates, the ADO may rely on the state's signature of the grant application as documentation that the state has found all costs to be reasonable.

Table 3-69 Documentation of ADO Cost Reasonableness Determinations

For…	The ADO must document its determination by…
d. Grants based on estimates	In the rare instance that an ADO issues a grant or part of a grant based on estimates, the ADO must make the cost reasonableness determination before the sponsor receives a grant payment for the work. In this instance, the ADO must document their cost reasonableness determination in writing and place a copy in the project file. In the specific instance of a state block grant that is based on estimates, the ADO may rely on the state's request for a grant payment for the work as documentation that the state has found all costs to be reasonable.
e. Change Orders, Supplemental Agreements, and Contract Modifications	The ADO documents its cost reasonableness determination in one of two ways: **Grant Amendment.** If the ADO issues a grant amendment, the ADO documents its determination that the costs in the associated change orders, supplemental agreements, or contract modifications are reasonable by signing the amendment. **FAA Final Project Report.** If a grant amendment is not required, the ADO documents its determination that the costs in all change orders, supplemental agreements, and contract modifications are reasonable by signing the FAA final project report. Further discussion of additional ADO responsibilities related to change orders, supplemental agreements, and contract modifications is discussed in Paragraph 5-34. In the specific instance of a state block grant, the ADO may rely on the state's grant closeout package as documentation that the state has found all costs associated with change orders, supplemental agreements, and contract modifications to be reasonable.

Section 15. Costs Not in Another Federal Grant (Allowable Cost Rule #4).

3-105. Requirement for Costs to Not be in Another Federal Grant.

Per 49 USC § 47110(b)(4), the cost must not be incurred in a project for airport development or airport planning for which other federal assistance has been granted. Per FAA policy, AIP must not be used for a project cost that has already been covered in another federal grant. In other words, the costs must not be paid for by the federal government more than once, and may not cause the federal share percentage of the project to exceed the federal share allowed in 49 USC § 47109. Note that this requirement does not prohibit another federal agency from providing funding to a sponsor to be used for the local share if that federal agency permits its funds to be used for local share.

Section 16. Costs within Federal Share (Allowable Cost Rule #5).

3-106. Allowable Federal Share Requirement.

Per 49 USC § 47110(b)(5), the total allowable federal costs cannot exceed the maximum federal cost that is in the grant agreement (except as allowed within the amendment rules per Chapter 5, Section 7).

Section 17. No Unreasonable Delay in Completion.

3-107. Requirement for No Unreasonable Delay in Project Completion.

Per 49 USC § 47106(a)(4), the ADO cannot issue a grant to a project if the ADO is aware of circumstances that will unreasonably delay project completion. For instance, the ADO might delay putting a project under grant if there are runway closure timing issues that have not been adequately worked out with the airlines.

Chapter 4. What AIP funding is available?

4-1. Relevant AIP Legislation (Referred to as the Act).

References to the Act in this Handbook are based on the AIP related legislation contained in the United States Code (USC), as defined in Appendix A.

4-2. Legislation Needed to Issue AIP Grants (Authorization/Appropriation).

49 USC § 47104(a) allows the Administrator to issue grants for airport planning and development in the United States. In order to be able to issue grants and operate the AIP grant program, the FAA normally needs both an authorization and an appropriation.

a. Authorization. The authorization is often referred to as the FAA *Bill* or *Reauthorization* and may be passed by Congress for one or more years. The authorization defines the annual funding level for AIP and gives the FAA contract authority to issue grants. AIP is currently operating under the FAA Modernization and Reform Act of 2012 (Public Law 112-95). Per 49 USC § 48103(a), $3,350,000,000 for each of the fiscal years 2012 through 2015 has been authorized in this bill for airport planning and airport development under 49 USC § 47104, airport noise compatibility planning under 49 USC § 47505(a)(2), and carrying out noise compatibility programs under 49 USC § 47504(c).

b. Appropriation. The appropriation is an annual budget that Congress establishes for the FAA. The appropriation allows the FAA to incur obligations and make payments for specific purposes. Congress may also use the appropriation to reduce the authorized AIP funding level from the levels set by the authorization for the current year.

4-3. Airport and Airway Trust Fund (Source of AIP).

49 USC § 48103 authorizes revenue for AIP from the Airport and Airway Trust Fund, which is commonly referred to as the Trust Fund. The Airport and Airway Revenue Act of 1970 created the Trust fund to provide a dedicated source of funding for the aviation system.
26 USC § 9502(c) (the Internal Revenue Code of 1986) authorizes funds to be made available from the Trust Fund for AIP.

The revenue sources of the Trust Fund can be found in Appendix W.

4-4. Calculations of Passenger Boardings

49 USC § 47102(15) defines the time period for calculating the number of passenger boardings at an airport as *in the prior year*. For example, the passenger boardings in FY 2014 are the passengers in calendar year 2012.

4-5. Categories of AIP Funding (Including Calculations and Legislative References).

Once an authorization and an appropriation are in place, the approved AIP funding is split into defined categories and types according to formulas in the Act. A detailed summary of the AIP

fund categories, fund types, and associated calculation methods in Table 4-1. Table 4-2 shows the actual percentage of AIP funding by fund type in fiscal year 2011.

Table 4-1 AIP Funds by Category, Type, and Calculation

Fund Type and Legislative Reference	How Calculated if less than $3,200,000,000 in AIP is Available in the Fiscal Year	How Calculated if $3,200,000,000 or More in AIP is Available in the Fiscal Year
Passenger Entitlement		
a. Passenger Entitlement 49 USC § 47114(c)(1)	Per 49 USC § 47114(c)(1)(A): $7.80 for each of the first 50,000 passenger enplanements. $5.20 for each of the next 50,000. $2.60 for each of the next 400,000. $0.65 for each of the next 500,000. $0.50 for each passenger enplanement > $1 million enplanements. Per 49 USC § 47114(c)(1)(B), the annual minimum is $650,000 and the annual maximum is $22 million per airport. Per 49 USC § 47114(f), the amount of entitlement funds for large and medium hub airports collecting a PFC are reduced based on the PFC collection level approved for the airport. If the airport is collecting at $3.00 or less, the amount of entitlements is reduced by 50%. If the airport is collecting more than $3.00, the amount of entitlements is reduced by 75%. In Hawaii, this calculation is modified based on the percent of inter-island passengers. **Special Rule for Fiscal Year 2012 and 2013:** Per 49 USC § 47114(c)(1)(F), an airport that was a primary airport in 2007, but in calendar year 2009 and/or 2010, the annual number of passenger boardings was less than 10,000; an amount equal to the amount apportioned for that airport in fiscal year 2009 may be apportioned during fiscal years 2012 and 2013.	Per 49 USC § 47114(c)(1)(C): $15.60 for each of the first 50,000 passenger enplanements. $10.40 for each of the next 50,000. $5.20 for each of the next 400,000. $1.30 for each of the next 500,000. $1 for each passenger enplanement > 1 million enplanements. Per 49 USC § 47114(c)(1)(C), The annual minimum is $1 million and the annual maximum is $26 million per airport. Per 49 USC § 47114(f), the amount of entitlement funds for large and medium hub airports collecting a PFC are reduced based on the PFC collection level approved for the airport. If the airport is collecting at $3.00 or less, the amount of entitlements is reduced by 50%. If the airport is collecting more than $3.00, the amount of entitlements is reduced by 75%. In Hawaii, this calculation is modified based on the percent of inter-island passengers. **Special Rule for Fiscal Year 2012 and 2013:** Per 49 USC § 47114(c)(1)(F), an airport that was a primary airport in 2007, but in calendar year 2009 and/or 2010, the annual number of passenger boardings was less than 10,000; an amount equal to the amount apportioned for that airport in fiscal year 2009 may be apportioned during fiscal years 2012 and 2013.

Table 4-1 AIP Funds by Category, Type, and Calculation

Fund Type and Legislative Reference	How Calculated if less than $3,200,000,000 in AIP is Available in the Fiscal Year	How Calculated if $3,200,000,000 or More in AIP is Available in the Fiscal Year
Cargo Entitlement		
b. Cargo Entitlement 49 USC § 47114(c)(2)	3.5% of total AIP available for grants, divided on a pro-rata basis according to an airport's share of total U.S. landed cargo weight. Per 49 USC § 47114(c)(2)(C), not more than 8% of the total cargo entitlements may be apportioned for any one airport.	3.5% of total AIP available for grants, divided on a pro-rata basis according to an airport's share of total U.S. landed cargo weight.
Amounts Apportioned for General Aviation Airports Split between Nonprimary Entitlements and State Apportionment.		
c. Nonprimary Entitlement 49 USC § 47114(d)(3)(A) 49 USC § 47114(d)(7)	None. The exception is if, per 49 USC § 47114(d)(7), $650,000 for an airport that meets both of the following criteria: **(1)** Received scheduled or unscheduled air service from a large certificated air carrier (as defined in 14 CFR part 241 or such other regulations as may be issued by the Secretary under the authority of 49 USC § 41709) in the calendar year used to calculate the apportionment. **(2)** Had more than 10,000 passenger boardings in the calendar year used to calculate the apportionment.	Per 49 USC § 47114(d)(3)(A), the lesser of $150,000 or 1/5 of an airport's 5-year development cost listed in the biennial NPIAS report to Congress. The exception is if, per 49 USC § 47114(d)(7), $1,000,000 for an airport that meets both of the following criteria: **(1)** Received scheduled or unscheduled air service from a large certificated air carrier (as defined in 14 CFR part 241 or such other regulations as may be issued by the Secretary under the authority of 49 USC § 41709) in the calendar year used to calculate the apportionment. **(2)** Had more than 10,000 passenger boardings in the calendar year used to calculate the apportionment.

Table 4-1 AIP Funds by Category, Type, and Calculation

Fund Type and Legislative Reference	How Calculated if less than $3,200,000,000 in AIP is Available in the Fiscal Year	How Calculated if $3,200,000,000 or More in AIP is Available in the Fiscal Year
d. State Apportionment (including Insular) 49 USC § 47114(d)(2) 49 USC § 47114(d)(3)(B)	Per 49 USC § 47114(d)(2), 18.5% of total AIP available for grants minus the total nonprimary entitlements. Per 49 USC § 47114(d)(2), a total of 99.34% of the funds remaining after the deduction of nonprimary entitlement is apportioned for airports based on an area/population formula within the 50 States, the District of Columbia, and Puerto Rico. The remaining 0.66% is apportioned for airports in the insular areas (Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands).	Per 49 USC § 47114(d)(3), 20% of total AIP available for grants minus the total nonprimary entitlements. Per 49 USC § 47114(d)(3)(B), 99.38% of the funds remaining after the deduction of nonprimary entitlement is apportioned for airports based on an area/population formula within the 50 States, the District of Columbia, and Puerto Rico. The remaining 0.62% is apportioned for airports in the insular areas (Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands).
Alaska Supplemental		
e. Alaska Supplemental 49 USC § 47114(e)	Per 49 USC § 47114(e)(1), Alaskan airports are apportioned at least as much money as they were apportioned in fiscal year 1980 under Section 15(a)(3)(A) of the Airport and Airway Development Act of 1970. This amount is $10,672,557.	Per 49 USC § 47114(e)(4), Alaskan airports are apportioned at least double as much money as they were apportioned in fiscal year 1980 under Section 15(a)(3)(A) of the Airport and Airway Development Act of 1970. This doubled amount is $21,345,114.

Table 4-1 AIP Funds by Category, Type, and Calculation

Fund Type and Legislative Reference	How Calculated if less than $3,200,000,000 in AIP is Available in the Fiscal Year	How Calculated if $3,200,000,000 or More in AIP is Available in the Fiscal Year
Small Airport Fund This is a calculation, not a set aside fund.		
f. Small Airport Fund 49 USC § 47116	The Small Airport Fund is not an actual stand-alone set-aside fund. It is merely a calculation to ensure that a required level of discretionary is used on small airports. A total of 87.5% of the amount of passenger entitlement funds reduced from large and medium hub airports (per 49 USC § 47114(f)) is used to calculate the Small Airport Fund. The Small Airport Fund is divided by airport type as follows: 1/7 to small hub. 2/7 to general aviation and reliever airports, as well as and certain public use airports with restrictions (see Table 4-3). 4/7 to nonhub primary and non-primary commercial service.	The Small Airport Fund is not an actual stand-alone set-aside fund. It is merely a calculation to ensure that a minimum level of discretionary is used on small airports. A total of 87.5% of the amount of passenger entitlement funds reduced from large and medium hub airports (per 49 USC § 47114(f)) is used to calculate the Small Airport Fund. The Small Airport Fund is divided by airport type as follows: 1/7 to small hub. 2/7 to general aviation and reliever airports, as well as and certain public use airports with restrictions (see Table 4-3). 4/7 to nonhub primary and non-primary commercial service.
Discretionary **Includes Discretionary Set Asides and Remaining Discretionary** Remainder of AIP after above distributions.		
Discretionary Set Asides		
g. Noise and Environmental Set Aside 49 USC § 47117(e)(1)(A)	At least 35% of discretionary, but not more than $300 million.	At least 35% of discretionary, but not more than $300 million.
h. MAP Set Aside 49 USC § 47117(e)(1)(B)	At least 4% of discretionary.	At least 4% of discretionary.
i. Reliever Set Aside 49 USC § 47117(e)(1)(C)	None.	At least 0.66% (2/3 of 1%) of discretionary.

Table 4-1 AIP Funds by Category, Type, and Calculation

Fund Type and Legislative Reference	How Calculated if less than $3,200,000,000 in AIP is Available in the Fiscal Year	How Calculated if $3,200,000,000 or More in AIP is Available in the Fiscal Year
Remaining Discretionary **Includes Discretionary that remains after calculating the Discretionary Set Asides** 49 USC § 47115(a)		
j. Capacity/ Safety/ Security/ Noise (C/S/S/N) 49 USC § 47115(c)	75% of remainder of AIP after above distributions and set-asides, and 75% of 12.5% of the returned entitlements that are not allocated to the Small Airport Fund.	75% of remainder of AIP after above distributions and set-asides, and 75% of 12.5% of the returned entitlements that are not allocated to the Small Airport Fund.
k. Pure Discretionary 49 USC § 47115(b)	25% of remainder of AIP after above distributions and set-asides, and 25% of 12.5% of the returned entitlements that are not allocated to the Small Airport Fund.	25% of remainder of AIP after above distributions and set-asides, and 25% of 12.5% of the returned entitlements that are not allocated to the Small Airport Fund.
l. Discretionary from Converted Entitlements/ Apportionments 49 USC § 47117(f)	No calculation. This funding is obtained from carrying over entitlements and apportionments to the next year. This funding is not subject to the set aside calculation requirements.	No calculation. This funding is obtained from carrying over entitlements and apportionments to the next year. This funding is not subject to the set aside calculation requirements.

Table 4-2 Fiscal Year 2013 Final Funding Breakdown by Fund Type

Fund Type	Fiscal Year 2013 Percentage
a. Passenger Entitlement	26.6%
b. Cargo Entitlement	3.5%
c. Nonprimary Entitlements	12.5%
d. State Apportionment	7.4%
e. Alaska Supplemental	0.7%
f. Noise and Environmental Set Aside	4.2%
g. MAP Set Aside	0.5%

Table 4-2 Fiscal Year 2013 Final Funding Breakdown by Fund Type

Fund Type	Fiscal Year 2013 Percentage
h. Reliever Set Aside	0.1%
i. Small Airport Fund	15.2%
j. Capacity/ Safety/ Security/ Noise (C/S/S/N)	5.4%
k. Pure Discretionary	1.8%
l. Discretionary from Converted Entitlements/Apportionments	22.01%

4-6. Types of Potential Funding by Airport Type (Including Airport Type Definitions).

As established in 49 USC § 47104, only public-use airports in the NPIAS are eligible for AIP funding. These airports are classified into various categories as shown in Table 4-3, along with the types of potential funding that an ADO can apply to these airport types.

Table 4-3 Airport Type Criteria and Potential Funding Types

Airport Type	And meets all of the following Airport Criteria	Types of Potential Funding (See Paragraphs 4-6 and 4-7 for additional restrictions by airport and project type)
a. Large Hub	**(1) Commercial Service Airport.** Publicly owned airport that has at least 2,500 passenger boardings each calendar year and receives scheduled passenger service. (*Note: Privately owned airports are not commercial service airports per 49 USC § 47102(7) even if the airport has at least 2,500 passenger boardings.*) **(2) Primary Airport.** A commercial service airport with more than 10,000 annual passenger boardings per 49 USC § 47102(16). **(3) Meets Large Hub Criteria.** 1% or more of annual passenger boardings per 49 USC § 47102(11).	Passenger Entitlement Discretionary Alaska Supplemental Cargo Entitlement State Apportionment – Per 49 USC § 47114(d)(4), State Apportionment may be used by any size public airport in Hawaii, Alaska or Puerto Rico.

Table 4-3 Airport Type Criteria and Potential Funding Types

Airport Type	And meets all of the following Airport Criteria	Types of Potential Funding (See Paragraphs 4-6 and 4-7 for additional restrictions by airport and project type)
b. Medium Hub	**(1) Commercial Service Airport.** Publicly owned airport that has at least 2,500 passenger boardings each calendar year and receives scheduled passenger service. (*Note: Privately owned airports are not commercial service airports per 49 USC § 47102(7) even if the airport has at least 2,500 passenger boardings.*) **(2) Primary Airport.** A commercial service airport with more than 10,000 annual passenger boardings per 49 USC § 47102(16). **(3) Meets Medium Hub Criteria.** At least 0.25%, but less than 1% or more of annual passenger boardings per 49 USC § 47102(13).	Passenger Entitlement Discretionary Alaska Supplemental Cargo Entitlement State Apportionment – Per 49 USC § 47114(d)(4), State Apportionment may be used by any size public airport in Hawaii, Alaska or Puerto Rico.
c. Small Hub	**(1) Commercial Service Airport.** Publicly owned airport that has at least 2,500 passenger boardings each calendar year and receives scheduled passenger service. (*Note: Privately owned airports are not commercial service airports per 49 USC § 47102(7) even if the airport has at least 2,500 passenger boardings.*) **(2) Primary Airport.** A commercial service airport with more than 10,000 annual passenger boardings per 49 USC § 47102(16). **(3) Meets Small Hub Criteria.** At least 0.05%, but less than 0.25% or more of annual passenger boardings per 49 USC § 47102(25).	Passenger Entitlement Small Airport Fund Discretionary Alaska Supplemental Cargo Entitlement State Apportionment – Per 49 USC § 47114(d)(4), State Apportionment may be used by any size public airport in Hawaii, Alaska or Puerto Rico.

Table 4-3 Airport Type Criteria and Potential Funding Types

Airport Type	And meets all of the following Airport Criteria	Types of Potential Funding (See Paragraphs 4-6 and 4-7 for additional restrictions by airport and project type)
d. Nonhub Primary	**(1) Commercial Service Airport.** Publicly owned airport that has at least 2,500 passenger boardings each calendar year and receives scheduled passenger service. (*Note: Privately owned airports are not commercial service airports per 49 USC § 47102(7) even if the airport has at least 2,500 passenger boardings.*) **(2) Primary Airport.** A commercial service airport with more than 10,000 annual passenger boardings per 49 USC § 47102(16). **(3) Meets Nonhub Criteria.** More than 10,000, but less than 0.05% or more of annual passenger boardings per 49 USC § 47102(14).	Passenger Entitlement Small Airport Fund Discretionary Alaska Supplemental Cargo Entitlement State Apportionment – Per 49 USC § 47114(d)(4), State Apportionment may be used by any size public airport in Hawaii, Alaska or Puerto Rico.
e. Virtual Primary (Scenario 1) Per 49 USC § 47114 (c)(1)(E)	**(1) Primary Airport in Last Fiscal Year.** A commercial service airport with more than 10,000 passenger boardings two calendar years preceding the current fiscal year **(2) Meets Non Primary Airport Criteria in Current Fiscal Year.** Less than 10,000 annual passenger boardings in the calendar year before the current fiscal year. **(3) Reason for Fall of Passenger Boardings.** APP-400 must determine that the cause of the shortfall in passenger boardings was a temporary but significant interruption in service by an air carrier to that airport due to an employment action, natural disaster, or other event unrelated to the demand for air transportation at the affected airport. **(4) Duration.** This virtual primary status is only good for one fiscal year based on the above criteria.	Passenger Entitlement Small Airport Fund Discretionary (except for C/S/S/N) Alaska Supplemental Cargo Entitlement State Apportionment – Per 49 USC § 47114(d)(4), State Apportionment may be used by any size public airport in Hawaii, Alaska or Puerto Rico. *Note: If APP-400 determines that the airport qualifies as a virtual primary, the current fiscal year passenger entitlement amount will be equal to entitlement amount in the preceding fiscal year.*

Table 4-3 Airport Type Criteria and Potential Funding Types

Airport Type	And meets all of the following Airport Criteria	Types of Potential Funding (See Paragraphs 4-6 and 4-7 for additional restrictions by airport and project type)
f. Virtual Primary (Scenario 2) Per 49 USC § 47114 (c)(1)(F)	**(1) Primary Airport in Fiscal Year 2009.** A commercial service airport with more than 10,000 passenger boardings in calendar year 2007. **(2) Meets Non Primary Airport Criteria in Fiscal Years 2011 or 2012**. Less than 10,000 annual passenger boardings in either calendar year 2009 or 2010. **(3) Duration**. This virtual primary status is only good for fiscal years 2012 and 2013.	Passenger Entitlement Small Airport Fund Discretionary (except for C/S/S/N) Alaska Supplemental Cargo Entitlement State Apportionment – Per 49 USC § 47114(d)(4), State Apportionment may be used by any size public airport in Hawaii, Alaska or Puerto Rico. *Note: If APP-400 determines that the airport qualifies as a virtual primary, the current fiscal year passenger entitlement amount will be equal to entitlement amount in fiscal year 2009.*
g. Nonprimary Commercial Service (also referred to as Nonhub Nonprimary)	**(1) Commercial Service Airport.** Publicly owned airport that has at least 2,500 passenger boardings each calendar year and receives scheduled passenger service. (*Note: Privately owned airports are not commercial service airports per 49 USC § 47102(7) even if the airport has at least 2,500 passenger boardings.*) **(2) Not a Primary Airport.** Not a primary airport because the airport has less than or equal to 10,000 annual passenger boardings per 49 USC § 47102(16).	Nonprimary Entitlement State Apportionment Small Airport Fund Discretionary (except for C/S/S/N) Alaska Supplemental Cargo Entitlement

Table 4-3 Airport Type Criteria and Potential Funding Types

Airport Type	And meets all of the following Airport Criteria	Types of Potential Funding (See Paragraphs 4-6 and 4-7 for additional restrictions by airport and project type)
h. General Aviation	**(1) Public Airport.** Per 49 USC § 47102(8), a public airport that is located within a state. Per 49 USC § 47102(21), a public airport is an airport used or intended to be used for public purposes that is under the control of a public agency where the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is publicly owned. **(2) Not a Commercial Service Airport.** Per 49 USC § 47102(8), the airport must either have no scheduled service, or scheduled service with less than 2,500 annual passenger boardings each year.	Nonprimary Entitlement State Apportionment Small Airport Fund Discretionary (except for C/S/S/N) Alaska Supplemental Cargo Entitlement
i. Reliever	**(1) Airport Designated as a Reliever by the FAA**. The criteria for the FAA to designate an airport as a reliever is as follows: **(a) Definition in Statute.** Per 49 USC § 47102(23), a reliever is an airport the Secretary designates to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community **(b) How the FAA (Secretary) Designates Relievers.** Per the current version of FAA Order 5090-3, Field Formulation of the National Program of Integrated Airport Systems, reliever airports must have more than 25,000 annual itinerant operations or at least 100 based aircraft that is relieving a commercial service airport that serves a metropolitan area with a population of at least 250,000 persons or at least 250,000 annual enplaned passengers, and operates at 60% of its capacity, or would be operated at such a level before	Nonprimary Entitlement State Apportionment Small Airport Fund Discretionary Alaska Supplemental Cargo Entitlement *Note: To be eligible to receive the reliever set-aside, per 49 USC §* 471117(e)(1)(C), *the reliever airport must have more than 75,000 annual operations, a runway of greater than 5,000 feet, a precision instrument landing procedure, 100 based aircraft, and must relieve an airport with 20,000 hours of annual delays of commercial passenger aircraft operations.*

Table 4-3 Airport Type Criteria and Potential Funding Types

Airport Type	And meets all of the following Airport Criteria	Types of Potential Funding (See Paragraphs 4-6 and 4-7 for additional restrictions by airport and project type)
	being relieved by one or more reliever airports, or is subject to restrictions that limit activity that would otherwise reach 60% of capacity.	
j. General Aviation Airport Eligible for Minimum Primary Entitlement (per 49 USC § 47114 (d)(7))	**(1) Received Large Certificated Air Carrier Service.** Per 49 USC § 47114(d)(7)(A), received scheduled or unscheduled air service from a large certificated air carrier (as defined in 14 CFR part 241, or such other regulations as may be issued by the Secretary of Transportation under the authority of 49 USC § 47109) **(2) Over 10,000 Passenger Boardings.** Had more than 10,000 passenger boardings in the calendar year used to calculate the apportionment, per 49 USC § 47114(d)(7)(B).	Nonprimary Entitlement State Apportionment Small Airport Fund Discretionary (except for C/S/S/N) Alaska Supplemental Cargo Entitlement *Note that these airports receive the amount of minimum primary entitlements, but as nonprimary entitlements.*
k. Privately-Owned, Public Use Airport meeting Statutory Limitations	**(1) Public Use Airport Meeting Statutory Limitations.** Per 49 USC § 47102(22)(B)(ii), a privately-owned airport used or intended to be used for public purposes that has at least 2,500 passenger boardings each year and receives scheduled passenger aircraft service. **(2) NPIAS Airport.** Designated by the FAA to be a NPIAS Airport.	Small Airport Fund Discretionary (except for C/S/S/N)

4-7. Airports that Can Use Each Fund Type (Funding Restrictions by Airport Type).

Table 4-4 provides a comprehensive list of airport limitations by fund type.

Table 4-4 Airports that Can Use Each Fund Type

Fund Type and Legislative Reference	Public Use NPIAS Airports that Can Use this Funding
a. Passenger Entitlement 49 USC § 47114(c)(1)	**(1)** Primary and virtual primary airports. **(2)** Airports in the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau are excluded per 49 USC § 47115(j).
b. Cargo Entitlement 49 USC § 47114(c)(2)	**(1)** Airports that have more than one million pounds of landed all-cargo weight annually. **(2)** Airports in the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau are excluded per 49 USC § 47115(j).
c. Nonprimary Entitlement 49 USC § 47114(d)(3)	**(1)** General aviation, reliever, and nonprimary commercial service airports. **(2)** Airports in the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau are excluded per 49 USC § 47115(j).
d. State Apportionment 49 USC § 47114(d)(2)	**(1)** General aviation, reliever, and nonprimary commercial service airports within the specific state or insular area (except for in Alaska, Hawaii and Puerto Rico, where the funds can be used on any airport type per 49 USC § 47114(d)(4)). **(2)** Primary and virtual primary airports only when the project is an integrated airport system planning project that encompasses one or more primary airports per 49 USC § 47114(d)(6). **(3)** Airports in the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau are excluded per 49 USC § 47115(j).
e. Alaska Supplemental 49 USC § 47114(e)	**(1)** Airports located in Alaska.
f. Small Airport Fund 49 USC § 47116	**(1)** Small hub, nonhub, virtual primary, nonprimary commercial service, and general aviation, and reliever airports, as well as and certain public use airports with restrictions (see Table 4-3). **(2)** 49 USC § 47116(c), also specifically allows an airport in block grant states to receive grants directly from the FAA with small airport funds as if the state were not within the program.
g. Discretionary: Noise and Environmental Set Aside 49 USC § 47117(e)(1)(A)	**(1) Airports.** Any airport eligible for one of the follow projects: **(a) Airport Noise Compatibility Planning.** Airport noise compatibility planning under section 49 USC § 47505(a)(2). **(b) Noise Compatibility Program Projects.** Airport noise compatibility program projects approved by the FAA in a noise compatibility program under 49 USC § 47504(c).

Table 4-4 Airports that Can Use Each Fund Type

Fund Type and Legislative Reference	Public Use NPIAS Airports that Can Use this Funding
	(c) Noise Mitigation Projects in a Record of Decision. Noise mitigation projects approved in an environmental record of decision for an airport development project. **(d) Compatible Land Use Planning/Projects.** Compatible land use planning and projects carried out by state and local governments under 49 USC § 47141. **(e) Americans with Disabilities Act of 1990 (ADA) Projects.** Airport development projects to comply with ADA per 49 USC § 47102(3)(F). **(f) Clean Air Act Projects.** Airport development projects to comply with the Clean Air Act (42 USC § 7401) per 49 USC § 47102(3)(F). **(g) Federal Water Pollution Control Act (Clean Water Act) Projects.** Airport development projects to comply with the Federal Water Pollution Control Act per 49 USC § 47102(3)(F). (*Clean Water Act* has become the Federal Water Pollution Control Act's common name since the act was reorganized and expanded in 1972.) **(h) Voluntary Airport Low Emissions (VALE) Projects.** Projects that meet the requirements of the VALE program per 49 USC § 47102(3)(K) and 49 USC § 47102(3)(L). These requirements are discussed in Chapter 6, Section 5. **(i) Certain Water Quality Mitigation Projects**. Water quality mitigation projects to comply with the Federal Water Pollution Control Act (Clean Water Act, 33 USC § 1251 et seq.), approved in an environmental record of decision for an airport development project. **(2) Non-Airport Sponsors.** Any non-airport sponsors that is eligible for one of the follow projects: **(a) Airport Noise Compatibility Planning.** Airport noise compatibility planning under section 49 USC § 47505(a)(2). **(b) Noise Compatibility Program Projects.** Airport noise compatibility program projects approved by the FAA in a noise compatibility plan under 49 USC § 47504(c). **(c) Noise Mitigation Projects in a Record of Decision.** Noise mitigation projects approved in an environmental record of decision for an airport development project. **(d) Compatible Land Use Planning/Projects.** Compatible land use planning and projects carried out by state and local governments under 49 USC § 47141. **(3) Sponsors and Airports Not Included**. Sponsors and airports in the Republic of the Marshall Islands, Federated States of

Table 4-4 Airports that Can Use Each Fund Type

Fund Type and Legislative Reference	Public Use NPIAS Airports that Can Use this Funding
	Micronesia, and Republic of Palau are able to receive grants from the discretionary fund in 49 USC § 47115 and the Small Airport Fund in 49 USC § 47116 per 49 USC § 47115(j), which means that they are not able to receive grants from the Noise and Environmental Set Aside in 49 USC § 47117(e)(1)(A).
h. Discretionary: MAP Set Aside 49 USC § 47117(e)(1)(B)	**(1)** FAA designated Military Airport Program airports. These are former military airports closed or realigned and designated for conversion to civil or joint use. **(2)** Sponsors and airports in the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau are able to receive grants from the discretionary fund in 49 USC § 47115 and the Small Airport Fund in 49 USC § 47116 per 49 USC § 47115(j). **(3)** Per 49 USC § 47118(h), an FAA designated safety critical airport. **(4)** Sponsors and airports in the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau are able to receive grants from the discretionary fund in 49 USC § 47115 and the Small Airport Fund in 49 USC § 47116 per 49 USC § 47115(j), which means that they are not able to receive grants from the MAP Set Aside in 49 USC § 47117(e)(1)(B).
i. Discretionary: Reliever Set Aside 49 USC § 47117(e)(1)(C)	**(1)** Only those reliever airports with more than 75,000 annual operations, a runway of greater than 5,000 feet, a precision instrument landing procedure, 100 based aircraft, and relieves an airport with 20,000 hours of annual delays of commercial passenger aircraft operations. **(2)** Sponsors and airports in the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau are able to receive grants from the discretionary fund in 49 USC § 47115 and the Small Airport Fund in 49 USC § 47116 per 49 USC § 47115(j), which means that they are not able to receive grants from the Reliever Set Aside in 49 USC § 47117(e)(1)(C).
j. Discretionary: Capacity/ Safety/ Security/ Noise (C/S/S/N) 49 USC § 47115(c)	**(1)** Only primary and reliever airports.
k. Pure Discretionary 49 USC § 47115(b)	**(1)** Any public-use NPIAS airport. **(2)** Midway Island Airport during fiscal years 2012-2015 per Section 151 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95). This funding can only be issued through a reimbursable agreement between the FAA and the Secretary of the Interior and is limited to $2.5 million of pure discretionary per fiscal year.

Table 4-4 Airports that Can Use Each Fund Type

Fund Type and Legislative Reference	Public Use NPIAS Airports that Can Use this Funding
l. Discretionary from Converted Entitlements/ Apportionments 49 USC § 47117(f)	**(1)** Any public-use NPIAS airport.

4-8. Project Restrictions by Fund Type.

Table 4-5 provides a comprehensive list of project restrictions by fund type.

Table 4-5 Project Restrictions by Fund Type

Fund Type	Project Restrictions by Fund Type
a. Passenger Entitlement	(1) **Non-Revenue Producing Public Parking Lots**. Not allowed for any airport type except a nonhub primary airport (only if associated with a commercial service terminal building) per 49 USC § 47119(a)(2) and 49 USC § 47119(c)(1). (2) **Revenue Producing Aeronautical Support Facilities**. Not allowed. (The Act does not authorize this funding for this purpose.) (3) **Not requesting discretionary funding on higher priority projects**. Per 49 USC § 47120, the ADO must give lower priority to discretionary projects submitted by the sponsor if the sponsor proposes using entitlements funds for a lower priority project than the priority of the project for which discretionary funding is being requested.
b. Cargo Entitlement	(1) **Terminal Buildings**. Not allowed (see Paragraph N-9 for details). (2) **Non-Revenue Producing Public Parking Lots**. Not allowed (the Act does not authorize this funding for this purpose). (3) **Revenue Producing Aeronautical Support Facilities**. Not allowed (the Act does not authorize this funding for this purpose). (4) **Relocation of Sponsor Owned Facilities Caused by a Change in FAA Design Standards**. Not allowed (see Paragraph 3-77 for details).
c. Nonprimary Entitlement	(1) **Non-Revenue Producing Public Parking Lots.** Not allowed for any airport types except nonprimary commercial service airports (only if associated with a commercial service terminal building) or general aviation and reliever airports (only if associated with a general aviation terminal building) per 49 USC § 47119(a)(2) and 49 USC § 47119(c)(5).

Table 4-5 Project Restrictions by Fund Type

Fund Type	Project Restrictions by Fund Type
d. State Apportionment	(1) **Terminal Buildings.** Not allowed (see Paragraph N-9 for details). (2) **Non-Revenue Producing Public Parking Lots.** Not allowed (the Act does not authorize this funding for this purpose). (3) **Revenue Producing Aeronautical Support Facilities.** Not allowed (the Act does not authorize this funding for this purpose).
e. Alaska Supplemental	(1) **Terminal Buildings.** Not allowed (see Paragraph N-9 for details). (2) **Non-revenue Producing Public Parking Lots.** Not allowed (the Act does not authorize this funding for this purpose). (3) **Revenue Producing Aeronautical Support Facilities.** Not allowed (the Act does not authorize this funding for this purpose). (4) **Relocation of Sponsor Owned Facilities Caused by a Change in FAA Design Standards.** Not allowed (see Paragraph 3-77 for details). (5) **Contract Air Traffic Control Towers.** Not allowed. Funding is restricted by airport and fund type per 49 USC § 47124(b)(4)(A).
f. Small Airport Fund	**(1) Terminal Buildings.** Not allowed for any airport type at a nonhub primary airport (see Paragraph N-9 for details). **(2) Non-Revenue Producing Public Parking Lots.** Not allowed for any airport types except nonhub primary airports (only if associated with a commercial service terminal building) per 49 USC § 47119(a)(2) and 49 USC § 47119(c)(3). **(3) Projects without Small Airport Fund Notification.** The ADO must not use these funds on any project unless the ADO notifies the sponsor in writing that the project is being funded, all or in part, by the Small Airport Fund per 49 USC § 47116(f). **(4) Revenue Producing Aeronautical Support Facilities**. Not allowed (the Act does not authorize this funding for this purpose). **(5) Relocation of Sponsor Owned Facilities Caused by a Change in FAA Design Standards.** Not allowed (see Paragraph 3-77 for details). **(6) Contract Air Traffic Control Towers.** Not allowed. Funding is restricted by airport and fund type per 49 USC § 47124(b)(4)(A).
g. Noise and Environmental Set Aside	**(1) Requesting discretionary funding on higher priority projects.** Per 49 USC § 47120, the ADO must give lower priority to discretionary projects submitted by the sponsor if the sponsor proposes using entitlements funds for a lower priority project than the priority of the project for which discretionary funding is being requested. **(2) Projects that are not Noise, Air Quality, or Environmental.** The ADO must not use these funds on projects except eligible noise, air quality, and specific environmental projects. Energy efficiency studies and projects are **not** included (see Chapter 6, Section 7). Per 49 USC § 47117(e)(1)(A), the eligible projects are restricted to:

Table 4-5 Project Restrictions by Fund Type

Fund Type	Project Restrictions by Fund Type
	(a) Airport Noise Compatibility Planning. Airport noise compatibility planning under section 49 USC § 47505(a)(2). **(b) Noise Compatibility Program Projects**. Airport noise compatibility program projects approved by the FAA in a noise compatibility program under 49 USC § 47504(c). **(c) Noise Mitigation Projects in a Record of Decision**. Noise mitigation projects approved in an environmental record of decision for an airport development project. **(d) Compatible Land Use Planning/Projects**. Compatible land use planning and projects carried out by state and local governments under 49 USC § 47141. **(e) Americans with Disabilities Act of 1990 (ADA) Projects**. Airport development projects to comply with ADA per 49 USC § 47102(3)(F). **(f) Clean Air Act Projects**. Airport development projects to comply with the Clean Air Act (42 USC § 7401) per 49 USC § 47102(3)(F). **(g) Federal Water Pollution Control Act Projects**. Airport development projects to comply with the Federal Water Pollution Control Act per 49 USC § 47102(3)(F). **(h) Voluntary Airport Low Emissions (VALE) Projects.** Projects that meet the requirements of the VALE program per 49 USC § 47102(3)(K) and 49 USC § 47102(3)(L). These requirements are discussed in Chapter 6, Section 5. **(i) Zero Emission Vehicle and Infrastructure Projects.** Projects that meet the requirements of this pilot program per 49 USC § 47136a(a). This is further discussed in Chapter 6, Section 6. **(j) Certain Water Quality Mitigation Projects**. Water quality mitigation projects to comply with the Federal Water Pollution Control Act (Clean Water Act, 33 USC § 1251 et seq.), approved in an environmental record of decision for an airport development project.
h. MAP Set Aside	**(1) Projects that are not approved under MAP or 49 USC § 47118(h).** The ADO must not use these funds on projects that are not approved under MAP (see Chapter 6, Section 3 for details) or as an FAA designated safety critical project under 49 USC § 47118(h) (see Paragraph 2-3 for details). **(2) Requesting discretionary funding on higher priority projects.** Per 49 USC § 47120, the ADO must give lower priority to discretionary projects submitted by the sponsor if the sponsor proposes using entitlements funds for a lower priority project than the priority of the project for which discretionary funding is being requested.
i. Reliever Set Aside	**(1) Terminal Buildings.** Not allowed (see Paragraph N-9 for details). **(2) Non-Revenue Producing Public Parking Lots.** Not allowed (the Act does not authorize this funding for this purpose).

Table 4-5 Project Restrictions by Fund Type

Fund Type	Project Restrictions by Fund Type
	(3) Revenue Producing Aeronautical Support Facilities. Not allowed (the Act does not authorize this funding for this purpose). **(4) Relocation of Sponsor Owned Facilities Caused by a Change in FAA Design Standards.** Not allowed (see Paragraph 3-77 for details). **(5) Contract Air Traffic Control Towers.** Not allowed. Funding is restricted by airport and fund type per 49 USC § 47124(b)(4)(A). **(6) Requesting discretionary funding on higher priority projects.** Per 49 USC § 47120, the ADO must give lower priority to discretionary projects submitted by the sponsor if the sponsor proposes using entitlements funds for a lower priority project than the priority of the project for which discretionary funding is being requested.
j. Remaining Discretionary (C/S/S/N, Pure Discretionary, and Discretionary from Converted Entitlements/ Apportionments)	**(1) Terminal Buildings.** Only allowed in limited amounts at non-hub primary airports, nonprimary commercial service airports, and reliever airports and in limited circumstances where the airport has changed airport types (see Paragraph N-9 for details). **(2) Non-Revenue Producing Public Parking Lots.** Not allowed except for nonhub primary airports, nonprimary commercial service airports, and reliever airports per 49 USC § 47119(a)(2), 49 USC § 47119(c)(2), and 49 USC § 47119(c)(3). The non-revenue producing public parking lot is only allowable if it is associated with an eligible commercial service or general aviation terminal building. The same discretionary funding rules and amounts apply for non-revenue producing public parking lots as the associated terminal (see Item 1 above that discuss discretionary rules for commercial service and general aviation terminal buildings). **(3) Revenue Producing Aeronautical Support Facilities.** Not allowed (the Act does not authorize this funding for this purpose). **(4) Relocation of Sponsor Owned Facilities Caused by a Change in FAA Design Standards.** Not allowed (see Paragraph 3-77 for details). **(5) Use on Higher Priority Projects than Entitlement Projects.** To meet the requirements of 49 USC § 47115(d)(2)(A) and 49 USC § 47120, the ADO must obtain prior approval from APP-520 to use these funds on a project if the sponsor's entitlements will be used on lower priority projects. **(6) Consideration of Project Priority.** To comply with 49 USC § 47115(d)(2)(A), the ADO, prior to selecting a project for this type of funding, must determine if the decision will impact the ability to fund other projects with a higher national priority rating in the same fiscal year and obtain Regional office approval. **(7) Consideration of Project Execution.** To comply with 49 USC § 47115(d)(2)(B), the ADO must consider whether the sponsor can start the project in either the current fiscal year or six months after the grant is issued, whichever is later. Per FAA policy, starting the project means issuing a notice to proceed for construction projects; executing the purchase order for equipment projects; beginning design for projects that include design; or beginning planning for planning projects.

Table 4-5 Project Restrictions by Fund Type

Fund Type	Project Restrictions by Fund Type
	(8) Contract Air Traffic Control Towers. Not allowed. Funding is restricted by airport and fund type per 49 USC § 47124(b)(4)(A).

4-9. Fund Expiration Time Frames by Airport and Fund Type.

49 USC § 47117(b) defines how long AIP funding is available. Once AIP funds are apportioned, the funds are only available for the number of fiscal years listed in Table 4-6.

Table 4-6 Expiration of AIP Funds

For the following airport type…	The following funds…	Are available for the fiscal year in which the funds are apportioned plus…
a. Small, Medium, or Large Hub Primary	Passenger Entitlement Cargo Entitlement	Two fiscal years immediately following the year in which the funds are apportioned, **or a total of three years.** *These funds continue to have a three year life even if the airport type changes after the funds have been allocated.*
b. Nonhub Primary	Passenger Entitlement Cargo Entitlement	Three fiscal years immediately following the year in which the funds are apportioned, **or a total of four years.** *These funds continue to have a four year life even if the airport type changes after the funds have been allocated.*
c. Nonprimary	Cargo Entitlement Nonprimary Entitlement	Three fiscal years immediately following the year in which the funds are apportioned, **or a total of four years.** *These funds continue to have a four year life even if the airport type changes after the funds have been allocated.*
d. N/A	State Apportionment (including Insular) Alaska Supplemental	Two fiscal years immediately following the year in which the funds were apportioned, **or a total of three years.**
e. N/A	Discretionary	Zero additional years, **or a total of one year**.

4-10. Federal Share by Airport Type (Including Exceptions).

The federal share of allowable project costs is a fixed percentage of the allowable project costs. The federal share by airport type, as well as the associated exceptions, is listed in Table 4-7.

Table 4-7 Federal Share by Airport Type (Including Exceptions)

Airport Type	Normal Federal Share	Exceptions
a. Large Hub **b.** Medium Hub	75%	**(1) Noise Projects.** 80% for noise projects per 49 USC § 47504(c)(4). *Note: Per 49 USC § 47505(b), the normal federal share for noise compatibility planning projects remains at 75% unless the airport receives a different federal share in one of the other exceptions listed here. In addition, the federal share for non-noise compatibility projects that are funded through the environmental set-aside such as VALE, noise planning projects, and other non-noise related environmental projects also remain at 75%.* **(2) States with Large Amounts of Public Land.** 49 USC § 47109 increases the federal share at some airports in states with large amounts of publicly owned land. These airports and their increased federal shares are listed in Table 4-8. **(3) Insular Areas.** Airports in American Samoa, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands have a waiver of up to $200,000 of the sponsor's share per 33 USC § 2310. Therefore, a grant of up to $2,000,000 at the 90% participation rate needs no contribution from the sponsor. **(4) Special Rule for Transition from Small to Medium Hub.** The federal share for a medium hub is at 90% for the two fiscal years following a status change from small to medium hub per 49 USC § 47109(e).

Table 4-7 Federal Share by Airport Type (Including Exceptions)

Airport Type	Normal Federal Share	Exceptions
c. Small Hub **d.** Nonhub Primary	90%	**(1) Temporary Increase to 95%.** Section 161 of Vision 100 (Public Law 108-176, December 12, 2003) added a Note to 49 USC § 47109 to temporarily increase the federal share of allowable project costs from 90% to 95% for Fiscal Years 2004-2007. Although scheduled to sunset at the end of Fiscal Year 2007, Congress extended this temporary increase from Fiscal Years 2008-2011. The FAA Modernization and Reform Act of 2012 (Public Law 112-95) did not extend this temporary provision, and the federal share reverted back to 90% except as listed below. **(2) States with Large Amounts of Public Land.** 49 USC § 47109 increases the federal share at some airports in states with large amounts of publicly owned land. These airports and their increased federal shares are listed Table 4-8. **(3) Economically Distressed Areas.** Per 49 USC § 47109(f), the federal share for smaller airports (those that are not large or medium hubs) who are both receiving Essential Air Service (EAS) and are located in economically distressed areas (EDA) is 95%. APP-500 will obtain a list of the EAS airports from the DOT office administering the EAS program. APP-500 will use the EDA data published by the Federal Highway Administration to determine which EAS airports are in EDAs. APP-500 will publish the list of airports that meet these criteria at the beginning of each fiscal year and will not make mid-year changes based on new EAS or EDA data. **(4) Innovative Finance Grants**. A grant issued under the innovative finance demonstration program per 49 USC § 47135 may have a flexible federal shares. **(5) Insular Areas**. Airports in American Samoa, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands have a waiver of up to $200,000 of the sponsor's share per 33 USC § 2310. Therefore, a grant of up to $800,000 at the 75% participation rate needs no contribution from the sponsor. **(6) Turbine Powered Aircraft**. 49 USC § 47116(d)(2) directs the FAA to give consideration to airport development projects to support operations by turbine powered aircraft if the non-federal share of the project is at least 40%. For these projects, the federal share must be less than 60%.
e. Nonprimary Commercial Service	90%	**(1) Temporary Increase to 95%.** Section 161 of Vision 100 (Public Law 108-176) added a note to 49 USC § 47109 to temporarily increase the federal share of allowable project costs from 90% to 95% for Fiscal Years 2004-2007.

Table 4-7 Federal Share by Airport Type (Including Exceptions)

Airport Type	Normal Federal Share	Exceptions
f. General Aviation **g.** Reliever		Although scheduled to sunset at the end of Fiscal Year 2007, Congress extended this temporary increase from Fiscal Years 2008-2011. The FAA Modernization and Reform Act of 2012 (Public Law 112-95) did not extend this temporary provision, and the federal share reverted back to 90% except as listed below. **(2) States with Large Amounts of Public Land.** 49 USC § 47109 increases the federal share at some airports in states with large amounts of publicly owned land. These airports and their increased federal shares are listed in Table 4-8. **(3) Economically Distressed Areas.** Per 49 USC § 47109(f), the federal share for smaller airports (those that are not large or medium hubs) who are both receiving Essential Air Service (EAS) and are located in economically distressed areas (EDA) is 95%. APP-500 will obtain a list of the EAS airports from the DOT office administering the EAS program. APP-500 will use the EDA data published by the Federal Highway Administration to determine which EAS airports are in EDAs. APP-500 will publish the list of airports that meet these criteria at the beginning of each fiscal year and will not make mid-year changes based on new EAS or EDA data. **(4) State Block Grant Subgrants.** Per 49 USC § 47109(a)(2), states may issue state block grant subgrants at a different participation percentage than the associated state block grant. The subgrant participation rate must be equal or lower than the fiscal year federal percentage rate of the associated state block grant. In FY 2004 and FY 2012, the federal share for nonprimary airports changed. Per FAA policy, states must either clearly document when they are commingling funds of different federal percentages within the same subgrant or issue separate subgrants to avoid confusion. **(5) Innovative Finance Grants**. A grants issued under the innovative finance demonstration program per 49 USC § 47135 may have a flexible federal shares. **(6) Insular Areas**. Airports in American Samoa, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands have a waiver of up to $200,000 of the sponsor's share per 33 USC § 2310. Therefore, a grant of up to $800,000 at the 75% participation rate needs no contribution from the sponsor.
h. Any airport in the private ownership	70%	**(1)** For a project funded with discretionary funds.

Table 4-7 Federal Share by Airport Type (Including Exceptions)

Airport Type	Normal Federal Share	Exceptions
pilot program per 49 USC § 47134		
i. Any airport in the purchase of private development rights program per 49 USC § 47138	Any percentage up to and including 90%	**(1)** None.
j. Any airport in the zero emission airport vehicle and infrastructure pilot program per 49 USC § 47136a (d)	50%	**(1)** None.

49 USC § 47109**(b)** includes special language that increases the federal share for airports in states that have more than 5% public or Indian land as defined by the Department of the Interior's Bureau of Land Management. 49 USC § 47109 requires that the FAA determine if an airport is in a public land state and whether the current federal share is less than the federal share was on June 30, 1975. On that date, the federal share of most projects was 50% for *large* hub airports (not *large and medium* hub airports as exists in current legislation) and 75% for all other airport types, plus the bump-up for airports in the public land states.

Table 4-8 contains the increased federal share for those states that have large amounts of public land. Unless otherwise noted in these tables, the federal share percentages are based on 49 USC § 47109.

Background information on the calculation of the increased federal share for states with large amounts of public land is found in Appendix AA.

Table 4-8 Federal Shares by Airport Classification in Public Land States

State	Large Hub Airports	Medium Hub Airports	Small or Nonhub Commercial Service airports	Non-primary General Aviation and Reliever Airports
a. Alaska (AK)	75	87.76%	93.75%	93.75%
b. Arizona (AZ)	75	91.06%	91.06%	91.06%
c. California (CA)	75	80.59%	90.66%	90.00%
d. Colorado (CO)	75	79.02%	90.00%	90.00%
e. Idaho (ID)	75	83.51%	93.75%	90.00%
f. Montana (MT)	75	79.47%	90.00%	90.00%
g. Nevada (NV)	75	93.75%	93.75%	93.75%
h. New Mexico (NM)	75	84.29%	93.75%	90.00%
i. Oregon (OR)	75	83.33%	93.75%	90.00%
j. South Dakota (SD)	75	78.55%	90.00%	90.00%
k. Utah (UT)	75	90.63%	90.63%	90.63%
l. Washington (WA)	75	77.31%	90.00%	90.00%
m. Wyoming (WY)	75	84.58%	93.75%	90.00%

*The increased federal share for large hub airports in 1975 was less than the current federal share of 75%, therefore there is no increase in federal share for a large hub airport in a public land states.

4-11. Transfer of Entitlement Funds between Airports.

49 USC § 47117(c) allows the FAA to transfer entitlements between airports. The intention of this statutory provision is to permit a sponsor to share its unused entitlements with another airport so that the funds do not expire or get carried over to future years. The conditions and required agreements for these transfers are outlined in Table 4-9. The Act does not allow the FAA to transfer state apportionment or Alaskan supplemental between states. The Act also does not allow the FAA to transfer entitlements to a state.

Because the FAA must know when entitlements are transferred and between which airports, the FAA requires that the sponsor sign a transfer agreement. This agreement is necessary even when the sponsor owns the airports between which the funds are being transferred.

This requirement does not apply to various location grants. This is because the airport still retains the rights to the entitlements per the state sponsorship agreement that is required for various location grants per Table 2-10.

Table 4-9 Requirements to Transfer Entitlement Funds between Airports

If a sponsor wants to…	Only the following entitlements can be transferred…	If the following conditions are met…	And the following agreements are provided….
a. Transfer all or part of their entitlements between airports they own per 49 USC § 47117(c)(1).	Passenger	The airport that will receive the entitlements is in the NPIAS. The airport that will receive the entitlements is also owned by the sponsor. The sponsor requests use of the funding through the sponsor's capital improvement plan and/or a grant application.	The sponsor does not have to submit a waiver request or sign an Agreement for Transfer of Entitlements. The ADO does not need to track these actions separately.
b. Waive receipt of all or part of their entitlements per 49 USC § 47117(c)(2).	Passenger Cargo Nonprimary	The airport that will receive the entitlements is in the NPIAS. The airport that will receive the entitlements must be in the same state or geographical area. In this case, geographical area means the same or an adjacent Standard Metropolitan Statistical Area. The sponsor must make a written request to the ADO.	The ADO must prepare the Agreement for Transfer of Entitlements (FAA Form 5100-110) included in Appendix V, and the ADO, sponsor, and sponsor's attorney must execute the agreement. The agreement must only specify entitlements of one airport. The ADO must prepare separate agreements if entitlements are being transferred from more than one airport. *Note: The sponsor receiving the transferred entitlements does not incur grant assurance obligations until the sponsor signs a grant that contains the transferred entitlements. The sponsor waiving receipt of the transferred entitlements is not tied to the grant assurances associated with this transferred entitlement.*

Table 4-9 Requirements to Transfer Entitlement Funds between Airports

If a sponsor wants to…	Only the following entitlements can be transferred…	If the following conditions are met…	And the following agreements are provided….
c. Waive receipt of all or part of their entitlements and request they be used at another airport per 49 USC § 47117(c)(2).	Passenger Cargo Nonprimary	The airport that will receive the entitlements is in the NPIAS. The airport that will receive the entitlements must be in the same state or geographical area. In this case, geographical area means the same or an adjacent Standard Metropolitan Statistical Area. The sponsor must make a written request to the ADO. The ADO must have concurred with transferring the entitlements to the airport the sponsor has requested. This is because the ADO, not the sponsor, has the decision authority regarding which airport will receive the transferred funds. If the ADO objects to the airport requested by the sponsor, the ADO will inform the sponsor and give the sponsor the option of withdrawing the waiver request. The sponsor is not selling, trading or bartering away their entitlement since this may be construed as using federal funds in an inappropriate manner. In other words, a sponsor may not trade its entitlements for money or property that would not be eligible under AIP.	The ADO must prepare the Agreement for Transfer of Entitlements (see Appendix V), and the ADO, the sponsor, and sponsor's attorney must execute the agreement. The agreement must only specify entitlements of one airport. The sponsor waiving funds and the sponsor receiving funds have the option to make separate agreements concerning the transfer. This agreement is between the two sponsors. The sponsors and/or their attorneys are responsible for ensuring the legality of the agreement. The FAA is not a party to the agreement, is not required to obtain the agreement, and is not responsible for enforcing the conditions of the agreement. *Note: The sponsor receiving the transferred entitlements does not incur grant assurance obligations until the sponsor signs a grant that contains the transferred entitlements. The sponsor waiving receipt of the transferred entitlements is not tied to the grant assurances associated with this transferred entitlement.*

4-12. Use of Donations (or Previously Acquired Land) as the Sponsor Share.

Per Paragraph 12 in Attachment B of OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR § 200.420 to § 200.475, General Provisions for Selected Items of Cost), the ADO has the option of allowing a sponsor to use donated items or a credit for previously acquired land as a portion or for the entire sponsor share in a grant. The ADO must use the Table 4-10 to determine if and/or how to offset the sponsor share in a grant.

Table 4-10 Summary of Tables Containing Requirements for using Donations for the Sponsor's Share

The following table…	Contains the following requirements…
Table 4-11.	General requirements.
Table 4-12.	Value requirements.
Table 4-13.	Offset process.
Table 4-14.	Offset examples.

Table 4-11 General Requirements for Offsetting the Sponsor Share of a Grant

For the following items…	The following general requirements apply…
a. Land Donated to the Sponsor	**(1)** The land must be AIP eligible, but does not have to be required for the project. **(2)** The ADO must have concurred with the value of land. The ADO has the option to either implicitly concur with the value by issuing the grant or make a written determination. In either case, the ADO must place the documentation used to support this value in the project files. **(3)** The sponsor must provide information documenting when the donation or acquisition was or will be made. **(4)** The sponsor must provide a copy of any agreements between the donor and the sponsor and document to the ADO that the donor has/will not receive an exclusive benefit or consideration as a result of the transaction. **(5)** The sponsor must provide the identity of the donor and outline the relationship between the sponsor and the donor. **(6)** The sponsor must document to the ADO that there are no reversion clauses tied to the donation other than reversion back to the donor if and when the land is no longer needed for airport purposes. **(7)** The sponsor must document to the ADO that the donor was not acting as an agent for the sponsor and is not a government or quasi-government entity in the same state as the sponsor. **(8)** The sponsor must add the donated land and document the value that has been credited toward the sponsor share on the Exhibit A.

Table 4-11 General Requirements for Offsetting the Sponsor Share of a Grant

For the following items…	The following general requirements apply…
	(9) The sponsor is bound to Assurance 31 for the donated land. **(10)** A description of the land donated as sponsor share must be included in the grant.
b. Land Previously Acquired by the Sponsor	**(1)** The land must be AIP eligible, but does not have to be required for the project. **(2)** The sponsor must document to the ADO that the requirements in Appendix Q have been met. **(3)** The ADO must have concurred with the value of land. The ADO has the option to either implicitly concur with the value by issuing the grant or make a written determination. In either case, the ADO must place the documentation used to support this value in the project files. **(4)** The sponsor must document the value of the land that has been credited toward the sponsor share on the Exhibit A. **(5)** The sponsor is bound to Assurance 31 for the previously acquired land. **(6)** A description of the land donated as sponsor share must be included in the grant.
c. Labor, Materials, Equipment and Services Donated *to the Sponsor*	**(1)** The ADO must determine that the labor, materials, and/or equipment costs are allowable and necessary project costs that would have normally been included in the grant. **(2)** The sponsor must request the use of the donated labor, materials, and/or equipment costs in writing, and the ADO must have approved the request and the value of the donated items in advance of the grant offer. The ADO must use the sponsor force account requirements provided in Paragraph 3-55 in making this determination. When applying the requirement in Paragraph 3-55, the ADO must simply substitute all references to the sponsor's labor, materials, equipment, or services with the donated labor, materials, equipment, or services. **(3)** The sponsor must provide a copy of any agreements between the donor and the sponsor and document to the ADO that the donor has/will not receive an exclusive benefit or consideration as a result of the transaction. This includes the benefit of the donor avoiding costs they would have normally incurred (for instance, if donor donates excess fill to avoid paying for disposal of the fill, the donor would gain a benefit by not having to pay for the disposal.) **(4)** The sponsor must provide the identity of the donor and outline the relationship between the sponsor and the donor. **(5)** The sponsor must document to the ADO that there are no reversion clauses tied to the donation of equipment or materials. **(6)** The sponsor must document to the ADO that the donor was not acting as an agent for the sponsor and is not a government or quasi-government entity in the same state as the sponsor.

Table 4-11 General Requirements for Offsetting the Sponsor Share of a Grant

For the following items…	The following general requirements apply…
d. Labor, Materials and Supplies, Equipment, and Services Donated *by the Sponsor*	**(1)** A sponsor cannot use sponsor furnished materials, equipment or the services of sponsor employees against the sponsor's share per Attachment B of OMB Circular A-87 (2 CFR § 200.420 to § 200.475, General Provisions for Selected Items of Cost). Instead, the ADO does have the option of approving these costs as force account work if all of the requirements for force account work in Paragraph 3-55 are met. Note that force account materials and supplies have the added requirement of needing to be procured per 49 CFR § 18 (2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards).

Table 4-12 Value of Items Used to Offset the Sponsor Share

For the following items…	The ADO must determine the value as follows…
a. Land Donated to the Sponsor	**(1)** The ADO must use the fair market value of the land at the time it was donated. **(2)** The ADO must only include cost allowed under Appendix Q. **(3)** If the value of the land exceeds the amount needed to cover the sponsor share, the ADO has the option to allow the sponsor to use the unused value for the sponsor share on future grants. In that case, the ADO must correctly describe the amount of land being included as sponsor share and the amount that is being set aside for future sponsor share.
b. Land Previously Acquired by the Sponsor	**(1)** For a public sponsor, the ADO must use the fair market value of the land at the time of purchase, not the current fair market value. **(2)** For a sponsor of a privately-owned airport, 49 USC § 47109(d) requires that the ADO use the current fair market value of the land at the time of the project. **(3)** The ADO must only include cost allowed under Appendix Q. **(4)** If the value of the land exceeds the amount needed to cover the sponsor share, ADO has the option to allow the sponsor to use the unused value for the sponsor share on future grants. In that case, the ADO must correctly describe the amount of land being included as sponsor share and the amount that is being set aside for future sponsor share
c. Labor, Materials, Equipment and Services Donated to the Sponsor	**(1)** The ADO must use the current fair market value of the donated labor, materials, equipment, and services at the time they are donated. **(2)** The ADO must determine the current market value of the donation by following the sponsor force account requirements provided in Paragraph 3-55. When applying the requirement in Paragraph 3-55, the ADO must simply substitute all references to the sponsor's labor, materials, equipment, or services with the donated labor, materials, equipment, or services.

Table 4-13 Process to Offset the Sponsor Share of a Grant

For the…	The following applies…
a. Donation Value (or Previously Acquired Land Value) Needed for the Grant	The ADO calculates this value using the following formula: = (Project Cost x Sponsor Share %) ÷ Federal Share % As the formula indicates, the calculated value is not a dollar to dollar credit against the sponsor share. If the state is participating, the sponsor share percent used above is the percent the sponsor would be paying (the non-federal share percent minus the state share percent).
b. Credit Remaining for Future Grants	The ADO calculates this using the following formula: = Land Value – Donation Value (or Previously Acquired Land Value) Applied to the Grant
c. Application Amount	The sponsor must use the following formula to calculate the amount they must show on the grant application: = Project Cost + Donation Value (or Previously Acquired Land Value) Applied to the Grant
d. Application Project Description	The sponsor must list the proposed project as the project to be accomplished under the grant. The sponsor must also show the previously purchased land or donated labor, materials, equipment and/or services as an item that will be used as a full or partial credit against the sponsor share.
e. Grant Amount	The ADO calculates this using the following formula: = Application Amount x Federal Share %
f. Maximum Obligation in Grant	The ADO shows the entire grant amount under the category of the project (example: $1,000,000 for airport development), not the category of the donated item.
g. Remaining Sponsor Share	The ADO calculates this using the following formula: = Application Amount – Federal Share Amount – Donation Value (or Previously Acquired Land Value)
h. Grant Description	The ADO must use the following format: *[Insert Normal Grant Description]* including a credit of *$[Insert Value of Donation (or Value of Previously Acquired Land) Applied to the Grant]* for the *[Insert either complete or partial]* sponsor share for the *[Insert either complete or partial] [Insert donated if applicable]* value of *[Insert brief description of item being credited – include the parcel numbers for land].*

Table 4-14 Example Calculations for Offsetting the Sponsor Share of a Grant

Examples Include…

EXAMPLE 1: Donated Land, No State Participation, Value of Land Exceeds Sponsor Share.

A general aviation sponsor has a $1,000,000 runway extension project. A local businessman donated a piece of land to the sponsor five years previously, and the appraised fair market value *at the time of donation* was $2,000,000. All other requirements for the donation have been met. The non-federal share is 10%. In this case, the state is not contributing toward the non-federal share, therefore the sponsor share is 10%.

Project Cost = $1,000,000 **Federal Share %** = 90% **Sponsor Share %** = 10%

Donation Value Needed for this Grant = Project Cost x Sponsor Share % ÷ Federal Share %

= $1,000,000 x 10% ÷ 90%

= $111,112

Donation Value Remaining for Future Grants = Land Value – Donation Value Applied to the Grant

= $2,000,000 – $111,112

= $1,888,888

Application Amount = Project Cost + Donation Value Applied to the Grant

= $1,000,000 + $111,112

= $1,111,112

Application Project Description: The sponsor must list the runway extension as the project to be accomplished under the grant, and show the land as a donated item that will be used as a credit against the sponsor share.

Grant Amount = Application Amount x Federal Share %

= $1,111,112x 90%

= $1,000,000

Maximum Obligation in Grant = $1,000,000 for airport development (*$0 for land*).

Grant Description = Extend Runway 9/27 (150’ x 1,000’) including a credit of $111,112 for the complete sponsor share for the partial donation value of Parcel 48.

Participation Breakdown = The FAA contributes $1,000,000 and the sponsor *virtually* contributes $111,112as a credit, which adds up to the $1,111,112 application amount. This allows the FAA to issue a grant for $1,000,000 to cover both the federal share of the project costs ($1,000,000 x 90% = $900,000) as well as the sponsor share ($1,000,000 x 10% = $100,000).

Table 4-14 Example Calculations for Offsetting the Sponsor Share of a Grant

Examples Include…

EXAMPLE 2: Previously Acquired Land, State Participation, Value of Land Exceeds Sponsor Share

A general aviation sponsor has a $1,000,000 runway extension project. The sponsor used local funds to purchase a parcel of land, and the appraised fair market value *at the time of acquisition* was $2,000,000. All other requirements for previously acquired land have been met. The non-federal share is 5%. In this case, the state contributes half of the non-federal share, or 5% toward the non-federal share, therefore the sponsor share is also 5%.

Project Cost = $1,000,000 **Federal Share %** = 90% **Sponsor Share %** =5%

Land Value Needed for this Grant = Project Cost x Sponsor Share % ÷ Federal Share %

= $1,000,000 x 5% ÷ 90%

= $55,556

Land Value Remaining for Future Grants = Land Value – Land Value Applied to the Grant

= $2,000,000 – $55,556

= $1,944,444

Application Amount = Project Cost + Land Value Applied to the Grant

= $1,000,000 + $55,556

= $1,055,556

Application Project Description: The sponsor must list the runway extension as the project to be accomplished under the grant, and show the previously purchased land as an item that will be used as a credit against the sponsor share.

Grant Amount = Application Amount x Federal Share %

= $1,055,556 x 90%

= $950,000

Maximum Obligation in Grant = $950,000 for airport development (*$0 for land*)

Grant Description = Extend Runway 9/27 (150’ x 1,000’) including a credit of $55,556 for the complete sponsor share for the partial value of Parcel 48.

Participation Breakdown = The FAA contributes $950,000, the state contributes $50,000, and the sponsor *virtually* contributes $55,556 as a credit, which adds up to the $1,055,556 application amount. This allows the FAA to issue a grant for $950,000 to cover both the federal share of the project costs ($1,000,000 x 90% = $900,000) as well as the sponsor share ($1,000,000 x 5% = $50,000).

Table 4-14 Example Calculations for Offsetting the Sponsor Share of a Grant

Examples Include…
EXAMPLE 3: Donated Labor/Materials, No State Participation, Value Less than Sponsor Share A general aviation sponsor has a $1,000,000 runway extension project. A local businessman is willing to donate the sodding required for the project. The ADO approves the request and concurs with the donation value of $10,000. All other requirements for the donation have been met. The non-federal share is 10%. In this case, the state is not contributing toward the non-federal share, therefore the sponsor share is 10%. **Project Cost** = $1,000,000 **Federal Share %** = 90% **Sponsor Share %** = 10% **Application Amount** = Project Cost + Donation Value = $1,000,000 + $10,000 = $1,010,000 **Application Project Description:** The sponsor must list the runway extension as the project to be accomplished under the grant, and show the donated sodding as an item that will be used as a partial credit against the sponsor share. **Grant Amount** = Application Amount x Federal Share % = $1,010,000 x 90% = $909,000 **Maximum Obligation in Grant** = $909,000airport development **Remaining Sponsor Share** = Application Amount – Federal Share Amount – Donation Value = $1,010,000 - $909,000- $10,000 = $91,000 **Grant Description** = Extend Runway 9/27 (150’ x 1,000’) including a credit of $10,000 for the partial sponsor share for the complete donated value of required sodding. **Participation Breakdown** = The FAA contributes $909,000, the sponsor *virtually* contributes $10,000 as a credit, and the sponsor contributes $91,000 for the remaining sponsor share, which adds up to the $1,010,000 application amount. This allows the FAA to issue a grant for $909,000 to cover both the federal share of the project costs ($1,000,000 x 90% = $909,000) as well as a portion of the sponsor share ($10,000 x 90% = $9,000), leaving the sponsor to pay for the remaining $91,000 of the sponsor Share (($1,000,000 x 10%) - $9,000).

4-13. Budget Augmentation (Combining Funds between Different Federal Programs).

Each federal program is supported by appropriations, and the funding limits set out in the relevant legislation are the limits of that program. Combining federal funding is considered improper budget augmentation unless *specific authority* is contained in the legislation to do so. The Handbook calls out those rare instances where legislative authority has been granted for budget augmentation within an AIP grant. These instances are included in Table 4-15.

More information on the rules regarding federal budget augmentation is contained in the Government Accountability Office's (GAO) Principles of Federal Appropriations Law, Third Edition, commonly referred to as the Red Book. APP-520 is also available for further guidance.

Table 4-15 Instances of Allowable Budget Augmentation

Some examples Include…	
a.	Economic development agency and Appalachian regional commission grants, which have specific authority to give grants for local matching share of other federal programs.
b.	Costs for instrument landing systems to be transferred to the FAA under appropriation statutes.
c.	The incidental costs for clearing, grading and grubbing for an AIP project that may also provide site preparation for FAA facilities.

Chapter 5. How does the grant process work?

Section 1. Basic Grant Steps.

5-1. Relevant AIP Legislation (Referred to as the Act).

References to the Act in this Handbook are based on the AIP related legislation contained in the United States Code (USC), as defined in Appendix A.

5-2. Basic Grant Steps.

Table 5-1 captures the basic steps in the grant process as outlined in the following sections of this chapter.

Table 5-1 The Basic Steps in the Grant Process

The basic steps are…
a. Pre-Grant Actions.
b. Grant Programming.
c. Grant Application, Offer, and Acceptance.
d. ADO Grant Oversight.
e. Grant Payment.
f. Grant Amendment.
g. Grant Closeouts.
h. Grant Suspension and/or Termination.
i. Post-Grant Actions.

Section 2. Pre-Grant Actions.

5-3. Introduction.

There are many actions that need to be taken before an AIP eligible project is ready to be considered for inclusion in a grant. Table 5-2 captures these major actions. The subsequent explanations in this section discuss which actions apply to which types of projects.

Table 5-2 The Major Pre-Grant Actions

The major actions include…
a. Identification of Potential Projects by Sponsors and ADO.
b. Early Coordination between ADO and Sponsor.
c. ADO Initiation of Project Evaluation Report and Development Analysis (PERADA).
d. ADO Verification of Sponsor Eligibility.
e. ADO Verification that All Project Requirements will be Met.
f. ADO Verification that Airport Layout Plan is Current.
g. ADO Notification to New Sponsors of Flood Insurance Requirements.
h. ADO Notification to New Sponsors of Sponsor Civil Rights Requirements.
i. Contract Clauses and Provisions Required for AIP Grants.
j. ADO Verification Risk Level Determination is Complete.
k. ADO Review of Open Grant Status.
l. ADO Verification that Competition Plan is Current.

5-4. Identification of Potential Projects by Sponsors and ADO.

Sponsors normally develop 20-year airport development plans and often engage in other planning efforts. From these activities, the sponsor develops their capital improvement plan and submits it to the ADO. The ADO then uses this information, as well as other pertinent information available in house, to identify projects that meet the applicable requirements in Chapter 3.

The FAA Office of Airports uses this data to create a five year National Plan of Integrated Airport Systems (NPIAS) Report outlining the projects that are eligible and justified for AIP funding. The Secretary of Transportation is required to publish this plan every two years per 49 USC § 47103. The FAA Office of Airports then creates an Airports Capital Improvement Plan (ACIP) to identify the projects that may be funded with AIP over the next three years.

FAA inclusion of the project in the NPIAS or the ACIP is not a guarantee of funding, nor is the value of the project considered a final determination by the FAA.

Detailed information on the NPIAS and ACIP processes are found in the current versions of FAA Order 5100.39, Airports Capital Improvement Plan and FAA Order 5090.3, Field Formulation of the National Plan of Integrated Airport Systems.

It is important that during this process the ADO discuss the projects listed in Table 5-3 with the sponsor and determine when the projects will be addressed. This is because these items have been determined by Congress to be of special interest, are required by rule or regulation, or if not implemented, can affect the utility of the airport in the future.

Table 5-3 Important Potential Projects for ADO/Sponsor Discussion

Important projects include…
a. Clear Runway Approaches. Per 49 USC § 47107(a)(9), the sponsor must take appropriate action to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards. (*Note: 49 USC § 47107(a)(9) uses the work operations to the airport, which includes departures and approaches. Because design surfaces are typically described in terms of approach surfaces or missed approach surfaces, the term "approaches" describes the clearance surfaces required to protect operations to or from a runway.*)
b. Compatible Land Use Issues. Per 49 USC § 47107(a)(10), the sponsor must take appropriate action (to extent reasonable) to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations. For example, if there are residential uses surrounding the airport, acquisition of the properties or soundproofing the houses may be appropriate.
c. Congressionally Mandated Items. 49 USC § 47101(f) lists items that should be given high priority by the ADO at commercial service airports to the extent possible with available money and considering other safety needs. The items on this list include: **(1)** Electronic or visual vertical guidance on each runway. **(2)** Grooving or friction treatment of each primary and secondary runway. **(3)** Distance-to-go signs for each primary and secondary runway. **(4)** A precision approach system, a vertical visual guidance system, and a full approach light system for each primary runway. **(5)** A non-precision instrument approach for each secondary runway. **(6)** Runway end identifier lights on each runway that does not have an approach light system. **(7)** A surface movement radar system at each category III airport (per FAA policy, not eligible for AIP). **(8)** A taxiway lighting and sign system. **(9)** Runway edge lighting and marking. **(10)** Radar approach coverage for each airport terminal area (per FAA policy, not eligible for AIP). **(11)** Runway and taxiway incursion prevention devices, including integrated in-pavement lighting systems for runways and taxiways (per FAA policy, may have limited eligibility).
d. 14 CFR 139 Violations. 14 CFR part 139 requires certificated airports to meet certain standards, including required safety and signage. The ADO is encouraged to review the latest 14 CFR part 139 inspection report to determine if there are any AIP eligible equipment or development items that need to be addressed.

5-5. Early Coordination between ADO and Sponsor.

The ADO has the option to notify the sponsor of the favorable potential for receiving federal funding in the upcoming fiscal years. This is not a commitment nor a guarantee of funds but simply a notice that funding for the project appears favorable and that the sponsor should consider initiating actions that require long lead times in order to avoid delays in the grant process.

In addition, the sponsor must develop a realistic project schedule that will ensure that the grant can proceed in a timely manner. The ADO may request sponsor coordination of this schedule. The schedule must set realistic sponsor deadline dates for key steps in the grant process because a sponsor's failure to complete these steps in a timely manner may seriously impact or delay project funding. Table 5-4 contains common key steps.

Table 5-4 Common Key Steps in the Grant Process

Common key steps include…	
a.	Submission of a benefit-cost analysis (for projects such as certain NAVAIDS, projects requesting $ 10 million or more in discretionary funding over the life of the project, new airport projects, capacity projects).
b.	Submission of environmental review documents.
c.	Selection of sponsor's engineer.
d.	Completion of final plans and specifications and engineer's report.
e.	Submission of aeronautical study to coordinate the project with other FAA lines of business and other federal agencies.
f.	Submission of construction safety phasing plan.
g.	Completion of safety management system (SMS) coordination.
h.	Submission of disadvantaged business enterprise (DBE) plan.
i.	Completion of necessary land acquisition and relocation of displaced persons.
j.	Adoption of a zoning ordinance or other compatible land use measures.
k.	Submission of title evidence or attorney certification of title.
l.	Coordination with planning agencies.
m.	Notice of intent to use entitlement funds (to meet the deadline published in the annual Federal Register Notice).
n.	Receipt of current wage rates.

Table 5-4 Common Key Steps in the Grant Process

Common key steps include…
o. Advertisement for bids.
p. Receipt of bids.
q. Submission of Application for Federal Assistance.
r. Acceptance of grant offer.
s. Award of contract.
t. Completion of the pre-construction conference.

5-6. ADO Initiation of Project Evaluation Report and Development Analysis (PERADA).

The PERADA is an optional checklist that the ADOs may use to ensure that certain important statutory, regulatory and grant requirements listed in this Handbook have been considered prior to a grant being programmed. If the ADO's PERADA review identifies any items that are not met at the time of programming, this checklist can act as a useful tool for the ADO in following up on these items at the appropriate time during the grant process. For example, if a required aeronautical case was not approved prior to the ADO programming the grant, the ADO must follow up and make sure the aeronautical case was approved prior to the issuance of the grant offer.

While it is mandatory for the ADO to review the items on the PERADA checklist, the use of the checklist itself is *not* mandatory. By issuing the grant, the ADO is confirming that all of the applicable requirements as detailed in this Handbook have or will be met.

APP-500 maintains the current PERADA checklist and instructions.

5-7. ADO Verification of Sponsor Eligibility.

The ADO must verify that all of the sponsor requirements in Chapter 2 have been met.

5-8. ADO Verification that All Project Requirements will be Met.

The ADO must verify that all of the sponsor requirements in Chapter 3 and the appropriate project requirement appendix will be met by the required time in the grant process.

5-9. ADO Verification that Airport Layout Plan is Current.

Per 49 USC § 47107(a)(16), the sponsor must maintain a current layout plan of the airport in order to receive an airport design, construction, or equipment grant as defined under 49 USC § 47102(3). The ALP that is on file with the ADO must reflect the current and proposed

conditions at the airport and all proposed and existing access points used to taxi aircraft across the airports property boundary.

5-10. ADO Notification to New Sponsors of Flood Insurance Requirements.

Per the Flood Disaster Protection Act of 1973, sponsors with an airport in a Federal Emergency Management Agency (FEMA) identified area having a special flood hazard must participate in the National Flood Insurance Program.

The ADO is responsible for advising new sponsors of this requirement and advising that there are additional details available at the FEMA website (see Appendix B for link). Sponsor will be certifying in the grant assurances that they comply with this requirement for acquisition and construction projects.

5-11. ADO Notification to New Sponsors of Sponsor Civil Rights Requirements.

Sponsors (including block grant states) receiving AIP funding must follow all applicable civil rights requirements in Table 5-5. Sponsors must work directly with the FAA Office of Civil Rights (ACR) to ensure that all of these requirements have been met. The ADO is responsible for advising new sponsors to contact ACR to discuss these requirements.

Table 5-5 Sponsor Civil Rights Requirements

Civil rights requirements for sponsors include…
a. Disadvantaged Business Enterprise (DBE) Program. 49 CFR part 26, Grant Assurance #37, 49 USC § 47113. This applies only if the sponsor will be awarding prime contracts exceeding $250,000 in federal funding during a federal fiscal year. Contracts solely for the purpose of land are excluded. Block grant states must submit either a single overall goal or multiple goals that cover all of the subgrants funded during a fiscal year.
b. Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program. 49 CFR part 23, Grant Assurance #37, 49 USC § 47107(e).
c. Americans with Disabilities Act (ADA), Titles II & III. Section 504 of the Rehabilitation Act of 1973, Grant Assurances #1, #30, and #34, 49 USC § 47123 and § 47107, 49 CFR parts 27, 37, and 38, 28 CFR parts 35 and 36.
d. Air Carrier Access Act of 1986 (ACAA). 14 CFR part 382.
e. Title VI of Civil Rights Act of 1964. 42 USC § 2000d, et seq. As a condition of receiving any federal funding assistance, all sponsors are subject to and agree to comply with the Standard Title VI/Non-Discrimination Assurances. In addition, the Standard Title VI/Non-Discrimination Assurances are also binding on sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees.

5-12. ADO Verification that Risk Level Determination is Complete.

Based on a DOT Office of Inspector General (OIG) audit and findings related to the FAA's administration of AIP, the FAA has implemented a risk base oversight system to minimize the risk of misuse of funds by sponsors. The FAA uses a tiered ranking system to assign a risk level to each sponsor. The risk level defines the level of oversight needed. Current detailed guidance on how to assign sponsor risk a level is maintained by APP-520.

At this point in the process, the ADO must verify that a risk level has been assigned to the sponsor and is still current. If not, it is FAA policy that the ADO must complete the original determination or redo the risk level assignment.

5-13. ADO Review of Open Grant Status.

Per FAA policy, the ADO must determine if the sponsor has any open grants older than four years or that have not had a payment request for 18 months or more. If so, the ADO must obtain the reason why and the sponsor's plans to address the situation.

This is because 49 USC § 47106(a)(4) requires that the sponsor carry out and complete AIP funded projects without unreasonable delay, and a history of old and/or inactive grants may be an indicator that the sponsor may not be able to comply with this requirement.

5-14. ADO Verification that Competition Plan is Current.

For certain medium and large hub airports, the ADO must verify that all required completion plans and updates are approved. The completion plan requirements are discussed in detail in Appendix X.

Section 3. Grant Programming.

5-15. Introduction.

Once the ADO has completed the pre-grant actions in the previous section, there are three major steps before the grant application can be processed.

a. Grant Programming

b. Congressional Notification

c. Sponsor Notification

5-16. Grant Programming.

Grant programming is defined as the ADO action of creating a proposed grant in the automated AIP system. At this point, the ADO may enter the project into the automated AIP system based on estimates found in the sponsor's capital improvement plan or in cost estimate updates provided by the sponsor. In the past, sponsors provided these costs to the ADO in a preapplication. Formal preapplications are no longer required.

After this is done, the grant is then reviewed at various levels within the FAA Office of Airports. If the grant is approved, it is then ready to begin the congressional notification process.

5-17. Congressional Notification.

If the FAA Office of Airports approves the grant, the grant then is forwarded to the FAA Office of Government and Industry Affairs (AGI). AGI reviews the grant and forwards it electronically to the DOT Office of the Secretary (OST).

After reviewing the grant, OST notifies the appropriate congressional office that the congressional office can publicly announce the grant. The OST process varies depending on the type and amount of funding involved and current legislative requirements. OST electronically notifies the FAA when this process is complete (often referred to as the OST release date).

The FAA can share specific grant information with the public (including the sponsor) only *after* the OST release date is entered in the automated AIP system.

5-18. Sponsor Notification.

After the congressional notification process is complete, the FAA Office of Airports posts the grant on the FAA Office of Airports website (see Appendix B for link). This is considered the official FAA notification to the sponsor that the ADO has authority to issue a grant for the project. The ADO has the option of also directly notifying the sponsor.

Section 4. Grant Application, Offer, and Acceptance.

5-19. Introduction.

Once the sponsor has been notified that they will receive a grant, the ADO and sponsor must complete the steps listed below.

a. Grant Application Package Submittal

b. Grant Application Review

c. Funds Reservation

d. Grant Offer

e. Grant Acceptance

f. The FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314) Notification

5-20. Grant Application Package Submittal.

a. Timing of Submission. Sponsors must submit a complete and correct grant application package prior to the ADO issuing a grant offer.

b. Grant Application Package Contents. Table 5-6 outlines what a sponsor must submit in a grant application package. The ADO will advise the sponsor how many original and/or copies must be submitted to the ADO.

Table 5-6 Grant Application Contents

For the following…	The sponsor submittal requirement is…
a. Application for Federal Assistance (Standard Form 424)	**Mandatory**. Sponsors must sign and submit this form as part of all grant application packages (see Appendix V). The signed grant application is contractually referenced in the grant agreement and a signed copy must be included in the ADO grant files.
b. Application for Development Projects (Parts II through IV) (FAA Form 5100-100)	**Mandatory.** FAA Form 5100-100, or its equivalent, must be submitted for all projects (see Appendix V). The term *its equivalent* is intended to allow sponsors to create their own documents that contain the exact information requested in FAA Form 5100-100, but allows them to include sponsor-specific information or data. This form provides supporting grant information such as the source of the sponsor share, detailed cost breakdowns, project specific information (such as narratives and justifications), and confirmation that items such as coordination with on airport users has been accomplished. Note that Part III, Budget Information Item 18 (Contingencies) is not an allowable cost under OMB Circular A-87 (2 CFR 200 Subpart E, Cost Principles). Sponsors must leave this item blank. **Optional for the State Block Grant Applications**. The ADO has the option to request this information, but states do not normally include this in a state block grant application. The state must collect this information for subgrants in accordance with their State Block Grant Program Memorandum of Agreement.
c. Application for Planning Projects (Parts II through IV) (FAA Form 5100-101)	**Mandatory for Planning Projects if FAA Form 5100-100 is not used.** For planning projects, sponsors can submit FAA Form 5100-101, or its equivalent, instead of FAA Form 5100-100 (see Appendix V). The term *its equivalent* is intended to allow sponsors to create their own documents that contain the exact information requested in FAA Form 5100-101, but allows them to include sponsor-specific information or data. **Optional for the State Block Grant Applications**. The ADO has the option to request this information, but states do not normally include this in a state block grant application. The state must collect this information for subgrants in accordance with their State Block Grant Program Memorandum of Agreement.

Table 5-6 Grant Application Contents

For the following…	The sponsor submittal requirement is…
d. Detailed Project Narratives and/or Cost Breakdowns (beyond that provided in either FAA Form 5100-100 or FAA Form 5100-101)	**Mandatory if requested by the ADO**. Sponsors must provide an additional detailed narrative summary statement and/or a detailed project cost breakdown (beyond that provided in either FAA Form 5100-100 or FAA Form 5100-101) if requested by the ADO. The detailed summary will normally include a description and justification for *each* of the projects in the grant. The detailed project cost breakdowns will normally be in sufficient detail for the ADO to determine whether the project costs for *each* of the projects are reasonable. **Optional for State Block Grant Applications**. The ADO has the option to request this information (especially for discretionary projects), but states do not normally include this in a state block grant application. The state must collect this information for subgrants in accordance with their State Block Grant Program Memorandum of Agreement.
e. Project Sketches	**Mandatory if requested by the ADO**. Sponsors must provide an 8 ½" x 11" or larger sketch for each of the projects if requested by the ADO. This sketch must clearly identify the limits of the proposed project and its location on the airport. For land acquisition projects, the sketch must show the boundaries of currently owned land and the boundaries and proposed property rights of each parcel of land or easement to be acquired, and include parcel numbers and acreage. **Optional for State Block Grant Applications**. The ADO has the option to request this information (especially for discretionary projects), but states do not normally include this in a state block grant application. The state must collect this information for subgrants in accordance with their State Block Grant Program Memorandum of Agreement.
f. Project Documentation Needed For ADO Reasonableness Determination	**Mandatory**. Sponsors must provide all of the documentation necessary for the ADO to make a cost reasonableness determination for the costs contained in the grant application. The sponsor and ADO requirements are discussed in detail in Section 14 of Chapter 3. It is FAA policy that a sponsor must submit the grant application incorporating actual bid or negotiated agreement amounts. The ADO has an option to accept a grant application based on estimates when actual bids or negotiated agreement amounts are not available, however this practice is suboptimal because it may unnecessarily tie up funding that could be used on other projects.

Table 5-6 Grant Application Contents

For the following…	The sponsor submittal requirement is…
g. Exhibit A	**Mandatory (If A Current Approved Version is Not On File in the ADO).** The ADO must have a current approved Exhibit A (property inventory map) on file prior to issuing a grant at that airport because it is contractually referenced in the grant agreement. If the airport is a first time sponsor, or the Exhibit A is not up to date, the ADO must require the sponsor to submit an Exhibit A. Otherwise, the ADO may allow the sponsor to include the Exhibit A on file by reference in Part II, Section C of FAA Form 5100-100 (or equivalent). The following documents contain guidance on Exhibit A requirements: **(1)** The current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects **(2)** The current version of FAA Order 5190-6, FAA Airport Compliance Manual **(3)** The current version of FAA Order 5100.37, Land Acquisition and Relocation Assistance for Airport Projects **Optional for State Block Grant Applications**. The ADO has the option to request this information, but states do not normally include this in a state block grant application. The state must collect this information for subgrants in accordance with their State Block Grant Program Memorandum of Agreement.
h. Title Certificate or Long Term Lease Agreement	**At the Request of the ADO**. Sponsors must have good title for the land on which they will be constructing the project. The ADO has the option of requiring copies of the title certificates or long term lease agreement for the project files. **Optional for State Block Grant Program**. This is not required for state block grant applications. The state must collect this information for subgrants in accordance with their State Block Grant Program Memorandum of Agreement.

5-21. Grant Application Review.

The ADO must review the application and supporting documents for accuracy and completeness. The ADO may adjust the depth and intensity of the review in accordance with the complexity of the project, the amount of the grant, the size of the airport, and past experience with that sponsor. The ADO may also request that the sponsor provide any additional information needed for the ADO to complete this review. By issuing the grant offer, the ADO is officially approving the projects in the grant application.

a. Minimum Grant Amount. Per FAA policy, the ADO must not accept applications for grants totaling less than $25,000 in federal funding unless the ADO has received APP-520 concurrence that it is clearly advantageous to the federal government. The ADO documents this

determination of this being clearly advantageous by issuing the grant. Note that the sponsor has the option to include multiple projects in the grant application to meet or exceed this $25,000 requirement.

b. All Pre-Grant Actions Complete. Before the ADO can issue a grant, the ADO must verify that all of the pre-grant actions in Section 2 of this chapter (verification of sponsor eligibility, current ALP, etc.) have been completed.

c. Determination of Reasonableness of Grant Amounts. Before the ADO can issue a grant, the ADO must determine that all of the applicable requirements for costs are reasonable as required in Section 14 of Chapter 3. This is an important and mandatory part of the ADO grant application review process. The ADO's reasonableness determination is not covered by sponsor certifications and the ADO cannot delegate this responsibility.

5-22. Reservation of Funds.

If the ADO finds the grant application to be in order, the ADO must reserve the funds in the automated AIP system. The system generates an electronic FAA Form 1413-1, Request for Change in Reservation/Obligation. The ADO has the option of printing a copy of this form and placing it in the grant file, however, this is not mandatory because the form is retained in the automated AIP system. This is reviewed in the system at the regional level and if approved, the system forwards the request to the FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314) for AMK-314's acceptance. Once AMK-314 accepts the reservation in the system, the funds are officially reserved.

Project and funding changes may be made by the ADO after the congressional notification process. Normally this is due to differences between the estimated costs and the actual bid amounts. Occasionally this occurs because the sponsor wants to change, add, or delete a project. In these instances, the ADO must ensure that this is not a substitute for proper planning or estimating. Project and funding changes after congressional notification may require APP approval or additional congressional notification as follows.

a. APP-520 Approval. The ADO must obtain APP-520 approval for the following two types of program changes to projects that have gone through congressional notification:

(1) Replacement of a Project Receiving Discretionary Funds. Replacement of a project that is receiving discretionary funding with another project.

(2) New Lower Priority Entitlement Project at an Airport Receiving Discretionary Funds. Replacement of a project that has a lower priority than a project the airport has or will receive discretionary funds in the same fiscal year. This is because discretionary distributions are based in part on how an airport is using its entitlements.

b. Additional Congressional Notification. If the grant amount is increased after congressional notification, the ADO may be required to send the grant back through the congressional notification process. APP-520 provides the criteria for sending a grant back through congressional notification process based on legislation and OST requirements.

5-23. Grant Offer.

There are multiple items that are part of a grant offer package. The ADO must include all of these items in the grant file and is only required to send some of these items to the sponsor.

a. Grant Offer Package Components. The grant offer package consists of the components listed in Table 5-7. All of these components must be filed by the ADO in the applicable grant file.

b. Items Sent to Sponsor. The grant offer sent to the sponsor must contain items a-f in Table 5-7. The ADO also has the option of attaching any of the other components.

Table 5-7 Grant Offer Package

The following items are components of the grant offer package…
a. Grant Cover Letter.
b. Grant Agreement.
c. Applicable Special Conditions (APP-520 maintains a current list of special conditions that must be used for specific projects or airport situations).
d. Grant Assurances (see Paragraph 2-4 for requirements).
e. Sponsor Certifications.
f. Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects.
g. Applicable State Agency Agreements.
h. The Entire Grant Application (see Paragraph 5-19 for requirements).

c. Grant Cover Letter. Traditionally, the grant cover letter highlights important grant information to the sponsor. This may include when the grant needs to be returned, how many copies the ADO requires, and reference to any special conditions the ADO wants to emphasize. See Appendix V for a sample cover letter. Per 49 USC § 47116, the ADO must include the following sentence in all grant offer letters except those for medium or large hub: *Please note that this grant offer may be funded all or in part, with funds from the Small Airport Fund.*

d. Grant Agreement. A fully signed and executed grant agreement is a binding agreement obligating the sponsor and the FAA to the terms and conditions of the grant agreement. There are three basic types of grant agreements. These are the traditional, the multi-year, and the state block grant. Table 5-8 contains general requirements that apply to all three types of grants, and Table 5-9 contains specific requirements for each of the types of agreements. Table 5-10 includes examples of grant descriptions.

Table 5-8 Requirements for All Grant Agreement Types

The following requirements apply…
a. Grant Description. The ADO must write the grant description in sufficient detail to clearly identify and define each project (see Table 5-10 for examples).
b. Sample Agreements. The ADO must use the sample grant agreement formats (see Appendix V). The ADO cannot use a new or alternative format unless it has been approved by APP-500.
c. Standard Conditions. The ADO must not modify the standard grant conditions found in the grant templates. These may only be updated by APP-500.
d. Funding Level. If the grant application is based on actual bid or negotiated agreement amounts, the ADO must issue the grant based on these amounts (not the programmed amount). In addition, the ADO cannot write the grant agreement for more than what is requested in the signed grant application from the sponsor. However, the ADO can write the grant agreement for less than the grant application without requesting an updated application from the sponsor as long as the project components in the grant are included in the signed application and a note is made in the project file explaining the reduced grant amount.

Table 5-9 Specific Requirements by Grant Agreement Type

For this type of grant agreement…	The following applies…
a. Traditional	**(1) Grant Agreement Format.** The ADO must use FAA Form 5100-37, Grant Agreement (see Appendix V). **(2) Type of Funding.** The ADO must only use current year funding and funding carried over from prior years.
b. Multi-Year	**(1) Applicability.** 49 USC § 47108(a) allows the ADO to issue multi-year grants when the FAA AIP authorization is for multiple years. **(2) Grant Agreement Format.** For a multi-year grant, the ADO must begin with the traditional grant agreement. **(3) Additional Clause.** The ADO must add the following clause to the traditional grant agreement after the words Project Application: *Whereas this project will not be completed during fiscal year 20XX, and the total U.S. share of the estimated cost of completion will be $XXX,XXX.* Note that *20XX* is the current year and *$XXX,XXX* is the sum of the total multi-year amount for the initial year and all follow on years. **(4) Type of Funding.** Under this type of grant, the ADO allows the sponsor to commit the sponsor's future year entitlement funds (passenger, cargo, or nonprimary) within the grant. However, the ADO can only commit funds to a multiyear grant for years within the current program authorization. For example, The FAA Modernization and Reform Act of 2012 (Public Law 112-95) reauthorization is in effect from fiscal year 2012 through the end of fiscal year 2015. The ADO could have written a multi-year grant written in FY2013 that

Table 5-9 Specific Requirements by Grant Agreement Type

For this type of grant agreement…	The following applies…
	committed the sponsor's fiscal year 2013 – 2015 entitlements. The ADO could not have committed the sponsor's fiscal year 2016 entitlements because it is outside of the authorization period. **(5) Initial Year Requirements.** The initial year of a multi-year grant must include sponsor entitlement funds (passenger, cargo, or nonprimary) and may include other types of funds such as discretionary. The initial year funding is shown as the grant amount in the initial grant (the total multi-year grant amount is captured in the additional clause discussed above). **(6) Future Year Requirements.** Only sponsor entitlement funds (passenger, cargo, or nonprimary) can be used for the future years of a multi-year grant. The future year funds are added to the initial grant by a multi-year amendment (see multi-year amendments under Paragraph 5-54). **(7) Total Multi-Year Funding Amount.** The total multi-year funding amount is the sum of the initial year and future years. This amount is captured in the additional clause discussed above. **(8) Special Condition.** This type of grant requires a special condition, which the ADO can obtain from the special condition list maintained by APP-520.
c. State Block Grant	**(1) Grant Agreement Format.** The ADO must use the State Block Grant Agreement format (see Appendix V). **(2) Type of Funding.** The ADO must only use current year funding and funding carried over from prior years. **(3) Standard Conditions.** The standard conditions are different for state block grants (these are included in the sample state block grant agreement format found in Appendix V). **(4) Number of Grants per Fiscal Year.** The ADO may write as many state block grants during a fiscal year as it deems prudent. For example, although one grant could be issued for the year, it may be beneficial to write one grant for state apportionment, one for non-primary entitlement, and one or more for specific discretionary projects. **(5) Passenger, Cargo, and Nonprimary Entitlements.** If the state block grant contains entitlements, the ADO must list the airport name, city, and associated entitlement type and amount. (Note that if passenger entitlements are included in the state block grant, these are the passenger entitlements allocated to virtual primary airports under 49 USC 47114(c)(1).) **(6) Discretionary Funds.** If the state block grant contains discretionary funds, the ADO must list the airport name, airport city, the discretionary funding amount, and a brief description of the project (see Table 5-10). The ADO has the option to issue these discretionary projects under a separate state block grant, which may be preferable for timing and/or tracking purposes. **(7) Special Conditions.** Special conditions are normally included by the state in the specific subgrants. However, the ADO has the option of adding special conditions to the state block grant if the ADO deems it appropriate. APP-520

Table 5-9 Specific Requirements by Grant Agreement Type

For this type of grant agreement…	The following applies…
	maintains a current list of special conditions that must be used for specific project or airport situations.
a. Grant Amendments	**(1) Grant Amendments.** The requirements for grant amendments are included in Section 7 of this chapter.

Table 5-10 Examples of Grant Descriptions

For the following projects involving…	The following description information is appropriate…	And examples include…
a. Runways	**(1)** The runway number. **(2)** The length, width, and location on the runway where the work is being accomplished.	Reconstruct Runway 13/31 (9,000’ x 150’). Rehabilitate Runway 10/28 between Taxiway A1 and A2 (500’ x 150’). Extend Runway 9/27 (200’ x 150’ northeast).
b. Runways (Phased over three grants)	**(1)** The runway number. **(2)** The length, width, and location on the runway where the work is being accomplished.	Reconstruct Runway 13/31 Phase 1 Design (9,000’ x 150’). Reconstruct Runway 13/31 Phase 2 (South 4,000’ x 150’). Reconstruct Runway 13/31 Phase 3 (North 5,000’ x 150’).
c. Taxiways	**(1)** The taxiway number. **(2)** The length, width, and location on the taxiway where the work is being accomplished.	Reconstruct Taxiway A (9,000’ x 75’). Rehabilitate Taxiway B between Taxiway A1 and A2 (500’ x 50’). Extend Taxiway C (200’ x 50’ between Taxiway C and Runway 9).
d. Aprons	**(1)** The name of the apron (or reference by location). **(2)** The length, width, and location on the apron where the work is being accomplished.	Rehabilitate the General Aviation Ramp (5000 square feet). Expand the South Terminal Apron (40,000 square feet).

Table 5-10 Examples of Grant Descriptions

For the following projects involving…	The following description information is appropriate…	And examples include…
e. Land Acquisition	**(1)** The tract or parcel number. **(2)** The acreage. **(3)** The type of acquisition (easement, fee simple). **(4)** The purpose of the acquisition (RPZ for runway end XX, approach for runway end XX, new airport, future development). **(5)** A short description of any housing relocation.	Acquire Parcel A (40 Acres, Fee Simple) for the Runway Protection Zone of Runway 4. Acquire an easement for Parcel 54 (20.3 Acres) for approach protection for Runway 12. Acquire Parcel 84A (5 Acres, Fee Simple) Including Relocation Costs (3 residences, 1 barbershop) for future airport development.
f. Obstruction Removal or Marking	**(1)** The object being removed. **(2)** If clearing and grubbing is being accomplished, the acreage. **(3)** The runway end on which the obstruction is located.	Remove antenna tower off Runway 4. Clear and grub Runway 18 runway protection zone (40 acres). Install obstruction lighting on Hangar 6.
g. Noise Mitigation	**(1)** The type of noise mitigation (such as residential soundproofing, school soundproofing, blast fence). **(2)** The associated noise contour, if applicable. **(3)** If known, the number of houses/schools or people/students affected.	Provide residential sound insulation (approximately 20 residences) in the DNL 70 dB. Sound insulate Roosevelt High School (230 students) in the DNL 65 dB.
h. State Block Grant (No Discretionary)	**(1)** If the ADO chooses to write the grant for a specific project or projects, the appropriate information for that project. **(2)** If the grant will not be project specific, a general statement is appropriate.	**For a project specific grants:** See above examples. **For non-project specific grants**: Various airport developments under the State Block Grant Program.

e. Special Conditions. Special conditions highlight extra steps the sponsor must take as part of accepting the grant offer and included in the actual grant document. Special conditions are tailored to the type of project, special sponsor circumstances, and/or unique situations and are binding as part of the grant agreement. APP-520 maintains a current list of special conditions that must be used for specific project or airport situations. If the ADO determines that an

additional special condition is needed, the ADO must receive APP-520 approval to include the special condition in the grant. If appropriate, APP-520 has the option to amend the special condition list to include this additional special condition in the list of special conditions.

f. Grant Assurances. The requirements for the grant assurances are listed in Paragraph 2-4. The grant assurances are provided in Appendix Z.

g. Sponsor Certifications. 49 USC § 47105(d) allows the FAA to require sponsors to certify that they will comply with statutory and administrative requirements in carrying out an AIP funded project. There are seven certifications as shown in Table 5-11. See Appendix V for these sponsor certifications. Per FAA policy, all applicable certifications must be completed by the sponsor and submitted to the ADO before the grant is issued. Certifications are part of the Grant Package. Because the certifications contain the required information for a topic, the ADO has the option of requiring the sponsor to submit another copy of a certification when the particular work item is complete. For example, the ADO has the option of requiring the sponsor to submit another copy of the Construction Project Final Acceptance certification as part of the close-out submittals for a project.

Table 5-11 Summary of Sponsor Certifications

The following document…	Requires the sponsor to…
a. Selection of Consultants	Certify that they have or will properly follow key consultation selection requirements.
b. Project Plans and Specifications	Certify that they have or will prepare the plans and specifications in accordance with key requirements.
c. Equipment/Construction Contracts	Certify that they have or will properly follow key federal procurement requirements.
d. Real Property Acquisition	Certify that they have or will properly follow key land acquisition requirements.
e. Construction Project Final Acceptance	Certify that they have or will complete key requirements prior to final project acceptance.
f. Drug-Free Work Place	Certify that the work place will be drug-free as required under the Drug-Free Work Place Act of 1998 and 49 CFR part 32.
g. Conflict of Interests	**Currently not required.** Certify that there are no conflicts of interest to the FAA or to the state for (for state block grant subrecipients). The requirement for this certification does not become effective until the Department of Transportation publishes a regulation adopting the policies and procedures that are applicable to federal awards (anticipated December 26, 2014).

(1) Sponsor Certification History. It is FAA policy that the sponsor has primary responsibility for complying with AIP requirements.

(2) Sponsor Certification Purpose. The grant agreement and the associated grant assurances are the official legal binding documents that obligate the sponsor to AIP policies, regulations and standards. The sponsor's certifications are an additional measure used by the ADO to focus a sponsor's attention on certain grant obligations. These certifications are intended to enhance a sponsor's knowledge and ensure their compliance with these obligations.

(3) Sponsor Certification Timing. Current FAA policy is for the ADO to attach the applicable sponsor certifications to the grant agreement. The sponsor then accepts the certifications by signing the grant agreement.

(4) FAA Sponsor Certification Responsibility. The ADO retains the responsibility of maintaining a broad overview of AIP projects and being reasonably assured that the sponsor is meeting all of its obligations. The ADO's acceptance of a sponsor certification does not limit the ADO from reviewing the appropriate documentation for the purposes of validating the certification.

(5) False Sponsor Certification. If the ADO determines that the sponsor has not adhered to the certifications, the ADO must review the associated project costs to determine if the costs are still allowable under AIP. In addition, if the sponsor knowingly makes false statements, further penalties may apply per 49 USC § 47126.

(6) Items Specifically Not Covered by Sponsor Certification. The use of sponsor certifications is limited. Table 5-12 contains examples of federal actions that cannot be covered by sponsor certification.

Table 5-12 Examples of Actions Specifically Excluded from Sponsor Certification

Some examples of inappropriate actions for sponsor certification…
a. Review of projects for inclusion in the NPIAS.
b. Entry or deletion of airports from the NPIAS.
c. Determination of AIP eligibility or justification.
d. Review of impacts to the National Airspace System Architecture.
e. Review and approval of modifications to standards.
f. Review and approval of Airspace aeronautical cases.
g. Designation of instrument runways.
h. Determination of AIP project cost reasonableness.

Table 5-12 Examples of Actions Specifically Excluded from Sponsor Certification

Some examples of inappropriate actions for sponsor certification…
i. Determination of Disadvantaged Business Enterprise compliance.
j. Approval of environmental studies.
k. Approval of airport layout plans.
l. Review and approval of construction safety phasing plans.
m. Review and approval of various safety determinations (such as compliance with 14 CFR part 139 requirements and airfield safety determinations by Flight Standards).
n. Issuing waivers to the Buy American Preference requirements.
o. Review and approval of Project Labor Agreements.

h. Advisory Circular List. The FAA publishes a list of certain advisory circulars that set out the applicable policies, standards, and specifications that sponsors must carry out on an AIP funded project. The ADO includes this list directly in the grant agreement, which officially incorporates it as part of the grant conditions. This list, FAA Advisory Circulars Required for use in AIP Funded and PFC Approved Projects, is available online (see Appendix B for link).

i. Applicable State Agency Agreements. Some grants must be cosigned by the state agency. In these cases, the ADO must obtain the state agency agreement with the sponsor and retain this documentation in the ADO office files.

j. The Entire Grant Application. The requirements for the grant application are listed in Paragraph 5-19.

5-24. Grant Acceptance.

If the sponsor agrees with the grant offer, the steps and requirements for the sponsor to accept the grant offer are included in Table 5-13. Once the ADO receives a copy of the executed grant, the ADO must record that the grant was signed by the sponsor in the automated AIP system. The ADO has the option of printing the FAA Form 5100-107, Airport Improvement Program Form (also called AIP Grant Status Report) generated by the automated AIP system and placing the form in the file. However, this is not mandatory because a current version of the form containing the grant history is retained in the automated AIP system.

Table 5-13 Steps and Requirements for Sponsor Grant Acceptance

The steps and requirements include…
a. The sponsor cannot alter the grant agreement. The grant agreement can only be changed by a grant amendment issued by the ADO.
b. The sponsor must sign the grant in one of the two sponsor signature locations.
c. If the sponsor's signs where a notary is required, the notary must sign and stamp (or seal) the grant at the same time. Therefore the notary date must be the same date as the sponsor signature date.
d. The sponsor's attorney must sign the grant agreement after the sponsor. Therefore, the attorney's signature date must be on or after the sponsor's signature date.
e. The sponsor must keep one original executed grant agreement for its files and send the remaining executed grant(s) back to the ADO by the date required by the ADO.

5-25. The FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314) Notification.

The ADO must send the pages of the grant offer that contain the grant description, grant amount, and signatures to AMK-314.

Section 5. ADO Grant Oversight.

5-26. ADO Oversight (and Required Grant File Documents) Based on Sponsor Risk Level.

Based on a DOT Office of Inspector General (OIG) audit and findings related to the FAA's administration of AIP, the FAA has implemented a risked base oversight system to minimize the risk of misuse of funds by sponsors. The FAA uses a tiered ranking system to assign a risk level to each sponsor. The risk level defines the level of oversight required by the ADO and lists the documentation that the ADO must retain in the grant file. Current detailed guidance on how to assign sponsor risk levels and the associated oversight requirements is maintained by APP-520, and is posted on the FAA Office of Airports website (see Appendix B for link).

5-27. Statutory Requirement for ADO Project Oversight.

AIP is a grant program, and under 31 USC § 6304 and § 6305 (Federal Grant and Cooperative Agreement Act of 1977) federal agencies must use a grant agreement, rather than a cooperative agreement when limited involvement between the sponsor and the federal government is expected. ADO involvement in an AIP project is generally limited to the oversight necessary to protect the federal interests as specified in 31 USC § 6304.

In addition to the other ADO oversight requirements listed throughout this Handbook, the ADO has the following oversight requirements and options during the life of the project.

5-28. Safety Risk Management (SRM) Panels.

ADOs must participate in safety risk management panels associated with the project when it is required by a triggering action listed in the current version of FAA Order 5200.11, FAA Airports (ARP) Safety Management System. There is a separate tracking system for SRM, therefore the ADO is not required to document the ADO's participation in the grant file.

5-29. Construction Safety Phasing Plans.

The most current version of Advisory Circular 150/5370-2, Operational Safety on Airports during Construction, outlines when a sponsor is required to submit a construction safety phasing plan. The ADO must review and approve or disapprove all required construction safety phasing plans in writing. This ADO responsibility cannot be delegated and is not covered by sponsor certification.

AAS-100 maintains current guidance on ADO responsibilities for construction safety phasing plans.

5-30. Predesign, Prebid, and Preconstruction Conferences.

Sponsors have the option to hold predesign, prebid, and preconstruction as discussed in the current version of Advisory Circular 150/5300-9, Predesign, Prebid, and Preconstruction Conferences for Airport Grant Projects. The ADO has the option to participate in these conferences.

5-31. Equipment Photographs.

The ADO has the option to require a sponsor to submit a picture of the actual delivered equipment unless the sponsor's risk level makes submitting a photograph mandatory. The ADO must file any submitted photographs in the grant file.

5-32. Construction Photographs.

The ADO has the option to require a sponsor to submit pictures of the project site before, during, and/or after a construction project unless the sponsor's risk level makes submitting a photograph mandatory. The ADO must file any submitted photographs in the grant file.

5-33. Construction Management Plans.

In 1990, the FAA enacted a construction management plan policy for projects with a total pavement construction contract value over $250,000 to satisfy an OIG Audit on Airport Construction Materials Conformance finding. The FAA has since raised the dollar value to $500,000. It is FAA policy that a sponsor must submit a construction management plan to the ADO prior to the start of construction for projects with a total pavement construction contract value over $500,000. The pavement construction contract value is calculated by totaling the costs of the total pavement structure (including subgrade, base and subbase courses, and surface course). If these costs exceed $500,000, a construction management plan is required.

When construction of a project requiring a construction management plan is complete, the sponsor is required to submit a summary of the test results and the disposition of any problem test results. The ADO also has the option of requiring the sponsor provide the plan for lower dollar value pavement projects.

5-34. Notices to Proceed.

Once all contract documents have been executed, the sponsor will issue a notice to proceed to the contractor. The sponsor must send a copy of the notice to proceed to the ADO if requested by the ADO.

5-35. Change Orders, Supplemental Agreements, and Contract Modifications.

Sponsors have the option to change contracts through change orders, supplemental agreements, and contract modifications as discussed in Table 5-14.

All change orders, supplemental agreements, and contract modifications must eventually be reviewed by the ADO. This is because these actions are considered noncompetitive proposals per 49 CFR § 18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals) (see Paragraph U-15). The notification, submittal, and determination documentation requirements vary as discussed in Table 5-15.

Unless specifically requested by the ADO, the sponsor does not have to obtain prior ADO approval for contract changes except for the Buy American review, if required. However, if a sponsor proceeds with a contract change without FAA prior approval, it is at the sponsor's risk. The ADO review at a later date could determine that the costs in the contract change cannot be paid for under the grant. Sponsors have the option to request prior ADO review of contract changes.

Each change order requires separate Buy American review by the sponsor. Unless the change order is using 100% United States steel or manufactured goods, the change order will require a Buy American waiver from the ADO before the sponsor proceeds with the change order.

The ADO cannot approve costs that the ADO has determined are due to errors and omissions in the plans and specifications that were foreseeable at the project design. In addition, the ADO must only approve costs that are directly necessary to accomplish the project. Examples of change orders that the ADO can approve and cannot approve are discussed in Table 5-17. Examples of changes to professional services agreements that the ADO can approve and cannot approve are discussed in Table 5-17.

Table 5-14 Types of Contract Changes

For the following type of contract…	The following types of contract changes are used…	And guidance is contained in the current version of…
a. Construction and equipment contracts	Change orders or supplemental agreements	The current version of Advisory Circular 150/5370-10, Standards for Specifying Construction of Airports
b. Negotiated professional service agreements	Contract modifications or supplemental agreements	The current version of Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects

Table 5-15 Sponsor and ADO Requirements for Contract Changes

If the sponsor proposes to…	The sponsor must…	And the ADO…
a. Execute change orders, supplemental agreements, and contract modifications *with* a change in scope of the contract or an increase to the contract by *more than* the simplified acquisition threshold (per 49 CFR § 18.36(g)(2)(v)) (2 CFR § 200.324(b)(5))	Conduct a cost analysis per 49 CFR § 18.36(f) (2 CFR § 200.323, Contract cost and price). Notify the ADO.	Has the option to request that the sponsor submit associated documentation. Has the option to conduct a pre-award review. Has the option, if the ADO chooses to conduct a review, to provide the sponsor with a written response containing the ADO finding and/or keep a copy available for future reference.
b. Execute change orders, supplemental agreements, and contract modifications *without* a change in scope of the contract or an increase to the contract by *less than or equal* to the simplified acquisition threshold	Conduct a cost analysis per 49 CFR § 18.36(f) (2 CFR § 200.323, Contract cost and price). Notify the ADO *only* upon ADO request.	Has the option to request that the sponsor submit associated documentation. Has the option to conduct a pre-award review. Has the option, if the ADO chooses to conduct a review, to provide the sponsor with a written response containing the ADO finding and/or keep a copy available for future reference.

Table 5-15 Sponsor and ADO Requirements for Contract Changes

If the sponsor proposes to…	The sponsor must…	And the ADO…
c. Request a grant amendment	Conduct a cost analysis for all change orders, supplemental agreements, and contract modifications associated with the grant and submit all of the required documentation in Paragraph 3-101 to the ADO.	Must review the project costs to ensure that *all* of the requirements in Chapter 3 have been met, including cost reasonableness. By signing the grant amendment, the ADO is documenting that the associated project costs in the amendment meet the requirements of Chapter 3.
d. Submit the grant closeout package	Conduct a cost analysis for all change orders, supplemental agreements, and contract modifications associated with the grant and submit all of the required documentation in Paragraph 3-101 to the ADO.	Must review the project costs to ensure that *all* of the requirements in Chapter 3 have been met, including cost reasonableness. By signing the FAA final project report, the ADO is documenting that the final project costs in the grant meet the requirements of Chapter 3.

Table 5-16 Examples of Change Orders that Can and Cannot be Approved by the ADO for AIP Participation

For the following change order…	The ADO…
a. To revise quantities of items to reflect actual quantities used for the project.	May approve the request for adjustment (increase/decrease) in construction cost.
b. To address differing site conditions or materials that were *not* found during the site investigation.	May approve the request.
c. To remove subsurface materials *that were shown* in the soil borings taken during the site investigation.	May approve the request. Even though this work must be accomplished to finish the project, the existing field condition was readily apparent but was overlooked. (The difference between this and the preceding entry is that while the construction costs may be allowable, the costs to redesign are not allowable as discussed in the next table.)
d. To make changes in a terminal building using the proration that was used to determine initial AIP participation.	Must not approve the request. Contract change orders for prorated projects must be separately calculated based on actual cost information since the proration is only valid for the initial cost calculation.

Table 5-16 Examples of Change Orders that Can and Cannot be Approved by the ADO for AIP Participation

For the following change order…	The ADO…
e. For construction costs to add work outside of the grant description	Must not approve the request unless the ADO has coordinated the steps needed to add work to a project.

Table 5-17 Examples of Changes to Professional Services Agreements that Can and Cannot be Approved by the ADO for AIP Participation

For the following request…	The ADO…
a. To revise contract documents to rebid a package because of a bid protest that was upheld by the ADO	Must not approve the request.
b. To revise contract documents because the project specifications were deficient. This includes failure to use FAA standards, unapproved modifications, unduly restrictive requirements	Must not approve the request.
c. To rebid a project as a result of a non-competitive bid environment or high bids due to factors outside of the sponsor's control	May approve the request for additional professional services fees provided the Sponsors actions were not the cause of the non-competitive environment or high bids and the ADO.
d. To address via redesign differing site conditions or materials that were *not* found during the site investigation	May approve the request.
e. To address via redesign the removal of subsurface materials *that were shown i*n the soil borings taken during the site investigation	Must not approve the request. Even though this work must be accomplished to finish the project, and the construction costs may be allowable, the existing field condition was readily apparent but was overlooked during the design phase. (The difference between this and the preceding entry is that while the construction costs may be allowable, the costs to redesign are not allowable.)
f. To add work outside of the grant description.	Must not approve the request unless the ADO has coordinated the steps needed to add work to a project.

5-36. Periodic Inspections.

The ADO has the option of conducting periodic inspections of the worksite.

5-37. Construction Progress and Inspection Report.

Per the current version of Advisory Circular 150/5370-6, Construction Progress and Inspection Report – Airport Improvement Program (AIP), the sponsor's engineer must complete FAA Form 5370-1, Construction Progress and Inspection Report, or the equivalent for all AIP funded construction projects. The sponsor must submit the requested reports to the ADO at least quarterly (or more frequently at the ADO's request).

5-38. Meetings for Planning and Environmental Study Grants.

Sponsors (and sometimes the ADO) are often required to hold meetings in association with planning and environmental study grants. The ADO has the option of attending these meetings unless otherwise required by an FAA order or other FAA policy. For instance, the current version of FAA Order 5050.4, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects, requires that the ADO not only attend required EIS meetings (not optional), but also organize and lead the meetings. The specific requirements for these meetings are discussed in the current versions of the following documents.

a. Advisory Circular 150/5070-7, The Airport System Planning Process

b. Advisory Circular 150/5070-6, Airport Master Plans

c. FAA Order 5050.4, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects

5-39. Forecasts in Planning or Environmental Projects.

If the grant contains planning or environmental projects that require forecasts, the sponsor is required to submit the forecast to the ADO. The ADO must approve or disapprove the forecast before it is used as part of the project. This ADO responsibility cannot be delegated and is not covered by sponsor certification.

5-40. Quarterly Performance Report.

49 CFR § 18.40 (2 CFR § 200.328 Monitoring and Reqporting Program Performance), Monitoring and Reporting Program Performance, requires sponsors of federal grants to submit performance reports. Table 5-18 provides the quarterly performance report requirements for AIP projects by project type. Note that this Quarterly Performance Report provides project schedule and dates, and is not the same thing as the Standard Form 425, Federal Financial Report.

Table 5-18 Quarterly Performance Report Requirements by Project Type

For the following type of project…	The FAA policy is…
a. Non-construction	**(1)** The sponsor must submit a Quarterly Performance Report for each fiscal quarter until the non-construction project is completed. **(2)** The sponsor must submit each Quarterly Performance Report within 30 days of the end of the quarter. Sponsors must not submit the Quarterly Performance Reports in batches or at the end of the project. **(3)** A sample format for the Quarterly Performance Report is provided in Appendix V. At a minimum, the report must include the following items: **(a)** A comparison of proposed objectives to actual accomplishments. **(b)** Reasons for any slippage or lack of accomplishment in a given area. **(c)** Impacts on other AIP-funded projects. **(d)** Impacts to projects funded by PFC, other FAA programs, or the sponsor. **(e)** Identification and explanation of any anticipated cost overruns. **(4)** If a major project or schedule change occurs between Quarterly Performance Reports, the sponsor must submit an out of cycle Quarterly Performance Report to the ADO. **(5)** APP-520 maintains current guidance on the current ADO review requirements.
b. Construction	**(1)** The FAA has determined that sponsor submittal of FAA Form 5370-1, Construction Progress and Inspection Report satisfies the performance reporting requirement. **(2)** FAA Form 5370-1 (see Appendix V) is discussed in more detail in the current version of Advisory Circular 150/5370-6, Construction Progress and Inspection Report – Airport Improvement Program (AIP). **(3)** The sponsor must submit FAA Form 5370-1 to the ADO at least quarterly, however, the ADO has the option to require the sponsor submit these reports on a more frequent basis. **(4)** The sponsor must submit FAA Form 5370-1 to the ADO for each fiscal quarter until the construction project is completed. **(5)** The sponsor must submit each FAA Form 5370-1 within 30 days of the end of the quarter (not in batches or at the end of the project). **(6)** The sponsor must include the certified percentage-of-completion information on FAA Form 5370-1. If not, the ADO must require the sponsor to resubmit the form with this information. **(7)** If a major project or schedule change occurs between the reporting cycles, the sponsor must submit an out of cycle FAA Form 5370-1 to the ADO. **(8)** APP-520 maintains current guidance on the current ADO review requirements.

5-41. Annual Reporting of Annual Residential Population Benefits.

The ADO must report the residents and students that benefit from noise compatibility projects. This reporting is done on a yearly basis. APP-400 maintains the current form and guidance that must be used to report these benefits.

5-42. Final Inspection.

The ADO has the option to either conduct a final inspection for construction projects or accept sponsor certification. If the ADO performs a final inspection, it is FAA policy that the ADO must include a note in the FAA final project report that the ADO performed the inspection, the date of the inspection, and the inspection results. The ADO has the option to give the sponsor and contractor representatives the opportunity to be present at the final inspection. If the ADO does not perform a final inspection, it is FAA policy that the ADO must include a note in the FAA final project report documenting the reason that the decision was made to not have the final inspection.

Section 6. Grant Payments.

5-43. Summary of Payment Request Requirements and Limitations.

The requirements and limitations for grant payment requests are summarized in Table 5-19. These items are discussed in more detail in the following paragraphs.

Table 5-19 Grant Payment Request Requirements and Limitations

The grant payment requirements and limitations include…	
a.	The sponsor and ADO must process all grant payment requests through the currently approved Department of Transportation (DOT) grant payment system unless otherwise approved by the ADO.
b.	The sponsor must submit payment requests at least annually unless the ADO requires more frequent payment requests.
c.	The sponsor must base payment requests on costs incurred (based upon invoices, billing statements, or other appropriated payment support provided to the ADO by the sponsor).
d.	The ADO must not approve any payment requests for the last 10% of the federal share of the grant (or the last 10% of the estimated federal share of the grant after amendment, whichever is less) unless the requirements in Paragraph 5-45 are met. The ADO has the option of excluding a state block grant from this requirement only if the state is following this requirement for all of the subgrants within the state block grant and the ADO is confident that the state will submit the state block grant closeout documentation in a timely manner.
e.	The ADO is allowed to determine the timing and amount of the payment and may reduce or withhold the payment if the ADO follows the applicable requirements.
f.	The sponsor must stay within the contract retainage limitations.

Table 5-19 Grant Payment Request Requirements and Limitations

The grant payment requirements and limitations include…	
g.	The sponsor must stay within the disputed cost limitations.
h.	The sponsor must stay within the land acquisition cost limitations.
i.	The sponsor must not request a payment that is improper.
j.	The sponsor must document their payment requests on a Standard Form 425, Federal Financial Report (see Appendix V) or equivalent. APP-520 maintains current guidance on the current ADO review requirements for the Standard Form 425.
k.	The sponsor must maintain all of the documentation supporting the grant payment for the required time period and must make this information available upon request.

5-44. Requirements and Process for Using the Current DOT Electronic Payment System.

a. Sponsor Payment Requests. Sponsors must submit all grant payment requests and related supporting documentation electronically through the currently approved Department of Transportation grant payment system. Sponsors that are unable to use the DOT system must submit a waiver request to the ADO for review by the DOT. Current detailed guidance on how sponsors are to use the electronic system is maintained by the FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314).

b. ADO Payment Approval. The sponsor's risk level determines the level of payment review required by the ADO within the currently approved DOT grant payment system. Current detailed guidance on ADO review responsibilities and how the ADO is to use the electronic system is maintained by APP-520.

c. Method of Payments. Once ADO and AMK-314 approve the payment request, AMK-314 will request the U.S. Treasury to transfer funds to the sponsor's bank through an electronic funds transfer. If a sponsor requires a Treasury check, the sponsor must work with AMK-314 to determine the process.

5-45. Requirements for Frequency of Payment Requests and Expenditure Rate.

49 USC § 47106(a)(4) requires that a project be completed without unreasonable delay. The ADO ensures compliance with this requirement by monitoring Quarterly Performance Reports as required in Paragraph 5-39 and ensuring that regular grant payments are being made to support project accomplishments.

a. Frequency of Sponsor's Payment Requests. Under 49 CFR § 18.41(d)(3) (2 CFR § 200.327, Financial Reporting), sponsors must submit payment requests at least *every twelve months* starting from the date of the grant acceptance. In addition, 49 CFR § 18.41(b)(3) (2 CFR § 200.327, Financial Reporting) allows the ADO to require the sponsor to submit

payment request as often as every three months (quarterly). It is the FAA's expectation that the sponsor will request payment commensurate with project progress, which would lead to reimbursement requests more frequently than quarterly.

b. Requirements for Payment Request Frequencies Exceeding 12 Months. If a sponsor has not submitted a payment request for more than 12 months, it is FAA policy that the ADO must notify the sponsor in writing of this delinquency and request the sponsor to submit a payment request or, if applicable, close the grant. If the sponsor is unable to submit a payment request or close the grant, the sponsor must provide the ADO with the reason for the delay and the sponsor's proposed resolution. If the ADO finds the reason for the delay or the proposed resolution unacceptable, the ADO has the option to suspend the grant as outlined in Section 9 of this chapter and/or, upon further coordination with ACO-100, delay issuing any future grants to the sponsor until the issue is resolved.

c. Expenditure Rate. If the sponsor is drawing down the grant funding at a pace that is not consistent with the project progress or completing the project in a timely manner, the ADO has the option of asking the sponsor to submit the reason for the delay and the proposed resolution to the ADO in writing. If the ADO finds the reason for the delay or the proposed resolution unacceptable, the ADO has the option to suspend/terminate the grant as outlined in Section 9 of this chapter and/or, upon further coordination with ACO-100, delay issuing any future grants to the sponsor until the issue is resolved.

5-46. Requirements for Approving Payment within the Last 10% of the Federal Share.

Per 49 USC § 47111, no more than 90% of the federal share of a project's estimated allowable costs may be made before the project is complete. The language in this section of the statute has been misinterpreted in the past to only apply to advance payments. The intent and origination of this language has been researched by the FAA, and it has been determined that this requirement applies to all types of payment requests, not just advance payments.

Per FAA policy, the ADO has the option to approve payment requests for a portion of the remaining 10% for a project that the ADO determines is substantially complete and meets all of the requirements in Table 5-20 are met.

Table 5-20 Requirements for Approving Payment within the Last 10% of the Federal Share

Requirements include…	
a.	The sponsor has submitted all required documentation to the ADO, including the contract section, evidencing that the sponsor has found the project substantially complete per the contract requirements.
b.	The ADO must determine that the project is substantially complete. Substantial completion is generally a defined term in a contract and is the stage of the project when work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the project for its intended purpose. Per the contract, the substantial completion date typically triggers: retainage release, the warranty period, determination of any actual or liquidated damaged, the start of the statute of limitations, and related limitations.
c.	The sponsor is in the nominal risk category.
d.	The project results in a complete, usable unit of work.
e.	The ADO has determined that the request for payment does not exceed 97.5% of the federal share of the project's estimated allowable costs.
f.	The ADO has determined that the request for payment conforms to the requirements in the latest version of the Airport Improvement Program (AIP) Grant Payment and Sponsor Financial Reporting Policy, maintained by APP-520.

In addition, per FAA policy, until the ADO completes the FAA final project report and completes the sponsor notification as outlined in Table 5-34, the ADO must not approve any payment requests for the last 2.5% of the federal share of the grant (or the last 2.5% of the estimated federal share of the grant after amendment, whichever is less). The sponsor is still required to pay project invoices in a timely manner.

The ADO has the option of excluding a state block grant from this requirement only if the state is following this requirement for all of the subgrants within the state block grant and the ADO is confident that the state will submit the state block grant closeout documentation in a timely manner.

5-47. Requirements for Payment Requests to be Based on Incurred Costs.

Per 49 CFR § 18.21 (2 CFR § 200.305, Payment) the advance payment method is the standard method used by the federal government to pay a sponsor. In order for an ADO to allow a sponsor to be paid in this manner, the sponsor must meet the conditions in Table 5-21.

When a sponsor is not able to satisfy the advance payment method requirements in Table 5-21, then the ADO must require the sponsor to submit payment requests under the reimbursement method. The ADO must document the reasons a sponsor has been placed on the reimbursement method of payment in the sponsor's file. The ADO has the option to revisit this decision if

conditions with the sponsor change that may warrant the sponsor returning to the advance payment method.

Table 5-21 Conditions the Sponsor Must Meet for Advance Payments

The following conditions must be met for a sponsor to receive advance payments…
a. The Advance Payment Request is Based on Invoices and Billing Statements. Per FAA policy, the sponsor must provide documentation showing that the advance payment is based upon invoices, billing statements, or other appropriated payment support. For direct or indirect sponsor costs such as administrative costs, force account costs, or costs not supported by a contract, the sponsor must be able to provide documentation that supports the amount and validity of the cost. This ensures that the advance payment is based upon *defined* costs as opposed to *estimated* amounts.
b. The Sponsor Provides Prompt Payment to the Vendor. Per 49 CFR § 18.21(c) (2 CFR § 200.305(1)), the sponsor must maintain or demonstrate the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability.
c. The Sponsor Meets Payment Requirements in Their Contracts and in Local/State Law. Per FAA policy, the sponsor must not withhold payment from their vendors beyond the time frame addressed in their contract or by local and state law, regardless of the timing of the grant or advance payment.

5-48. Requirements for Reducing or Withholding Payments.

Under 49 USC § 47111, the ADO is allowed to decide when and in what amounts payments under the grant may be made. The unique situations where the ADO would reduce or withhold a sponsor payment request are discussed in Table 5-22.

Table 5-22 Situations Where an ADO Would Reduce or Withhold a Sponsor Payment Request

For the ADO to…	The ADO must…
a. Approve less than the sponsor payment request due to unallowable, unreasonable, or unjustified costs	**(1)** Determine that the payment request contains unallowable, unreasonable, or unjustified costs. **(2)** Notify the sponsor of the adjusted amount and the reason behind the adjustment. **(3)** Reject the payment back to the sponsor and require the payment to be resubmitted.

Table 5-22 Situations Where an ADO Would Reduce or Withhold a Sponsor Payment Request

For the ADO to…	The ADO must…
b. Withhold a sponsor payment request pending satisfactory backup	**(1)** Determine that there is insufficient information in the payment request for the ADO to determine the reasonableness, allowability, and necessity of the claimed costs. **(2)** Reject the payment back to the sponsor and require the payment to be resubmitted.
c. Withhold a sponsor payment request from a sponsor who is indebted to the U.S. Government	**(1)** Have been notified by the FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314) that the sponsor owes money to a federal agency. **(2)** Determine if withholding payments will significantly impact the progress on the AIP project. **(3)** Notify the sponsor of the indebtedness and request documentation of resolution. **(4)** Reject the payment back to the sponsor and require the payment to be resubmitted once the indebtedness has been resolved.
d. Withhold payment requests for a sponsor in noncompliance with a grant assurance (or other egregious violation)	**(1)** Have been notified by ACO-100 that ACO-100 has found the sponsor to be in noncompliance with a grant assurance (or other egregious violation). **(2)** Coordinate with ACO-100 to determine whether to withhold payments. **(3)** Not withhold payment for proper charges for more than 180 days unless the sponsor has been notified and given an opportunity for a hearing (if required by either 49 USC § 47106(d) or 47111) and ACO-100 concurs with this action.

5-49. Limitations for Contract Retainage.

The current version of Advisory Circular 150/5370-10, Standards for Specifying Construction of Airports, allows a sponsor to retain a percentage of a contractor's invoices until the contractor satisfactorily completes the work. A summary of these retainage requirements and the associated limitations for the sponsor to include them in payment request is included in Table 5-23.

Table 5-23 Contract Retainage Limitations

If the sponsor opts to…	The sponsor is required to…	And the sponsor's payment request…
a. Hold retainage, but not in an escrow account.	**(1)** Include a clause in the contract obligating prime contractors to make prompt and full payment of any retainage to their subcontractors. **(2)** Ensure that the retainage percentage that the prime contractor sets for the subcontractor does not exceed the retainage percentage the sponsor sets for the prime contractor. **(3)** Ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed (as required in 49 CFR § 26.29).	Must not include the retainage amount. This is because the sponsor has not paid the cost after the subcontractor's work is satisfactorily completed.
b. Hold retainage in an escrow account	**(1)** Include a clause in the contract obligating prime contractors to make prompt and full payment of any retainage to their subcontractors. **(2)** Ensure that the retainage percentage that the prime contractor sets for the subcontractor does not exceed the retainage percentage the sponsor sets for the prime contractor. **(3)** Ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed (as required in 49 CFR § 26.29).	May include the retainage amount. By placing the retainage in an escrow account, the sponsor is paying the cost and is allowed to include the cost in a payment request cost after the subcontractor's work is satisfactorily completed.
c. Not hold retainage	**(1)** Ensure that the prime contractor does not set a retainage percentage for the subcontractor. **(2)** Require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.	Must not deduct a retainage amount from the payment request. All costs are based on actual paid costs.

5-50. Limitations for Contractor Disputed Costs.

When the sponsor and the contractor do not agree on the amount owed to the contractor, and the dispute is likely to go to court, the sponsor is still allowed to submit a payment request for any undisputed costs.

5-51. Limitations for Land Acquisition Costs.

It is FAA policy that costs associated with a land acquisition (such as cost of land, appraisals, legal fees, etc.) are not allowable until *after* the sponsor has submitted evidence satisfactory to the ADO that the sponsor will receive good title to land. The sponsor must submit a binding purchase agreement that will convey good title, evidence of a condemnation deposit, a condemnation award, or a court settlement. Until the sponsor meets this requirement, there is no guarantee that the land acquisition will be completed. Therefore, sponsors must not submit payment requests until these conditions are met.

5-52. Requirements for Avoiding Improper Payments.

a. Background, Definition, and Examples. The Improper Payments Elimination and Recovery Act of 2010 (Public Law 111-204) outlines federal requirements regarding improper payments. An improper payment occurs when the funds go to the wrong sponsor, the sponsor receives an incorrect amount of funds, or the sponsor uses the funds in an improper manner. Sponsors must avoid requesting and the ADO must avoid approving improper payments. Examples of improper payments are listed in Table 5-24.

Table 5-24 Examples of Improper Payments

Some examples include payments that are made…
a. To the wrong AIP sponsor.
b. To an ineligible sponsor.
c. To the wrong AIP grant.
d. For an ineligible or unallowable work (see Chapter 3 for requirements).
e. That duplicates previous payments.
f. For costs that have not been paid (unless the ADO has approved an advance payment).
g. For an incorrect amount (either over or under the correct amount).
h. Where the sponsor cannot provide documentation to support that the payment was made correctly.

b. Identification and Remediation of Improper Payments. Improper payments may be identified through a number of avenues. This may include audits under the Single Audit Act, by

the DOT Office of Inspector General (OIG), by state or local authorities, by the U.S. General Accountability Office. Improper payments may also be identified by the ADO or the sponsor. In all cases, the ADO must take action as outlined in Table 5-25 and the sponsor must take action as outlined in Table 5-26.

c. Costs Incurred to Recover Improper Payments. By FAA policy, the costs incurred by a recipient to recover improper payments are not allowable as either direct or indirect costs.

Table 5-25 ADO Remediation Actions for Improper Payments

The ADO must…
a. Notify the OIG if the ADO has reason to believe the improper payment was a deliberate attempt to defraud the FAA.
b. Notify the sponsor in writing of the improper payment, including a description of the error or problem that was found (unless otherwise directed by the OIG).
c. Work with the sponsor to determine how the error or problem will be corrected (unless otherwise directed by the OIG).
d. Document the steps that will be taken to resolve the improper payment and include the documentation in the project files.

Table 5-26 Sponsor Remediation Actions for Improper Payments

If the sponsor…	The sponsor must…
a. Has not received the payment.	Withdraw and resubmit the payment request that contains the improper payment.
b. Has received the payment.	Per 31 CFR § 901.2(b)(3), pay the improper payment within 30 days of the initial ADO notification using the established process for returning AIP funds electronically through the currently approved Department of Transportation grant payment system. Any alternate forms of returning funds to the FAA must be coordinated with the ADO and the FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314).

5-53. Requirements for Submittal of Standard Form 425.

The sponsor must submit an annual report of their grant financial activity using Standard Form 425, Federal Financial Report, or equivalent (see Appendix V). The sponsor must submit each Standard Form 425 no less than 90 working days after the end of each fiscal year and a final report at grant closeout. Once a final report is submitted with the grant closeout, no additional reports are due at the end of the fiscal year for that grant. The sponsor must not submit the Standard Form 425's in batches or all at once at the end of the grant.

This requirement is found in 75 Federal Register 54215 (September 3, 2010). Per this Federal Register Notice, the Standard Form 272 is replaced by the Standard Form 425 (Federal Financial Report) and outlines the timing of the sponsor submittal. 49 CFR § 18.41(c)(1)(ii) also allows sponsors to submit the information in an alternative format when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

5-54. Requirements for Retaining/Providing Supporting Documentation.

The sponsor is responsible for maintaining all of the documentation supporting a grant payment and making this information available upon request.

Per 49 CFR § 18.42 (2 CFR § 200.333 to 200.337, Record Retention and Access), the sponsor is required to keep these records for at least three years from the date the sponsor submits the last payment request. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the three year period, the sponsor must retain the records until the completion or resolution of the action, or the three year period, whichever is later.

Section 7. Grant Amendments.

5-55. Criteria for Amending a Grant.

49 USC § 47108 allows the ADO to amend a grant once it has been issued. The ADO is allowed to issue an amendment as long as the ADO adheres to the criteria in Table 5-27 and Table 5-28. The appropriate amendment formats are described in Table 5-30.

Table 5-27 Criteria for an ADO to Amend a Grant

If the grant description…	The ADO can amend the grant if the following criteria are met…
a. Remains the same (regular amendments)	**(1)** If the grant amount will be increased, the sponsor must make the request in writing and fully document the amount and justification. **(2)** Decreases to the grant amount can be requested by the sponsor in writing or can be initiated by the ADO. The standard practice is for the sponsor to submit a written request, and ADO initiation of an amendment to decrease funds is normally only done when the sponsor does not agree with the amendment. Unless the decrease is initiated by the ADO based on information the ADO has in house, the sponsor must fully document the amount and reason for the decrease. **(3)** The ADO must determine that it is advantageous to the federal government. **(4)** The ADO must not increase the grant amount for planning projects. This restriction is based on 49 USC § 47108(b)(3) which only allows increasing the grant amount for airport development or land acquisition projects. **(5)** Normally, the ADO only amends a grant at closeout to adjust the grant amount to reflect final costs. However, the ADO has the options to amend the grant more than once and at times other than at closeout.

Table 5-27 Criteria for an ADO to Amend a Grant

If the grant description…	The ADO can amend the grant if the following criteria are met…
	(6) In the rare case where a grant is based on estimates, the ADO must amend the grant to remove excess funds as soon as the actual costs are known. **(7)** The ADO has confirmed that the applicable requirements in Chapter 3 have been met. **(8)** The ADO has confirmed that the amendment increase is within the limits found in Table 5-28.
b. Remains the same (amendment to correct the federal share percentage)	**(1)** Unless the grant is a multi-year grant (see multi-year amendment below) or the ADO needs to correct a mistake in the federal share percentage, the federal share percentage must remain the same throughout the life of the grant., the ADO may not amend a grant to change the federal share unless the amendment is needed to correct a mistake in the federal share percentage.
c. Remains the same (adding future year funds to a multi-year amendment)	**(1)** Unless otherwise required by the ADO, the sponsor is not required to submit a written request. **(2)** The multi-year amendment will not increase the total federal share for the multi-year agreement beyond the amount listed in the original grant agreement. **(3)** The ADO is only allowed to include sponsor entitlement funds (passenger, cargo, or nonprimary) in the multi-year amendment. **(4)** If the federal participation rate changes during the course of the multi-year grant, the ADO must write the amendment using the current fiscal year rate (not the rate that was in affect when the grant was issued).
d. Remains the same (adding additional funds to a multi-year amendment)	**(1)** If the federal share of the eligible project costs exceeds the total multi-year amendment amount established in the initial grant agreement, the ADO has the option to issue a regular amendment. **(2)** The ADO must follow the amendment rules for increases in Table 5-28 and use the total multi-year amendment amount as the basis of these calculations. **(3)** The total multi-year funding amount is the sum of the initial year and future years.
e. Is changed to clarify a project	**(1)** If the ADO is clarifying the project with no change in funding, then the ADO can initiate this action. Unless requested by the ADO, the sponsor does not need to request the change in writing or provide additional information. **(2)** The change to the grant description must simply provide a corrected grant description for the originally intended project. For this situation, work can only be added to the description if the ADO inadvertently omitted it from the original grant description. For example, the ADO might change the grant description to add relocation of a PAPI associated with a runway extension if the PAPI was always intended to be included in the project. **(3)** If the ADO wants to also adjust the funding for final project costs in the same amendment, then all of the criteria in Item a of this table also apply.

Table 5-27 Criteria for an ADO to Amend a Grant

If the grant description…	The ADO can amend the grant if the following criteria are met…
	(4) The ADO should issue the clarifying amendment as soon as the ADO identifies that the amendment is needed.
f. Is changed to add a project and increase funding in the grant	**(1)** FAA policy is to avoid adding both a new project and funding to a grant. The ADO should only consider using this option in rare circumstances. The standard accepted practice is to issue a new grant. An example of a suitable situation to add both a new project and funding is when it will help rapidly implement an emergency fix related to the original grant scope (i.e., during a runway rehabilitation, to replace a failure of a taxiway lighting system on the taxiway that is used to move aircraft around the closed runway). In this example, replacement of a taxiway lighting system would normally be a separate grant. This work is closely related to the current project, and the taxiway lighting system must be operational in order to support existing night operations on the airport. **(2)** The sponsor must make the request in writing and fully document the amount and justification. **(3)** The ADO must determine that it is advantageous to the federal government. **(4)** FAA policy is that the ADO must have requested, and received APP-520 approval in advance of adding a new project to the grant. **(5)** The ADO must determine that the need for the additional project is closely related to a project contained in the original grant. **(6)** If there is enough sponsor entitlement in the grant to cover the new project, then the sponsor can begin the work on the new project before the amendment is issued. Otherwise, the ADO must follow the reimbursement rules in Paragraph 3-100, replacing grant execution date with grant amendment execution date. **(7)** The ADO has confirmed that the applicable requirements in Chapter 3 have been met. **(8)** All other statutory and regulatory requirements (such as environmental clearance, airspace determination, ALP) that may apply to the new project have been or will be met.
g. Is changed to add a project (with no increase in funding over the original grant amount)	**(1)** The sponsor must make the request in writing and fully document the amount and justification. **(2)** The ADO must determine that it is advantageous to the federal government. **(3)** The sponsor must document that all work in the existing grant has been completed or have progressed to the point that all costs in the existing grant projects are known. **(4)** The ADO must determine that the need for the additional project is closely related to a project contained in the original grant. **(5)** The ADO must not add the project to the grant for the purpose of using excess funds remaining in the grant. The reason for this prohibition is that it delays the timely closeout of the grant and in the case of discretionary

Table 5-27 Criteria for an ADO to Amend a Grant

If the grant description…	The ADO can amend the grant if the following criteria are met…
	funding, bypasses the discretionary funding competition process. **(6)** If there is enough sponsor entitlement in the grant to cover the new project, then the sponsor can begin the work on the new project before the amendment is issued. Otherwise, the ADO must follow the reimbursement rules in Paragraph 3-100, replacing grant execution date with grant amendment execution date. **(7)** FAA policy is that the ADO have requested, and received APP-520 approval in advance of adding a new project to the grant. **(8)** The ADO has confirmed that the applicable requirements in Chapter 3 have been met. **(9)** All other statutory and regulatory requirements (such as environmental clearance, airspace determination, ALP) that may apply to the new project have been or will be met.
h. Is changed to delete a project (not land)	**(1)** Deletion of a project from a grant can be requested by the sponsor in writing or can be initiated by the ADO. The standard practice is for the sponsor to submit a written request, and ADO initiation of an amendment to delete a project is normally only done when the sponsor does not agree with the amendment. Unless the deletion is initiated by the ADO based on information the ADO has in house, the sponsor must fully document the amount and reason for the deletion. **(2)** The ADO must determine that it is advantageous to the federal government to delete the project. **(3)** The ADO must adjust the grant amount by the federal share of the deleted project. **(4)** The amendment does not prejudice the interests of the United States. This is a rare occurrence and APP-500 will notify the ADO if the situation exists. **(5)** In grants that contain land acquisition, land parcels for which costs have been incurred under the grant are not reprogrammed in another grant. **(6)** If the deleted project is for land acquisition and the sponsor has received payment on incurred land acquisition costs, the ADO must not fund the project in another grant. **(7)** The ADO should issue the amendment to delete the project as soon as the ADO identifies that the amendment is needed.
i. Is changed to delete a land project from the grant	**(1)** Deletion of land acquisition from a grant can be requested by the sponsor in writing or can be initiated by the ADO. The standard practice is for the sponsor to submit a written request, and ADO initiation of an amendment to the land project is normally only done when the sponsor does not agree with the amendment. Unless the deletion is initiated by the ADO based on information the ADO has in house, the sponsor must fully document the amount and reason for the deletion. **(2)** The ADO must determine that it is advantageous to the federal government to

Table 5-27 Criteria for an ADO to Amend a Grant

If the grant description…	The ADO can amend the grant if the following criteria are met…
	delete the land project. **(3)** The ADO must adjust the grant amount by the federal share of the deleted land project. **(4)** The amendment does not prejudice the interests of the United States. This is a rare occurrence and APP-500 will notify the ADO if the situation exists. **(5)** Because AIP cannot pay twice for the same costs, if the sponsor has received payment on any incurred land acquisition cost, the sponsor must repay those costs or provide written confirmation to the ADO that the costs for performing that work again will be locally funded. **(6)** The ADO should issue the amendment to delete the project as soon as the ADO identifies that the amendment is needed.
j. Is changed to modify a project	**(1)** The sponsor must make the request in writing and fully document the amount and justification for the modification. **(2)** If a portion of a project is deleted, the ADO must determine a usable unit will still be obtained. **(3)** If the project scope is being increased, the ADO must determine that the need for the additional work is closely related to the original project. **(4)** The ADO must determine that it is advantageous to the federal government. **(5)** Examples of a project modification are increasing a runway extension from 400’ to 500’ or reducing scope of a fencing project. **(6)** The ADO should issue the amendment to modify the project as soon as the ADO identifies that the amendment is needed. **(7)** The ADO has confirmed that the applicable requirements in Chapter 3 have been met.
k. Is changed to substitute a project	**(1)** The sponsor has made the request in writing and has fully documented the amount and justification for the substitution. **(2)** All of the criteria for adding and deleting a project have been met. **(3)** If the cost of the substituted project is less than the deleted project, the ADO decreases the federal share of the grant accordingly. **(4)** The ADO must determine that the funding rules for the projects do not prohibit the substitution. **(5)** If the deleted project is funded with discretionary funds, the ADO must not substitute a lower priority project without APP-520 concurrence. **(6)** The ADO should issue the amendment to substitute a project as soon as the ADO identifies that the amendment is needed. **(7)** The ADO has confirmed that the applicable requirements in Chapter 3 have been met.

Table 5-28 Grant Amendment Limits for Increases

Type of Grant	Primary Airport Rules	Nonprimary Airport Rules
a. Land Acquisition	Not more than 15% of the grant amount.	Up to the greater of: ▪ 15% of the grant amount *for land* (federal share is used here, not project cost). ▪ 25% of the total increase in allowable land costs (project cost is used here, not federal share). This is one of the few instances where the ADO has the option to amend the original grant amount by more than 15%. See Table 5-29 for example calculations.
b. Airport Development	Not more than 15% of the grant amount.	Not more than 15% of the grant amount.
c. Planning	May not be increased above the grant amount.	May not be increased above the grant amount.
d. Noise Compatibility Projects (implementation, not planning)	Not more than 15% of the grant amount.	Not more than 15% of the grant amount.
e. Design Only Grants	Not more than 15% of the grant amount.	Not more than 15% of the grant amount.
f. Mixed Project Types	Not more than 15% of the grant amount after the planning portion of the grant is deducted.	Not more than 15% of the grant amount after the planning portion of the grant is deducted. If the increase includes land, also take into account the above rules for land and see Table 5-29 for example calculations.
g. State Block Grants	Not applicable.	As of the publication date of this Handbook, it is FAA policy that the ADO must not amend a state block grant to increase the grant amount. If the ADO does not issue all of the available funds to the state in the first grant of the fiscal year, the ADO must issue the remaining funds in one or more separate grants. If the state chooses to cover an eligible project overrun with AIP funds, the state must only do this with unused entitlements (following all applicable transfer rules per Paragraph 4-10), state apportionment, or discretionary from their open state block grants. Per FAA policy, states are prohibited from using unused discretionary for new projects. This policy

Table 5-28 Grant Amendment Limits for Increases

Type of Grant	Primary Airport Rules	Nonprimary Airport Rules
		aligns the use of discretionary between state block and non-state block grants. The only adjustment an ADO can make to the grant amount is a deobligation to remove any unused funds. Because the State Block Grant Program provides states with the flexibility to reobligate entitlement and state apportionment on new or existing projects, it will be rare for the ADO to deobligate these types of funds. However, for discretionary projects, if the state has not used unused discretionary toward existing projects, then the ADO must deobligate the unused discretionary at grant closeout. If the ADO needs to reduce the funding in the grant at closeout, a separate amendment is not required (the decrease is entered into the system when the closeout is initiated).

Table 5-29 Examples of Grant Amendments with Land Increases for a Nonprimary Airport

Some examples include…

Example 1

Nonprimary airport given a grant for development and land at 90% federal share.

Item	Original Project Cost	Grant Amount	Final Project Cost
Development	$800,000	$720,000	$800,000
Land	$200,000	$180,000	$260,000
Total	$1,000,000.00	$900,000.00	$1,060,000.00

Development: No change in development cost. Therefore, grant amount portion remains at $720,000.

Land: Total cost of land increases by $60,000. The grant amount may be increased by 25% of the difference between the final total project cost and the original total project cost of the land (($260,000-$200,000) x 25% = $15,000), or by 15% of the original federal share of the grant pertaining to the land ($180,000 x 15% = $27,000), whichever is greater. Consequently, the land portion of the original grant amount of $180,000 can be increased by $27,000 to $207,000.

Final Grant Amount: $720,000 + $207,000 = $927,000

Table 5-29 Examples of Grant Amendments with Land Increases for a Nonprimary Airport

Some examples include…

Example 2

Nonprimary airport given a grant for development and land at 90% federal share.

Item	Original Project Cost	Grant Amount	Final Project Cost
Development	$800,000	$720,000	$950,000
Land	$200,000	$180,000	$400,000
Total	$1,000,000.00	$900,000.00	$1,350,000.00

Development: Development cost increases by $150,000. The development portion of the grant amount can be increased by a maximum of 15%. Therefore, the maximum increase is ($720,000 x 15% = $108,000). The amended grant amount for development is $828,000.

Land: Total cost of land increases by $200,000. The grant amount may be increased by 25% of the difference between the final total project cost and the original total project cost of the land (($400,000-$200,000) x 25% = $50,000), or by 15% of the original federal share of the grant pertaining to the land ($180,000 x 15% = $27,000), whichever is greater. Consequently, the land portion of the original grant amount of $180,000 can be increased by $50,000 to $230,000.

Final Grant Amount: $828,000 + $230,000 = $1,058,000

Note: In this case, the amended total grant amount is increased by an amount which is more than 15% of the original grant amount.

Table 5-30 Appropriate Amendment Formats (See Appendix V)

The following format is appropriate…	When all of the following criteria apply…
a. Formal Amendment (FAA Form 5100-38)	If one or more of the following conditions exist: **(1)** The amendment will change the grant assurances. **(2)** The amendment will change the grant conditions. **(3)** A project within the grant is controversial. **(4)** A project within the grant is in litigation. **(5)** The amendment reduces the grant by equal to or more than $25,000 or 5% of the current approved grant obligation, whichever is greater, and the grant is not being closed out. (For a grant reduction at closeout, a separate amendment is not required because the decrease is entered into the system when the closeout is initiated.)

Table 5-30 Appropriate Amendment Formats (See Appendix V)

The following format is appropriate…	When all of the following criteria apply…
b. Final Payment Notification and FAA Final Project Report	**(1)** The ADO is basing the final grant amount upon the FAA final project report and completes the sponsor notification as outlined in Table 5-34. **(2)** The grant amount will be reduced, and the reduction is less than $25,000 or 5% of the current approved grant obligation, whichever is greater.
c. Multi-Year Amendment	**(1)** The sole amendment purpose is to add multi-year funding as described in the grant agreement.
d. Letter Amendment	**(1)** None of the above formats are applicable.

5-56. Procedure for the ADO to Process an Amendment.

After all of the criteria in Paragraph 5-54 have been met, the ADO processes the amendment using the steps in Table 5-31.

Table 5-31 Amendment Steps

The amendment steps are…
a. **Reductions as part of a closeout**. If the ADO is simply reducing the funding in the grant as part of the closeout and is not required to complete a formal or letter amendment per Table 5-30, the ADO must follow the steps in Table 5-34 instead of those in this table.
b. **Amendment Programming**. The ADO creates an amendment in the automated AIP system from an open grant. If the grant is closed, the ADO must reopen the grant following regional policy and/or approval. The amendment is then reviewed at the regional level. If the amendment is approved, it is then ready to begin the congressional notification process, if required. If congressional notification is not required, the amendment skips to the funds reservation step.
c. **Congressional Notification (if applicable).** If the grant amount is increased, the ADO may be required to send the amendment through the congressional notification process. APP-520 provides the criteria for sending an amendment through congressional notification process based on legislation and OST requirements.
d. **Funds Reservation (if applicable).** If amendment is to increase funds, the ADO must reserve the funds in the automated AIP system. The system generates an electronic FAA Form 1413-1, Request for Change in Reservation/Obligation. This is reviewed in the system at the regional level and if approved, the system forwards the request to the FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314) for AMK-314's acceptance. Once AMK-314 accepts the reservation in the system, the funds are officially reserved.

Table 5-31 Amendment Steps

The amendment steps are…
e. Recovery of Funds (if applicable). If the amendment is to decrease funds, the ADO must decrease the funds in the automated AIP system. The system generates an electronic FAA Form 1413-1, Request for Change in Reservation/Obligation. This is reviewed in the system at the regional level and if approved, the system forwards the request to AMK-314 for AMK-314's acceptance. Once AMK-314 approves the decrease, the system forwards the request to the FAA Office of Budget and Performance – Operations and Capital Execution Branch (ABP-410) for ABP-410 approval. Once ABP-410 approves the decrease in the system, the funds are officially recovered.
f. Amendment Offer. The ADO issues the amendment offer to the sponsor using the format required in Table 5-30.
g. Amendment Acceptance (if applicable). If a formal amendment is used, the sponsor and the sponsor's attorney must sign and return the executed amendment to the ADO. The sponsor's attorney *must* sign the amendment *after* the sponsor in order for the amendment to be properly executed. The amendment cannot be altered by the sponsor without ADO concurrence and issuance of another grant amendment. The sponsor must keep one executed amendment for its files.
h. AMK-314 Notification. If the funding amount has been changed, the ADO must send a scanned copy of the signed amendment to AMK-314.

Section 8. Grant Closeouts.

5-57. Grant Closeout Steps and Requirements.

In order for the ADO to close a grant, the ADO and sponsor must have completed three basic steps. These are:

a. Physically complete all projects in the grant (as discussed in Table 5-32).

b. Complete all grant administrative and financial requirements (as discussed in Table 5-33).

c. Complete the closeout processing steps (as discussed in Table 5-34).

It is FAA policy that these steps be completed in a timely manner, and that grants should not be open for more than four years from when the grant was issued. Grants open beyond four years may be subject to additional scrutiny by various offices within the federal government, may affect a sponsor's ability to receive new grants, and may require additional sponsor and ADO reporting requirements.

Table 5-32 Project Physical Completion Requirements

For the following type of project…	The project is not complete until the following requirements are met…
a. Planning	**(1)** The sponsor has submitted the final planning deliverable to the ADO. **(2)** The FAA has reviewed, accepted, or approved the planning document as applicable.
b. Land Acquisition	**(1)** The sponsor has obtained satisfactory property interest in all parcels included in the grant description. **(2)** The sponsor has submitted an updated Exhibit A to the ADO that properly reflects the land acquisition.
c. Equipment Acquisition	**(1)** The sponsor has full ownership of the equipment (must be delivered, installed, and tested in accordance with plans and specifications). **(2)** The FAA Air Traffic Organization (ATO) has completed all required commissioning, inspection, initial flight check, and/or acceptance requirements (if applicable to the project). **(3)** The sponsor has submitted any FAA required equipment inventory updates to the ADO.
d. Construction	**(1)** The ATO has completed all required commissioning, inspection, initial flight check, and/or acceptance requirements (if applicable to the project). **(2)** The sponsor has completed the final inspection and verifies that all punch list items have been addressed. **(3)** A complete and useable facility is fully available for its intended use (except in the case of phased projects). **(4)** The sponsor has received the as-built plans. The ADO has the option to require the sponsor to submit an electronic or paper copy of these plans to the ADO.

Table 5-33 Grant Administration Closeout Requirements

For the following item…	The ADO must verify that the following requirements are met prior to the ADO processing a grant closeout…
a. Standard Required Sponsor Documentation per 49 CFR § 18.50 (2 CFR § 200.343 Closeout)	**(1)** The sponsor has submitted all documentation required based on the sponsor's risk level and the type of project including the following closeout specific documentation: **(2)** The final Standard Form 425, Federal Financial Report (see Appendix V), equivalent. This requirement for a final Standard Form 425 is included in the instructions for this form. **(3)** An advance paper copy of the final Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs (see Appendix V), or equivalent, that summarizes the final project costs. The ADO may allow the use of a Standard Form 270, Request for Advance or Reimbursement (see Appendix V), for non-construction projects in lieu of Standard Form 271. This advance copy provides the information that the ADO needs to determine the final allowable project cost. Note that the sponsor will still have to make a final payment request once the ADO completes their determination. **(4)** The final vendor invoices (unless the final vendor invoice is less than $1,000). For state block grants, the ADO has the option to only require a list of subgrants that shows the projects and final project amounts as long as the state has obtained the final vendor invoices.
b. Additional Sponsor Documentation Required by the ADO	**(1)** The ADO has the option to require the sponsor to submit any other documentation the ADO determines necessary to support the grant closeout. This may include a formal closeout package or separate items such as a final construction report that summarizes major project issues, a summary of project events, a project timeline, a summary of any Department of Labor issues, and the final DBE participation rates.
c. Additional Sponsor Documentation Required by the ADO for AWOS projects	**(1)** The FAA must have determined that the AWOS has been successfully commissioned. **(2)** The sponsor must have provided the ADO with all commissioning documentation. **(3)** The sponsor must have provided the ADO with a copy of the Weather Message Switching Center reporting contract with the third party interface provider if the sponsor has a connection to the Weather Message Switching Center Replacement (WMSCR). (Note that AWOS-A, A/V, I and II are not eligible for reporting.)
d. Grant Special Conditions	**(1)** The sponsor has met all of the grant special conditions required to be accomplished during the grant.
e. Updated Airport Layout Plan	**(1)** The sponsor has updated the ALP to reflect that the project has been completed (vs. proposed). Not all projects are shown on the ALP (such as runway rehabilitation or equipment acquisition) and in those cases an ALP update is not required. This does not normally require additional airspace coordination.

Table 5-33 Grant Administration Closeout Requirements

For the following item…	The ADO must verify that the following requirements are met prior to the ADO processing a grant closeout…
f. Exhibit A	**(1)** The sponsor has updated the Exhibit A to reflect that the property acquisition has been completed.
g. Noise Land Inventory and Reuse Plan	**(1)** The sponsor has updated the Noise Land Inventory and Reuse Plan to reflect that the property acquisition has been completed. APP-400 maintains current guidance on noise land inventory and reuse plans.
h. Environmental Requirements	**(1)** All project related environmental requirements found in the environmental determination have been completed.
i. Program Income, Including Interest Earned	**(1)** The sponsor has identified any program income, including interest earned and liquidated damages on federal grant funds, in the Program Income section of Standard Form 425 Federal Financial Report (or equivalent). (See Appendix V.) **(2)** The sponsor must have deducted this income from the federal share of the grant.
j. Disputed Costs	**(1)** The sponsor has identified any disputed costs in the Remarks section of Standard Form 425, Federal Financial Report (or equivalent). (See Appendix V.) **(2)** If the sponsor and the contractor do not agree on the amount owed to the contractor, and the dispute is likely to go to court, the sponsor has only requested reimbursement for the amount that is not in dispute. **(3)** Following review of the sponsor's closeout documentation, the ADO may choose to continue with the project closeout or leave the grant open until all litigation is completed.
k. Overpayment	**(1)** If Standard Form 425, Federal Financial Report (or equivalent), indicates that payments have been made which exceed the federal share of the allowable costs, the sponsor must repay this amount. (See Appendix V.) **(2)** The ADO must notify the OIG if the ADO has reason to believe the overpayment was a deliberate attempt to defraud the FAA. **(3)** The ADO must notify the FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314) in writing of the overpayment. **(4)** The sponsor must send the ADO a check for the overpayment amount as directed by AMK-314.

Table 5-34 Closeout Processing Steps

The closeout processing steps are…
a. FAA Final Project Report. Once all of the project physical completion requirements in Table 5-32 and the grant administration closeout requirements in Table 5-33 have been met, the ADO must prepare an FAA final project report in accordance with the current guidance maintained by APP-520. The report will normally be prepared and signed by the ADO project manager. The report must then also be reviewed and signed by the regional division manager (the regional division manager may delegate the approval authority down, but the authority must remain at one level higher than the project manager in the chain of command). This constitutes a routine element of program checks and balances as required by OMB Circular A-123 (2 CFR § 200.343 Closeout and § 200.303 Internal Controls), Management's Responsibility for Internal Control.
b. Final Payment Notification. Once the ADO completes the FAA final project report, the ADO must provide a written notification to the sponsor. This notification must include: **(1)** the maximum obligation amount calculated in the FAA final project report, **(2)** the reason for any differences between the maximum obligation amount and the sponsor's requested amount, and **(3)** the FAA final project report. The ADO must place a copy of this notification in the grant file. Until the ADO completes the FAA final project report and completes this sponsor notification, the ADO must follow the requirements in Table 5-20 for payment within the last 10% of the federal share of the grant (or the last 10% of the estimated federal share of the grant after amendment, whichever is less). The ADO has the option of excluding a state block grant from this requirement only if the state is following this requirement for all of the subgrants within the state block grant and the ADO is confident that the state will submit the state block grant closeout documentation in a timely manner.
c. Amendments. If the ADO needs to change the work scope or increase the funding, the ADO must follow the amendment requirements and process listed in Paragraphs 5-54 and 5-55. If the ADO needs to reduce the funding in the grant, a separate amendment is not required (the decrease is entered into the system when the closeout is initiated).
d. Final Payment Request Approval. Once the ADO notifies the sponsor of the final payment amount and completes any necessary amendment actions, the sponsor must submit the final payment request through the currently approved Department of Transportation grant payment system.
e. Validation of Draw Downs. The ADO must not process a closeout in the automated AIP system until the sponsor has drawn down the entire final grant amount calculated in the ADO's final project report. The ADO must validate this by reviewing the draw downs on the grant in the current financial system being used by the FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314).

Table 5-34 Closeout Processing Steps

The closeout processing steps are…
f. Initiating Closeout. After the ADO has validated the drawdowns, the ADO must initiate a closeout in the automated AIP system for the grant. The ADO can reduce the grant amount at this time to reflect the final project cost. The closeout is then reviewed at the regional level. If it is approved, the system will generate an electronic FAA Form 1413-1, Request for Change in Reservation/Obligation (if the grant is decreased) and will send the decrease (if applicable) and closeout request to AMK-314. The ADO has the option of printing this form and placing a copy in the grant file, however, this is not mandatory because the form is retained in the automated AIP system.
g. AMK-314 and the FAA Office of Budget and Performance – Operations and Capital Execution Branch (ABP-410) Review and Acceptance. Once AMK-314 makes any necessary funding adjustments in their financial system and approves the closeout; and all recoveries (if applicable) are approved in the automated AIP system by ABP-410; the grant is officially closed in the automated AIP system.
h. Grant Closeout Letter. After AMK-314 and ABP-410 review and acceptance is complete, the ADO must notify the sponsor of the grant closeout in writing. This closeout letter must include the grant closeout date and the final grant amount. The ADO must send a scanned copy of this letter to AMK-314 and include a copy in the grant file.
i. Printing FAA Form 5100-107, Airport Improvement Program Form (also called AIP Grant Status Report). At this point, the ADO has the option of printing the FAA Form 5100-107, Airport Improvement Program Form (also called AIP Grant Status Report) generated by the automated AIP system and placing the form in the file. However, this is not mandatory because a current version of the form containing the grant history is retained in the automated AIP system.

5-58. Block Grant Closeout.

In order for the ADO to close a block grant, the ADO and block grant sponsor must have completed two basic steps as shown in Table 5-35: It is FAA policy that these steps be completed in a timely manner, and that grants should not be open for more than four years from when the grant was issued. State block grants open beyond four years may be closed by the ADO. The ADO may extend the four year term upon reasonable request by the state block grant sponsor.

Table 5-35 Block Grant Closeout Requirements.

In order for the ADO to close a block grant, the ADO and block grant sponsor must have…
a. Physically, administratively, and financially closeout all of the projects that are in the block grant.
b. Followed the requirements in the block grant master agreement regarding which documents must be submitted to the ADO and which documents must be retained by the sponsor.

Section 9. Grant Suspension and/or Termination.

5-59. Reasons for Possible Grant Suspension or Termination.

Table 5-36 includes examples of when the ADO would consider suspending or terminating a grant. Note that for civil rights violations and non-compliance issues, there are additional legislative requirements. The FAA Office of Civil Rights (ACR) and ACO-100 are responsible for providing the ADO with direction on meeting these requirements.

In addition, if the suspension or termination of the grant will involve withholding an existing grant payment request, the ADO must follow the requirements in Paragraph 5-47.

Table 5-36 Examples of Reasons for Grant Suspension or Termination

Some examples include…	
a.	The circumstances that justify the project no longer exist.
b.	The sponsor has not incurred any cost on the project and has requested that the grant be deferred.
c.	The ADO has determined that progress on the project has stopped.
d.	The ADO has determined that the project cannot be commissioned and accepted into the National Airspace System.
e.	The ADO has determined that the sponsor has not met the requirements of a grant special condition.
f.	ACO-100 has notified the ADO that the sponsor is in non-compliance and has advised the ADO to suspend or terminate the grant. The applicable compliance requirements are contained in 14 CFR part 16, Rules of Practice for Federally-Assisted Airport Enforcement Proceedings, and the current version of FAA Order 5190.6, FAA Airport Compliance Manual.
g.	The FAA Office of Civil Rights (ACR) has determined that the sponsor has violated a civil rights requirement and has advised the ADO to suspend or terminate the grant. This is because ACR, not the ADO, is the point of contact for civil rights enforcement procedures, while the ADO normally handles any required grant suspension or termination procedures.

5-60. Suspension of a Grant.

The ADO may suspend the grant in whole or in part if the sponsor fails to comply with conditions of the grant. The ADO does this through a written notice to the sponsor. Costs incurred by the sponsor on the grant project after the sponsor has received the suspension notice are not allowable, unless specifically authorized in writing by the ADO. The ADO may allow costs which are otherwise allowable and could not be avoided during the period of suspension. The notice of suspension must contain the following:

a. The reasons for the suspension and the corrective action necessary to lift the suspension.

b. A date by which the corrective action must be taken.

c. Notification that the sponsor has a right to request that the Associate Administrator for Airports (ARP-1) reconsider the suspension or termination.

d. Notification that the ADO will be giving consideration to terminating the grant if the sponsor does not take the corrective action by the required date.

In addition, if the suspension of the grant will involve withholding an existing grant payment request, the ADO must follow the requirements in Paragraph 5-47.

5-61. Termination for Cause.

The ADO may unilaterally terminate the grant for cause if the sponsor fails to comply with the conditions of the grant. This is done by written notice to the sponsor. The ADO must use the following procedures for termination:

a. First, the ADO must have already suspended the grant.

b. The ADO must only use factual and objective language in all correspondence which may lead to termination for cause.

c. The ADO must send a written notification of the proposed termination to APP-1 and ACO-100 at the earliest possible opportunity. The ADO must also forward a copy of the notice of suspension and the ADO assessment of the sponsor's action to remedy the situation to APP-500 and ACO-100.

d. Upon receipt, ACO-100 will acknowledge the proposed termination to the ADO via telephone or e-mail. Within 30 days of ACO-100's acknowledgement, ACO-100 will notify the ADO, in writing, of the procedures to be followed.

e. The ADO must notify the sponsor of the termination in writing. This notice must include the reasons for the termination and must inform the sponsor of their right to request the Associate Administrator (ARP-1) reconsider the suspension or termination.

f. The ADO must ensure that payments or recoveries of payments under the grant are in accordance with the legal rights and liabilities of all parties involved.

g. ACO-100 may require the ADO to provide further coordination and action as a result of the termination for cause in accordance with 14 CFR part 16, Rules of Practice for Federally-Assisted Airport Enforcement Proceedings, and the current version of FAA Order 5190.6, FAA Airport Compliance Manual.

h. The FAA Office of Civil Rights (ACR) may require the ADO to provide further coordination and action as a result of the termination for cause in accordance with the applicable civil rights requirements.

In addition, if the termination of the grant will involve withholding an existing grant payment request, the ADO must follow the requirements in Paragraph 5-47.

5-62. Termination for Convenience.

The ADO has the option of terminating a grant for convenience if there is no beneficial reason to continue the project. This can be initiated by either the ADO or the sponsor. Termination for convenience requires:

a. A written agreement that details the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.

b. The termination agreement must state that the sponsor may not incur new obligations for the terminated portion of the grant after the effective date and must cancel as many obligations relating to the termination as possible.

c. The ADO can reimburse the sponsor for allowable project costs that were incurred prior to the effective cancellation date if, in the opinion of the ADO, incurring the costs was unavoidable and could not be canceled.

In addition, if the termination of the grant will involve withholding an existing grant payment request, the ADO must follow the requirements in Paragraph 5-47.

Section 10. Post-Grant Actions.

5-63. Sponsor Records Retention.

49 CFR § 18.42 (2 CFR § 200.333 to 200.337 Record Retention and Access) requires that a sponsor retain all grant related documentation for three years after the sponsor submits the final payment request. If a sponsor becomes involved in litigation or other action involving the records, the sponsor must retain the records until the issue is resolved or the end of the three year period, whichever is later.

Sponsors are also required to provide copies of this documentation upon request to the FAA, the DOT Office of Inspector General (OIG), General Accountability Office and independent auditors acting on behalf of those offices, and independent auditors under the Single Audit Act of 1984. Table 5-37 contains examples of documentation that the sponsor must retain.

Table 5-37 Examples of Documents that a Sponsor Must Retain

Some examples include…	
a.	Invoices and inspection reports for third party contracts and suppliers.
b.	Detailed employee pay records (including supporting labor distribution records) for force account work.
c.	Detailed labor distribution for project administration costs.
d.	Records of land purchases (including relocation costs).

5-64. ADO Records Retention.

The ADO must retain grant records according to the requirements of the current version of FAA Order 1350.15, Records Organization, Transfer, and Destruction Standards.

5-65. Reopening Grants.

In extraordinary circumstances, a grant can be reopened by the ADO if the ADO finds that the sponsor has either not been reimbursed for allowable costs or has been reimbursed for costs that are not allowable. The ADO must notify APP-520 in writing before the ADO reopens any closed grant explaining the reason that this action is necessary.

5-66. Audit Requirements.

OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations (2 CFR 200 Subpart F, Audit Requirements), establishes audit requirements for states, local governments, and non-profit organizations receiving federal funding, which includes AIP. Table 5-38 contains the guidance on when AIP audit are required by entity, including privately owned sponsors that do not fall under OMB Circular A-133(2 CFR 200 Subpart F, Audit Requirements § 200.501 Audit Requirements).

A grant can be audited at any time whether the grant is open or closed. Audit standards and requirements are included in 49 CFR part 18 (2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards) and in the Single Audit Act of 1984. Revenue use compliance reviews are also required as part of the ACO-100 requirements and are discussed in the current version of FAA Order 5190.6, FAA Airport Compliance Manual.

The ADO has the option of requesting that the OIG conduct additional audits where the ADO determines a need exists. Examples of reasons for the ADO to request an additional audit include where there is evidence of financial discrepancies or evidence of an unusual financial situation.

Table 5-38 Requirements for AIP Audits by Entity

For the following entity…	The following audit requirements apply…
a. Publicly Owned Sponsor	If the sponsor expends federal grants for more than $500,000 in a fiscal year in federal funding, the sponsor must have a single or program-specific audit conducted for that fiscal year. This $500,000 requirement applies to all federal funding, not just AIP.
b. Block Grant Subgrant Recipient	If the sponsor expends federal grants for more than $500,000 in a fiscal year in federal funding, the sponsor must have a single or program-specific audit conducted for that fiscal year. This $500,000 requirement applies to all federal funding, not just AIP. For block grant states, it is the opinion of the FAA that the airport receiving the subgrant, not the state, is responsible for obtaining the single audit. The airport that received the subgrant must report the grants on their Schedules of Expenditures of Federal Awards (see OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations (2 CFR § 200.331 Requirements for pass-through entities.)). The airport must report the grant on their Schedules of Expenditures of Federal Awards as subrecipients.
c. Block Grant State	For block grant states, it is the opinion of the FAA that block grant states are responsible for ensuring the airports under the block grant obtain single audits, if required. For block grant states, both the state must report the grants on their Schedules of Expenditures of Federal Awards (see OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations (2 CFR § 200.331 Requirements for pass-through entities.)). The states must report the grants to airports as a pass through.
d. Privately Owned Sponsor	OMB Circular A-133 (2 CFR 200 Subpart F, Audit Requirements) does not apply to privately owned sponsors. However, the ADO must require the privately owned sponsor to have an audit of the grant conducted for all but the most basic projects (such as acquisition of a snow removal vehicle). The ADO must include a special condition in the grant to require this. APP-520 maintains a current list of special conditions. This audit must be conducted at the completion of the project and must be done in accordance with accepted standard audit practices. The sponsor must provide copies to both the ADO and the OIG.

5-67. Disposal of AIP Funded Equipment.

The criteria for a sponsor to dispose of equipment that is no longer needed, is being replaced, or has exceeded its useful life (per Paragraph 3-12) are listed in Table 5-39. The criteria are consistent with 49 CFR § 18.32 (2 CFR § 200.33 Equipment). A sponsor can determine the fair market value by advertising the equipment to determine the amount a willing purchaser would pay, or by hiring an accredited appraiser.

Table 5-39 Criteria for Disposing or Replacing AIP Funded Equipment

If the equipment is…	And the fair market value is…	The following applies…
a. Retained by the airport (for any use) or donated or sold to any another entity	Less than $5,000.	No reimbursement to the FAA is required.
b. Retained and used for airport purposes	$5,000 or more.	No reimbursement to the FAA is required. No AIP funds may be used to provide building space for this equipment.
c. Retained and used for non-airport purposes	$5,000 or more.	Reimbursement to the FAA is required (for an amount equal to the fair market value multiplied by the current federal share). The reimbursement to the FAA is accomplished by the ADO reducing the total project cost of the next grant received by the sponsor by an amount equal to the total fair market value of the equipment. No AIP funds may be used to provide building space for this equipment.
d. Donated at no cost to another sponsor and the equipment is both eligible and justified at the receiving airport	$5,000 or more.	The grant obligations for the equipment are transferred to the other sponsor. No reimbursement to the FAA is required.
e. Sold (at fair market value or less) to another sponsor and the equipment is both eligible and justified at the receiving airport	$5,000 or more.	*This is not the preferred scenario. Donation of the equipment is a much more effective way to transfer the equipment.* The grant obligations for the equipment are transferred to the other sponsor. Reimbursement to the FAA is required (for an amount equal to the fair market value multiplied by the current federal share). The reimbursement to the FAA is accomplished by the ADO reducing the total project cost of the next grant received by the sponsor by an amount equal to the total fair market value of the equipment. The purchasing airport may request a grant for the purchase price, provided the equipment meets FAA specification and has an acceptable useful life based on the purchase price.

Table 5-39 Criteria for Disposing or Replacing AIP Funded Equipment

If the equipment is…	And the fair market value is…	The following applies…
f. Sold (at fair market value or less) or donated to a non-eligible entity	$5,000 or more.	Reimbursement to the FAA is required (for an amount equal to the fair market value multiplied by the current federal share). This reimbursement amount is required even if the equipment was donated at no cost or sold for less than fair market value. The reimbursement to the FAA is accomplished by the ADO reducing the total project cost of the next grant received by the sponsor by an amount equal to the total fair market value of the equipment.

5-68. Disposal of Excess/Unneeded AIP Funded Land (and ADO/Sponsor Tracking).

49 USC § 47107(c)(2) requires a sponsor to promptly dispose of AIP funded land when the land is no longer needed for airport purposes. In this specific case, airport purpose includes land is needed for an existing or future aeronautical purpose (including runway protection zone) or that serves as noise buffer land.

If the ADO determines that the land is no longer need for these purposes, the sponsor has the choice of either selling or keeping the land for non-airport purposes. In either case, the sponsor must use the federal share of the fair market value on projects in the order of precedence listed in Table 5-40 per 49 USC § 47107(c)(4). This is done outside of the grant process and requires a land release approval from the ADO (see the current version of FAA Order 5190, FAA Airport Compliance Manual). The ADO must also review and approve or disapprove the sponsor's choice of how to apply the funding prior to the funds being used for sponsor's requested purpose.

APP-400 and ACO-100 maintain current guidance on the ADO and sponsor requirements for tracking and disposal of AIP acquired land. APP-400 and ACO-100 also maintain current guidance for disposal of land funded with either Federal Aid to Airports Program (FAAP) or Airport Development Aid Program (ADAP).

Table 5-40 Order of Precedence for Applying Sale Proceeds of AIP Funded Land

Order of precedence to apply the federal share of the fair market value is…
(1) Reinvestment in an approved noise compatibility project.
(2) Reinvestment in an approved project that is eligible for funding under 49 USC § 47117(e). The only projects in this section of the law are projects eligible for noise and environmental set aside funding. A complete list of projects eligible for noise and environmental set aside funding is contained in Paragraph 4-7.
(3) Reinvestment in all other approved airport development projects at the airport.
(4) Transfer to a sponsor of another public airport for a noise compatibility project at the other airport.
(5) Send the ADO a check as directed by the FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314) for deposit in the Airport and Airway Trust Fund.

Chapter 6. What special AIP programs are available?

Section 1. Letters of Intent.

6-1. Relevant AIP Legislation (Referred to as the Act).

References to the Act in this Handbook are based on the AIP related legislation contained in the United States Code (USC), as defined in Appendix A.

6-2. Overview.

A Letter of Intent (LOI) is a formal document issued by the ADO that states an intention to provide future funding (using appropriate entitlements or apportionments, discretionary or funds from the small airport fund). The LOI is limited to airport development projects (including project formulation costs) at primary and reliever airports. It is further limited to projects that enhance or preserve capacity. 49 USC § 47110(e) gives the FAA the authority to issue LOIs and describes the requirements and prescribes the limitations on the use of the LOI.

The LOI establishes a schedule for future AIP funding, subject to annual appropriations and availability of funds. A sponsor who has received an LOI may start the project without waiting for individual AIP grants. Allowable project costs are eligible for reimbursement, subject to the payment schedule set forth in the LOI.

The LOI process is rigorous and requires early coordination and a full understanding of the submission and evaluation criteria by all parties involved. This section of the Handbook discusses the regulatory requirements. In addition, APP-510 maintains current guidance on the sponsor application, evaluation criteria, and other administrative requirements.

6-3. LOI Funding Rules and Policy.

Table 6-1 contains the unique funding rules and policy that apply to LOIs.

Table 6-1 LOI Funding Rules and Policy

Unique LOI funding rules and policy include…
a. LOI Budget. Per 49 USC § 47110(e)(4), the FAA must reserve a reasonable amount of AIP funding for grants not covered by LOIs. APP-510 meets this requirement by annually establishing an LOI budget that it uses to establish future LOI payment schedules.
b. Scheduling LOI Payments beyond the Fiscal Year of the Current AIP Authorization. The Department of Transportation and Related Agencies Appropriations Act, 1989 (Section 334 of Public Law 100-457) allows the FAA to issue an LOI with payments scheduled beyond the statutory expiration of the current AIP authorization.

Table 6-1 LOI Funding Rules and Policy

Unique LOI funding rules and policy include…
c. Use of Airport Entitlements. It is FAA policy for a sponsor to commit all of the airport entitlements over the life of the LOI to the project unless APP-500 and the ADO agree otherwise. If during any given year a sponsor's entitlements vary from the amount approved in the LOI schedule for that year: **(1) Fiscal Year Entitlements Less than LOI Schedule**. The ADO cannot increase the discretionary funds to compensate for the shortfall. Instead, the sponsor is expected to make up the shortfall with entitlements from a future year. **(2) Fiscal Year Entitlements More than LOI Schedule**. The ADO and sponsor can jointly decide to apply the funds to other higher priority projects during that fiscal year, carry over the funds to the following fiscal year, or add them to that year's annual payment (reducing the entitlements that need to be applied to the LOI in future years).
d. Use of Discretionary. It is FAA policy that the total of discretionary funds in all LOIs subject to future obligation is limited to approximately 50% of the forecast discretionary funds available for that purpose. Depending on the size of airport, the discretionary funding may be drawn from the Capacity/Safety/Security/Noise fund, the Small Airport Fund, or the Remaining Discretionary fund.
e. Use of Passenger Facility Charges. Per 49 USC § 47110(e)(5), the FAA is restricted from requiring a sponsor to impose a passenger facility charge for the project in order to obtain a letter of intent.
f. Reimbursing with Discretionary. The ability to reimburse with discretionary funds under an LOI is discussed in Paragraph 3-100.
g. Change to Nonprimary Airport Status. Per 49 USC § 47108(e)(1), if a primary airport changes to a nonprimary airport when a development project approved under an LOI is underway, the project remains eligible for discretionary funds.

6-4. LOI Project Criteria by Airport Type.

49 USC § 47110(e) gives the FAA the authority to issue the LOI's for projects that enhance or preserve capacity at primary and reliever airports. By FAA policy, LOI projects must meet the criteria listed in Table 6-2. All of the other project funding requirements in Chapter 3 apply, including the restriction on using AIP funds for interest payments.

A project under an LOI must also satisfy all statutory and administrative requirements for an AIP project. Sponsors must proceed as though they had applied for and been awarded AIP funds and must fulfill all environmental, civil rights, bidding, procurement, and contracting requirements associated with an AIP grant, even though portions of the work may proceed in advance of receiving AIP funds.

Table 6-2 LOI Project Criteria by Airport Type

For the following type airport…	The following criteria apply…
a. Large and Medium Hub	**Capacity Enhancing Projects:** **(1) Airfield Capacity Enhancement.** The proposed project must enhance airfield capacity by increasing aircraft movements, increasing aircraft seating or cargo capacity (including a different aircraft design group), or reducing airfield delays. **(2) Supporting Infrastructure.** LOI projects must only include other AIP-eligible infrastructure that is logically necessary to complete the LOI project. In many cases this will be something that is physically required, such as acquiring land to complete a runway extension. However, in some cases, project components may not be physically required but logically necessary. For example, when extending a runway it may also be necessary that the parallel taxiway be extended to ensure the full operational benefits of the runway extension are successfully realized. While the taxiway extension is not physically required, it is logically necessary because it links to the operational efficiency of the LOI project. **(3) Non-Supporting Infrastructure.** The LOI project must not include project components that, while completed concurrently because of convenience, are not logically necessary for the completion of the LOI project or for realizing the benefits of the LOI project. **(4) Aprons.** New apron areas must increase airfield capacity. However, aprons have historically competed less favorably for LOIs than runway or taxiway projects. **(5) System Capacity**. Per 49 USC § 47110(e)(2)(C), APP-510 must determine that the project will significantly enhance system-wide airport capacity. **(6) Ineligible Rehabilitation or Reconstruction Projects.** Rehabilitation or reconstruction projects undertaken solely to extend the life of existing pavement does not satisfy the system capacity statutory requirement. **(7) Eligible Reconstruction Projects.** Reconstruction of an existing runway or taxiway must strengthen or relocate/shift the pavement and result in a capacity enhancement by: **(a)** Increasing aircraft movements, increased aircraft seating or cargo capacity (including accommodating a different aircraft design group), or reduced airfield delays. **(b)** Creating an added arrival stream or reducing dependency between arrival streams. **(c)** Eliminating intersecting runways. **(d)** Improving departure, approach, or missed approach procedures.

Table 6-2 LOI Project Criteria by Airport Type

For the following type airport…	The following criteria apply…
b. Small Hub, Non Hub, Reliever	**Airfield Capacity Enhancing Projects:** **(1) Airfield Capacity Enhancement.** The proposed project must enhance airfield capacity by increasing aircraft movements, increasing aircraft seating or cargo capacity (including a different aircraft design group), or reducing airfield delays. **(2) Supporting Infrastructure.** LOI projects must only include other AIP-eligible infrastructure that is logically necessary to complete the LOI project. In many cases this will be something that is physically required, such as acquiring land to complete a runway extension. However, in some cases, project components may not be physically required but logically necessary. For example, when extending a runway it may also be necessary that the parallel taxiway be extended to ensure the full operational benefits of the runway extension are successfully realized. While the taxiway extension is not physically required, it is logically necessary because it links to the operational efficiency of the LOI project. **(3) Non-Supporting Infrastructure.** The LOI project must not include project components that, while completed concurrently because of convenience, are not logically necessary for the completion of the LOI project or for realizing the benefits of the LOI project. **(4) Aprons.** New apron areas must increase airfield capacity. However, aprons have historically competed less favorably for LOIs than runway or taxiway projects. **Airfield Capacity Preservation Projects** **(1) Eligible Rehabilitation or Reconstruction Projects**. Rehabilitation or reconstruction projects must either enhance or preserve capacity. However, rehabilitation and reconstruction projects to preserve capacity have historically competed less favorably for LOIs than those that will enhance capacity.

6-5. LOI Approval/Disapproval Process.

The FAA's process for evaluating LOI requests is principally a financial planning process rather than grant administration. Formal grant applications will still be required for each year once an LOI is awarded, based on the LOI payment schedule and subject to the availability of funds. The current process, as of the publication date of this Handbook, is contained in Table 6-3. APP-510 also maintains a timeline diagram for the LOI process that is available upon request.

Table 6-3 LOI Approval/Disapproval Process

The steps in the LOI process include…
a. Early FAA/Sponsor Coordination. Any sponsor interested in pursuing an LOI must contact their ADO as early as possible, generally at least five to six months before the LOI request deadline of March 1. The ADO must then brief the sponsor on all aspects of LOIs, including the LOI request process, evaluation criteria and submission requirements. The ADO is the primary contact for the sponsor regarding an LOI.
b. Joint Meeting. The ADO has the option to hold a joint meeting so that the ADO, the regional office, APP-510, the sponsor, and the sponsor's consultant understand the purpose and scope of the project, FAA authority and policy, and sponsor financial needs, schedules, and responsibilities. This joint meeting will normally include a discussion of the evaluation criteria including the relationship between the FAA's Terminal Area Forecast (TAF) and the sponsor's forecast assumptions and level of effort to be used in their financial planning and Benefit-Cost Analysis.
c. Benefit-Cost Analysis. The FAA recommends that sponsors submit the Benefit-Cost Analysis (BCA) for the proposed action to the ADO as far in advance of the LOI request as possible, but no later than March 1. This is because the review of the BCA may take more than six months and could delay the LOI decision. The BCA process for capacity projects is contained in Paragraph 3-14.
d. ADO Notification to APP-510. Per FAA policy, APP-510 requests a list of LOI candidates from the regional offices early in the fiscal year. Regional offices must coordinate with the ADOs and provide the list to APP-510 in the time frame requested by APP-510. In addition, the ADO must notify the regional office, and the regional office must notify APP-510 promptly when a sponsor that is not on this list expresses interest in obtaining an LOI. Preliminary information provided to APP-510 must include a general description of the project, the estimated cost, the proposed schedules for construction and reimbursement, and an indication of whether the project is a good candidate for an LOI.
e. Sponsor Submits LOI Request. It is FAA policy for sponsors to submit LOI requests to the ADO on or before March 1. The LOI review committee will normally review and either approve or disapprove the request by end of the same fiscal year. If a sponsor submits an LOI request after March 1, the LOI review committee will normally not review the request until the following fiscal year. The LOI review committee also has the option to review incomplete or partial requests on a case by case basis.
f. ADO Review. The ADO and regional office will prepare an overview, assessment and preliminary recommendation for Headquarters consideration, within 30 days of receiving an LOI request unless an extension is requested of and approved by APP-510 in advance. The ADO must use the most current LOI evaluation tool required (and maintained) by APP-510.

Table 6-3 LOI Approval/Disapproval Process

The steps in the LOI process include…
g. Committee Review. The FAA will establish a national-level committee each year to review LOI requests to ensure that all statutory requirements have been met, and to advise the FAA Associate Administrator for Airports (ARP-1) and the FAA Director of the Office of Airport Planning and Programming (APP-1) on the selection of LOI proposals. The committee will be composed of representatives of the FAA Office of Airports (ARP). The committee is chaired by APP-510 and may include ARP representatives from APP-510, APP-520, and an ARP regional division manager (or designee) with no LOI candidate in the current year. The committee may also include representation by the FAA Office of Aviation Policy and Plans (APO), the FAA Air Traffic Organization (ATO) and/or other FAA offices, as determined by the committee chair. The committee may recommend that APP-510 request additional information from the sponsor, and/or additional assessment from the ADO or regional office.
h. LOI Selection. After receiving the recommendations from the LOI Committee, ARP-1 makes the official selections.
i. LOI Programming. After ARP-1 selects the sponsors that will receive LOIs, APP-500 coordinates the LOI sign-off package within Headquarters including the FAA Office of Government and Industry Affairs (AGI). The LOI package contains a draft of the LOI documents, a memorandum from APP-500 to the regional division manager containing documentation of the FAA's review and proposed LOI approval, and the unsigned congressional notification letters.
j. DOT Office of the Secretary (OST) Coordination. APP-500 forwards the LOI sign-off package electronically to OST including the unsigned congressional notification letter.
k. Congressional Notification. For new or amended LOIs that exceed $10,000,000, OST must send the signed congressional notification letter to the Committees on Appropriations of the Senate and the House of Representatives; the Committee on Commerce, Science, and Transportation of the Senate; and the Committee on Public Works and Transportation of the House of Representatives of the proposed LOI. This requirement is contained in a note in the Department of Transportation and Related Agencies Appropriations Act, 1993 (Public Law 102-388, title III § 320). The FAA interpretation of this requirement is that OST must notify these parties of the new or amended LOI and may proceed if no legislation is passed to prohibit the LOI within 30 days after notification. OST electronically notifies the FAA when this process is complete.
l. LOI Decision Memorandum. When the congressional notification process is complete, APP-510 will officially prepare a memorandum that establishes the LOI funding level and provides supporting information for the decision.
m. LOI Offer. The ADO will issue the LOI to the sponsor when APP-510 has provided the ADO with the LOI Decision Memorandum. The same official who normally signs a grant offer for the FAA will be the official who signs the LOI offer.
n. ADO Issues Initial LOI Grant. APP-520 normally schedules the initial LOI grant for the fiscal year following the year in which the application was received unless the approval of the LOI is delayed beyond the end of the fiscal year. However, as allowed by 49 USC § 47110(e)(6), APP-500 has the option to schedule the initial LOI grant during the same fiscal year that the LOI is approved.

6-6. Sponsor LOI Submission Requirements.

Per FAA policy, sponsors must submit one hard copy and one electronic copy of the documentation listed in Table 6-4 to the ADO.

Table 6-4 Sponsor LOI Submission Requirements

The sponsor must provide…
a. Executive Summary. This summary must include an overview of the existing airport's facilities and operating environment, along with an overview of the proposed capital project or program to be supported by the requested LOI.
b. Description of the Existing Problem. This description must focus on the capacity constraints of the existing facilities relative to existing or projected demand.
c. Description of System-Wide Airport Capacity Enhancement (required for Large and Medium hub airports). This description must include how the proposed action will meet the requirement for a significant system-wide capacity enhancement. Sponsors must not construe this to refer solely to throughput capacity for major airline hubs. Sponsors may rely upon any one or more of several factors that the FAA may then consider in making this determination. Examples include, but are not limited to, physical airport improvements that result in or support one or more of the following. Reduction of required minimums will not generally be considered sufficient evidence, on its own, to represent a significant system-wide airport capacity enhancement. **(1)** Capacity increase in annual operations, either in Visual Flight Rules (VFR) or Instrument Flight Rules (IFR) conditions or both. **(2)** Increase in airport service volume by the addition of a new runway, elimination of runway intersections or other airfield operational constraints. For large hub airports, sponsors will need to demonstrate that the capacity benefits are real, measurable and significant. One of the FAA's performance targets is to increase annual service volume nationally by, on average, 1% per year. Large hub airport sponsors should consider discussing how a proposed LOI project will contribute to achieving this target. **(3)** Increase in hourly *call rates* (i.e., local tower acceptance rates in terms of hourly arrivals and departures). **(4)** Delay reduction relative to existing or forecast levels, either at the individual airport or among multiple airports serving the same geographic area. **(5)** Projected delay savings as a percentage of existing delays at the airport, or as a percentage of all national delays. **(6)** Delay reduction that can be shown to enhance airline schedule reliability, even if the project does not lead to substantial increases in operations. **(7)** Creation of an additional arrival stream or reduced dependency between arrival streams. **(8)** Regional distribution of demand from one or more capacity-constrained or significantly delayed airports. **(9)** Elimination of a demonstrable capacity constraint for an airport serving a region or metropolitan area where population or economic growth has exceeded growth in available departing seats or cargo capacity. **(10)** Increase in the maximum stage-length that can be served from the airport.

Table 6-4 Sponsor LOI Submission Requirements

The sponsor must provide…
d. Description of the Sponsor's Forecast. This description must include both summary and detailed information on enplanements and operations. If applicable, the description must also include details of the fleet mix, the peak hour airfield mix by class, and the airline load factors. The sponsor must provide a clear discussion of how the forecasts were derived and their key assumptions.
e. Description of the Proposed Action. This description must focus on how the proposed action will provide additional capacity. For large and medium hub airports, this description must also explain how the proposed action will enhance system-wide airport capacity.
f. Description of the Capital Cost Estimates. This description must delineate the level of planning or design data on which the estimates are based, the source of quantities and unit costs, and the levels of contingency assigned. The ADO has the option to request that the sponsor secure the services of an independent consultant to conduct a formal cost estimate review, including unbiased quantity calculations, estimates of unit costs and determination of appropriate contingency levels based on the level of design information available.
g. Status of and Schedule for the ALP Approval. If the sponsor has not submitted an ALP depicting the proposed action by March 1, the sponsor must provide a schedule to the ADO that clearly demonstrate that the FAA will be able to approve the ALP by September 30. This schedule must include sufficient time for full aeronautical study and airspace determination and all required coordination.
h. Status of Environmental Decision and Required Federal/State Permits. If the FAA has not completed the environmental decision or the sponsor has not obtained the required federal/state permits, the sponsor must provide a status/schedule of when this will be accomplished. If an FAA environmental decision is required, the schedule must demonstrate the FAA has sufficient time to issue an environmental decision by August 1. If the schedule suggests a date later than August 1, the sponsor should consider deferring the LOI request to the following year.
i. LOI Application Financial Template and Supporting Documentation. The LOI Application Financial Template (see Appendix V for template and instruction) must document all of the proposed funding sources and amounts. If additional approvals or other actions are required for any funding type (such as for Passenger Facility Charges or General Airport Revenue Bonds) the sponsor must include the status. Using the LOI Application Financial Template, the sponsor must clearly outline all sources and amounts of financing for the proposed project as well as for all other anticipated capital projects during the life of the LOI request. The Finance Template also provides an opportunity for sponsors to discuss alternative LOI disbursement schedules and how those alternatives might impact the overall financial plan.
j. Description of the Financial Plan for Other Capital Needs. The sponsor must discuss other significant capital costs identified in the LOI Application Financial Template beyond the proposed action to enable the FAA to identify whether the funding plan for the proposed action is viable.

Table 6-4 Sponsor LOI Submission Requirements

The sponsor must provide…
k. Benefit-Cost Analysis (BCA). If not submitted previously, the sponsor must include a BCA that was prepared in accordance with the FAA Airport Benefit-Cost Analysis Guidance (see Appendix B for link). This information must include all data necessary to explain the assumptions regarding existing and proposed facilities and operational parameters. For a project over $50 million dollars, it may also be beneficial for the sponsor to conduct detailed simulation modeling. The FAA has the option to require this if they feel the complexity of the project warrants it. Sponsors must recognize that the total project cost used in the BCA may be more than that of the proposed LOI project. This is necessary if the additional project components are required to realize the benefits of the proposed action. For example for an LOI for a new runway, the BCA may need to include taxiway and other airfield improvements to realize the benefits of the new runway.

6-7. Evaluation Criteria.

49 USC § 47115(d)(1) contains the six criteria that the FAA must use when selecting capacity enhancement projects for discretionary funding. The FAA interprets 49 USC § 47110(e) to require the FAA to use these criteria, which are listed in Table 6-5, for LOI evaluation.

APP-510 maintains review guidance and an LOI evaluation tool that must be used by the ADOs and regional offices to complete their evaluations. The purpose of the LOI evaluation tool is to ensure a consistent review process throughout the FAA Office of Airports.

Table 6-5 Criteria for Selecting LOI Projects

The criteria, which are used by the FAA to evaluate LOI projects, are….
a. The effect that the project will have on overall national transportation system capacity.
b. The benefit and cost of the project, including, in the case of a project at a reliever airport, the number of operations projected to be diverted from a primary airport to the reliever airport as a result of the project, as well as the cost savings projected to be realized by users of the local airport system.
c. The financial commitment from non-United States Government sources to preserve or improve airport capacity.
d. The airport improvement priorities of the States to the extent such priorities are not in conflict with items a and b in this table.
e. The projected growth in the number of passengers or aircraft that will be using the airport at which the project will be carried out.
f. The ability of the project to foster United States competitiveness in securing global air cargo activity at a United States airport.

6-8. LOI Offer Package.

An LOI Offer Package is normally comprised of two documents, the cover letter and the LOI Offer. Both documents are developed by APP-510 and signed by the ADO. Per FAA policy required contents of this LOI Offer are included in Table 6-6.

In addition, the ADO has the option to include any additional guidance or information that the ADO deems necessary. For example, the ADO may wish to include a spreadsheet with a detailed cost breakdown that shows the project component costs that are included in the proposed action and/or a project sketch that clearly shows the approved project components.

Table 6-6 LOI Offer Contents

APP-510 must include the following information in the LOI Offer…
a. LOI Number. Currently this is based on the regional office's three letter code, the fiscal year of issuance, and a sequential number (for example: AGL-88-02 is the second LOI issued by AGL in FY 1988). APP-510 is in the process of converting this to the following format, which must be used by the ADO once officially adopted: 3-AA-BBBB-LCC-YYYY *Where:* 3 = The program code for AIP. AA-BBBB = The NPIAS code for the airport. L = A single letter designator indicating this is an LOI. CC = The sequential number of LOIs issued for that airport. YYYY = The fiscal year in which the LOI is executed.
b. Airport Name.
c. Project Description. A brief, but complete, project description.
d. Maximum Federal Funding. The maximum amount of federal funds which will be made available for the project.
e. Funding Schedule. A schedule of reimbursements by fiscal year and type of funds (apportionment and/or discretionary).
f. Sponsor Compliance Statement. A statement that the sponsor must be in compliance with all statutory and administrative requirements.
g. *Intent* to Obligate Statement. A statement that the LOI is not considered an obligation of the United States, must not be deemed an administrative commitment for funding, but only an intention to obligate from future budget authority as such funds become available.
h. Amendment Statement. A statement that the LOI, with sufficient justification, may be amended to adjust the maximum federal obligation, the payment schedule, or both.

Table 6-6 LOI Offer Contents

APP-510 must include the following information in the LOI Offer…
i. **Requirements before Proceeding Statement.** A statement that if a sponsor proceeds without satisfying all of the *statutory and administrative requirements* associated with an actual grant, the commitment to reimburse the sponsor under the LOI may be voided.
j. **Failure to Comply with Federal Requirements Statement.** A statement that a sponsor's failure to comply with all federal requirements could lead to a requirement to repay paid amounts and jeopardize later reimbursements.

6-9. Grant Administration.

Once an LOI is approved, the ADO is responsible for issuing and administering the associated grants according to the approved LOI payment schedule. This includes ensuring that all of the sponsor (Chapter 2), project (Chapter 3), funding (Chapter 4), and grant (Chapter 5) requirements have been met.

The ADO has the flexibility to determine which phases of the LOI project will be included in each grant as long as the ADO is able to accurately track what is being funded.

The sponsor is required to maintain a current record of the physical and financial status of the project. The ADO has the option to request this information in the format and frequency the ADO determines is necessary.

6-10. Amendments to Letters of Intent.

There must be ongoing ADO involvement as each project phase is completed, as subsequent phases come to bid, and as successive grants are issued under the LOI. In extremely limited circumstances, the FAA may amend an LOI in future years to adjust the total maximum federal obligation, the schedule of payments, or both. Circumstances that warrant an amendment include, but are not limited to, a change in project cost related to unforeseen federal or state regulatory requirements, changes in project timing or scope, or changes in future obligating authority. APP-510 approval is required prior to an ADO amending an LOI.

The sponsor has a responsibility to estimate and manage costs as accurately as possible. In cases where the sponsor faces unexpected increases in costs driven solely by economic conditions, sponsors must not view a possible LOI amendment as the first solution to be considered, particularly since the FAA's overall participation rate will generally represent a small percentage of overall funding.

The sponsor must either consider cost reduction or deferral measures, and/or pursue the full range of funding sources available. The FAA has the option to issue an amendment, but such amendments will be the exception rather than the rule and may result in the FAA extending the

LOI payment schedule beyond the term of the original schedule and/or revising the level of federal participation.

In cases where an amendment would exceed $10 million or 20% of the original LOI Discretionary funding amount, APP-510 has the option to require the sponsor to submit updated information. If such an amendment is approved, APP-510 must initiate an OST/Congressional notification process as if a new LOI were being awarded.

An LOI is amended by amending both the individual grant within the LOI and the LOI itself. The amendment rules only apply to the specific grants that are issued under the LOI. The LOI itself is not subject to the grant amendment rules in Chapter 5, Section 7.

6-11. LOI Closeout.

Once all of the associated LOI grants are closed, the ADO must officially close the LOI in the automated AIP system.

6-12. Suspending or Terminating an LOI.

If a sponsor proceeds without satisfying all of the *statutory and administrative requirements* associated with an actual grant, the FAA has the option to suspend or terminate the LOI. Sponsors must fully understand that failure to comply with all federal requirements could lead to a requirement to repay paid amounts and jeopardize later reimbursements.

Section 2. State Block Grant.

6-13. General.

The State Block Grant Program allows states to assume the administrative responsibilities that are traditionally performed by the ADO for nonprimary airports. These functions are specifically defined by a state block grant agreement that is executed between the state and the FAA once the state is chosen for participation in the program.

6-14. Limited State Flexibility.

The State Block Grant Program provides participating states with some flexibility in the administration of the state apportionment and sponsor entitlement for the airports in their program. The limitations on this flexibility are outlined in the Memorandum of Agreement that is signed by both the state and the FAA. Unless specifically waived in the Memorandum of Agreement, the state must ensure that all applicable statutory and regulatory requirements discussed in this Handbook are met.

6-15. Responsibilities Retained by the FAA.

The FAA has determined that there are key functions that must be retained by the FAA. The ADO cannot delegate these functions to the state. The specific functions that must be retained

by the FAA are maintained by APP-520 in the current standard Memorandum of Agreement template.

6-16. Legislative History and List of Participants.

49 USC § 47128 authorizes the FAA to allow no more than ten states to administer block grants for the nonprimary airports in the state. Table 6-7 contains the history of the State Block Grant Program and Table 6-8 contains a list of the approved State Block Grant participants.

Table 6-7 History of the State Block Grant Program

Date	Major Milestones
December 30, 1987	The Airport and Airway Safety and Capacity Expansion Act of 1987 was passed. Section 116 of this Act amended the Airport and Airway Improvement Act of 1982, by adding new section 534 entitled State Block Grant Pilot Program.
October 20, 1988	14 CFR part 156, State Block Grant Pilot Program, was published in 53 Federal Register 41303 (October 20, 1988).
October 1, 1989	This State Block Grant Pilot Program became effective and allowed three states to apply for the program.
October 31, 1992	The Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 extended the State Block Grant Program until 1996. This Act also authorized the issuance of block grants for fiscal years 1993 through 1996 in four additional states (for a total of seven).
October 9, 1996	The Federal Aviation Reauthorization Act of 1996 authorized one new state block grant participant (for a total of eight) and made the State Block Grant Program a permanent feature of AIP.
April 4, 2000	The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) authorized one new state block grant participant in fiscal years 2000 and 2001 (for a total of nine) and an additional state block grant participant after fiscal year 2001 (for a total of ten).

Table 6-8 State Block Grant Participants

State	Fiscal Year Selected	Fiscal Year Exited Program
(1) Illinois	1989	N/A
(2) Missouri	1989	N/A
(3) North Carolina	1989	N/A
(4) Michigan	1993	N/A

Table 6-8 State Block Grant Participants

State	Fiscal Year Selected	Fiscal Year Exited Program
(5) New Jersey (no longer in program)	1993	2003
(6) Texas	1993	N/A
(7) Wisconsin	1993	N/A
(8) Tennessee	1997	N/A
(9) Pennsylvania	1997	N/A
(10)New Hampshire	2008	N/A
(11)Georgia	2008	N/A

6-17. State Block Grant Program Application.

The FAA will accept applications for the State Block Grant Program at any time – there is no set application schedule. To do this, the state simply sends a letter of request with the information listed in Table 6-9 to the ADO.

States are encouraged to check with the FAA prior to submitting an application to determine if there are any available slots in the program. If a state is accepted into the program, the state can remain in the program until the state decides it wants to withdraw from the program or the FAA suspends or terminates its participation.

Table 6-9 State Block Grant Application Information

The state must describe…
a. The state's organization and capabilities to effectively administer a block grant program.
b. The state's airport system planning process.
c. The state's programming process.
d. The state's willingness and ability to comply with the State Block Grant Agreement.
e. The state's willingness and ability to comply with the National Environmental Policy Act of 1969, state and local environmental policy acts, Executive orders, agency regulations, and other federal environmental requirements.
f. The state's willingness and ability to provide all program information that is requested by the FAA.

Table 6-9 State Block Grant Application Information

The state must describe…
g. The state's process for determining which projects will be funded, including: (1) The state's process for ensuring that critical safety, and security, and other national aviation priority needs will be met. (2) The state's system for determining a project's priority and how this process is consistent with the FAA's national priority system.

6-18. FAA Selection of State Block Grant Participants.

49 USC § 47128 (b) and (c) describe the criteria that the FAA must use to select a state for the State Block Grant Program. These criteria are listed in Table 6-10. The ADO must review the state's request against the criteria in this table and make a recommendation to the regional office. The regional office must then make a recommendation to APP-520, who is responsible for the final determination. The ADO is responsible for notifying the sponsor of the FAA's official determination.

Table 6-10 State Block Grant Selection Criteria

In order for the FAA to select a state for the State Block Grant Program, the FAA must determine that…
a. The state has an organization capable of effectively administering a block grant program.
b. The state uses a satisfactory airport system planning process.
c. The state uses a programming process that is acceptable to the FAA.
d. The state is both willing and able to comply with the State Block Grant Agreement.
e. The state is both willing and able to provide all program information that is requested by the FAA.
f. The state is both willing and able to comply with the National Environmental Policy Act, state and local environmental policy acts, executive orders, agency regulations, and other federal environmental requirements.
g. The state uses a satisfactory process for determining which projects will be funded, including: (1) A satisfactory process for ensuring that critical safety, and security, and other national aviation priority needs will be met. (2) A satisfactory process for determining a project's priority that is consistent with the FAA's national priority system.

6-19. Memorandum of Agreement.

As of the publication date of this Handbook, it is FAA policy that the state and the FAA must enter into a State Block Grant Program Memorandum of Agreement in order for the state to qualify for grants under the program. The FAA officially documents that the selection criteria have been met by executing a State Block Grant Program Memorandum of Agreement (MOA) with the state. The ADO must retain a signed original of the executed State Block Grant Program MOA and forward a copy to APP-520.

This MOA outlines the responsibilities of the state and the FAA under the State Block Grant Program. APP-520 maintains the current standard template for this MOA that the ADO must use.

6-20. Obligation to Sponsor Assurances.

The state and any entity to which the state distributes funds are obligated to AIP sponsor grant assurances. The sponsor assurances are the responsibility of the state, the entity, or both the state and the entity. Any agreement between the state and the airport must address any transfer and delegation of these assurance obligations. The state has the continuing responsibility to ensure compliance with the sponsor assurances even after the project is completed.

6-21. Criteria for an Airport to be in the State Block Grant Program.

Table 6-11 contains the criteria for an airport to be in the State Block Grant Program.

The state and the FAA have the option to allow specific airports to remain outside of the State Block Grant Program. This would mean that the administrative responsibilities would remain in the ADO. Both the state and the FAA must agree with this action, otherwise the airport must stay within the State Block Grant Program. The ADO must include a list of these airports in the MOA and must include the process for these airports to compete for state apportionment. In addition, the ADO provides this list annually to APP-520.

Table 6-11 Criteria for an Airport to be in the State Block Grant Program

In order for an airport to be eligible to be in a State Block Grant Program, the airport must be…
a. In the National Plan of Integrated Airport System (NPIAS).
b. Within the state boundaries of a block grant state.
c. An existing (not planned) public-use airport.
d. A general aviation, reliever, or nonprimary commercial service airport (primary airports are not eligible).
e. Listed as a block grant airport in the State Block Grant Program Memorandum of Agreement between the state and the FAA.

6-22. ADO Right to Issue Grants Directly to Airports in the State Block Grant Program.

The ADO retains the right to issue a grant directly to an airport in the state block grant. This grant would use small airport funds per 49 USC § 47116(c). This would be a rare occurrence and would normally only be done by the ADO to address an unusual circumstance.

6-23. Decision Authority for Discretionary Funds.

As of the publication date of this Handbook, it is FAA policy that the FAA retains the decision authority regarding which airport projects will be funded with discretionary funds within the block grant. The current APP-520 discretionary policy applies to these projects.

6-24. Grant Federal Share.

The federal share rules for state block grants and their associated subgrants are included in Table 4-7.

6-25. Grant and Amendment Processes.

The ADO issues one or more grants to the state each year for the state's available nonprimary entitlement, state apportionment, and cargo funds (where applicable). The ADO also has the option of issuing additional grants to the state with discretionary funds at specific airports. The state then issues the individual subgrants to nonprimary airports in its state.

The grant and amendment processes for the State Block Grant Program are incorporated in the applicable sections of Chapter 5.

6-26. Transfer of AIP Funding between Airports.

The rules for transferring funding between airports within the State Block Grant Program are included in Table 6-12.

Table 6-12 AIP Funding Transfer Rules for the State Block Grant Program

For the following funding type…	The following transfer rules apply…
a. State Apportionment	None.
b. Passenger, Cargo, and Nonprimary Entitlement	The state must follow the transfer rules provided in Paragraph 4-9.
c. Discretionary	Per FAA policy, states are prohibited from transferring ADO assigned discretionary to another airport or project, or using unused discretionary for new projects. This policy aligns the use of discretionary between state block and non-state block grants.

6-27. Project Eligibility and Allowable Costs.

AIP requirements for airport project eligibility and allowable cost (see Chapter 3) are the same for states receiving a block grant as they would be if the ADO were administering the project. The ADO has the final call in eligibility determinations where there are disagreements with the states interpretation.

6-28. Project Administrative Costs.

The state can charge for *project administrative* costs that would otherwise be an allowable cost for the *project* (normally done by a consultant or other hired company). Paragraph 3-63 outlines the requirements for the cost for a state's employee's time as well as overhead or indirect costs (overhead or indirect costs include anything more than direct employee's time).

6-29. Program Administration Costs.

State *program administration* costs are unallowable. These are costs that would be incurred by the ADO if the FAA were administering the grant. Per FAA Policy, exemptions from this prohibition are not considered.

6-30. Required Timeframe to Issue Subgrants.

It is FAA policy that the state must issue all funding to subgrants within four years of the end of the fiscal year the state block grant was issued, or must request that the ADO deobligate the funds. If the state does not do this, the ADO has the option to unilaterally deobligate the funds and close the grant.

6-31. Grant/Project Oversight.

Unless otherwise stated in the State Block Grant Program Memorandum of Agreement, all of the project and grant oversight requirements in Chapter 5, Section 5 apply.

6-32. Grant Payments.

The rules for grant payments for state block grants are included in Chapter 5, Section 6.

6-33. Grant Closeout.

The rules for grant payments for state block grants are included in Chapter 5, Section 8.

6-34. Program Review by the FAA.

The FAA has the option of reviewing a state's administration of the State Block Grant Program. The state must provide all documentation requested by the FAA.

6-35. Accounting and Audits.

States must have an accounting system that accurately reflects expenditures of all funding within a state block grant. State block grants and subgrants are subject to the same audit requirements as any other AIP grant.

6-36. Suspension/Termination of a Grant Issued under the State Block Grant Program.

The FAA has the option to suspend and/or terminate any state block grant. The procedures are listed in Chapter 5, Section 9. The ADO must assume the administrative responsibilities associated with the suspended grant. This is not the same as suspending a state from the program, which is covered in Paragraph 6-36.

6-37. Suspension of a State from the State Block Grant Program.

The FAA has the option to suspend a state from the State Block Grant Program if the FAA determines the State fails to comply with mandatory requirements. The FAA must use the criteria used for admitting the state to the program (see Paragraph 6-17) and the conditions in the State Block Grant Memorandum of Agreement to make this decision. The FAA must also work with the state to determine a course for corrective action and a time frame in which it will be completed by the state.

If a state is suspended, the ADO must assume the administrative responsibilities associated with the program. Prior to suspension, the ADO must obtain copies of all subgrants (open or closed).

6-38. Removal or Voluntary Withdrawal from the State Block Grant Program.

States may voluntarily withdraw from the State Block Grant Program. In addition, failure of states to comply with block grant conditions or regional agreements may result in the FAA removing the state from the program.

a. APP-1, APP-500, and ACO-100 Coordination/Concurrence. The ADO must coordinate and obtain concurrence from APP-1, APP-500, and ACO-100 prior to initiating withdrawal or removal of a state from the State Block Grant Program.

b. Negotiations on Transfer of Responsibilities from State to ADO. Unless the FAA determines otherwise, the ADO and the state have the option to negotiate the transfer of responsibilities from the state to the ADO. For instance, the ADO might request to phase out the state's participation in the program starting with selected categories of airports or projects.

c. Amendment to Memorandum of Agreement. The State Block Grant Program Memorandum of Agreement must be amended to reflect the transfer of responsibilities to the ADO. The memorandum must list all open and closed subgrants and must indicate what documentation must be transferred to the ADO. The ADO must obtain APP-500 and ACO-100 concurrence with the memorandum before it is executed by the ADO.

d. State Reapplication after Termination. A terminated state can reapply to be in the State Block Grant Program under the same application procedures for a new applicant.

Section 3. Military Airport Program.

6-39. General.

The Military Airport Program (MAP) allows the FAA to give grants to civil sponsors of joint-use military airfields or former military airports.

6-40. AIP Funding.

49 USC § 47117(e)(1)(B) designates a 4% set-aside of AIP discretionary funds that the FAA may use towards projects at MAP designated airports. The FAA normally directs MAP funding towards those specific projects that will allow a MAP designated airport to successfully transition from military to civilian use.

6-41. Designation Authority.

49 USC § 47118(a) allows the FAA to designate up to 15 current or former military airfields in the Military Airport Program. These airports can receive grants to help convert them to civilian use or to reduce congestion. Per 49 USC § 47118(g), three of the 15 airports may be general aviation airports and the remaining twelve must be commercial service or reliever airports.

6-42. Original MAP Designation Duration.

The FAA has the option to designate an airport as a MAP airport for one to five years per 49 USC § 47118(d). Per FAA policy, the FAA must evaluate the conversion needs of the airport in the sponsor's capital development plan to determine the appropriate length of designation.

6-43. Redesignation Duration.

Previously designated airports may apply for redesignation of additional terms not to exceed a five year per term per 49 USC § 47118(d). Those airports must meet current MAP requirements and, per FAA policy, have remaining MAP eligible projects that were not funded by the FAA. The FAA's goal is to graduate MAP airports to regular AIP participation by successfully converting these airports to civilian airport operations.

6-44. Requirements.

Sponsors must submit documentation that clearly shows they meet the 49 USC § 47118 and FAA policy requirements listed in Table 6-13.

Table 6-13 MAP Requirements

For the following requirement…	The following criteria apply…
a. System Benefits	Per 49 USC § 47118(c), the proposed projects will accomplish at least one of the following: **(1)** Reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings. **(2)** Enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays. **(3)** Preserve or enhance minimum airfield infrastructure facilities at former military airports to support emergency diversionary operations for transoceanic flights in locations where both of the following criteria are met: **(a)** The location is within United States jurisdiction or control. **(b)** The location has a demonstrable lack of diversionary airports within the distance or flight-time required by regulations governing transoceanic flights.
b. Current or Former Military Airport	Per 49 USC § 47118(a), the airport is either a current or former military airport under at least one of the following conditions: **(1)** The airport was closed or realigned under Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act, and/or Section 2905 of the Defense Base Closure and Realignment Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commissions). Only public agencies qualify under these acts. **(2)** The airport was closed or realigned under 10 USC § 2687 as excess property. These are bases announced for closure by the Department of Defense after September 30, 1977 (this is the date of announcement for closure and not the date the property was deeded to the sponsor). Only public agencies qualify under this regulation. **(3)** The airport is a commercial service or reliever airport that is a military installation with both military and civil aircraft operations (also called a joint use airport). Per 49 USC § 47118(g), a joint use airport that is not a commercial service or reliever airport is not eligible under MAP unless the airport meets conditions (1) or (2) above.
c. Public-Use Airport	Per 49 USC § 47105(b)(2), the airport is a public-use airport (see the definition Appendix A for the criteria) in the National Plan of Integrated Airport Systems.
d. MAP Slots are Available	Per 49 USC § 47118(a) and § 47118(g), three of the 15 airports may be general aviation airports and the remaining twelve must be commercial service or reliever airports.
e. Eligible Sponsor	The sponsor is an eligible sponsor per the requirements of the Act (see Chapter 2 for a listing of the requirements).

Table 6-13 MAP Requirements

For the following requirement…	The following criteria apply…
f. Airport Layout Plan	Per 49 USC § 47107(a)(16), the airport has an FAA approved airport layout plan.
g. Capital Improvement Plan	Per FAA policy, the sponsor has a five-year capital improvement plan that includes all eligible AIP projects that can be funded with MAP and AIP.
h. Environmental Requirements	Per FAA policy, the environmental review necessary to convey the property, enter into a long-term lease, or finalize a joint-use agreement must have been completed. The military department conveying or leasing the property, or entering into a joint-use agreement, has the lead responsibility for this environmental review. Per FAA policy, the environmental reviews for each specific MAP project are separate processes. These environmental reviews must meet the normal AIP requirements and timeframes.
i. Good Title	Per 49 USC § 47106(b), the sponsor has to have good title. Per FAA policy, good title requirements are as follows: **(1) Former Military Airport.** The sponsor must hold or will hold satisfactory title, a long-term lease in furtherance of conveyance of property for airport purposes, or a long term interim lease more than 20 years or longer to the property on which the civil airport is being located. This is because the lease term must be longer than the grant assurances for AIP construction projects. Documentation that an application for surplus or BRAC airport property has been accepted by the federal government is sufficient to indicate the eligible sponsor holds or will hold satisfactory title or a long-term lease. In addition, the sponsor must possess all necessary property rights prior to accepting a grant for a proposed project. **(2) Current Military Airport**. The sponsor must have an existing joint-use agreement with the military department having jurisdiction over the airport. If the sponsor is a first time applicant, the sponsor must submit a copy of the existing joint-use agreement no later than the time of the application. This is necessary to permit the ADO to issue grants to the sponsor. In addition, the sponsor must possess all necessary property rights prior to accepting a grant for a proposed project.

Table 6-13 MAP Requirements

For the following requirement…	The following criteria apply…
j. Marketing Plan	For a commercial service airport to qualify for redesignation, it is FAA policy that the sponsor must provide a reanalysis of their original business/marketing plans (for example, a plan previously funded by the Department of Defense Office of Economic Adjustment or the original Master Plan for the airport) and prepare a report. If there is no existing business/marketing plan, the sponsor must develop a business/marketing plan or strategy. The report must contain all of the following information: **(1)** Whether the original business/marketing plan is still appropriate. **(2)** Whether the airport is continuing to work towards the goals established in the business/marketing plan. **(3)** How the MAP projects contained in the application contribute to the goals of the sponsor's marketing plan. **(4)** If the business/marketing plan no longer applies to the current goals of the airport, how the airport has altered the business/marketing plan. Specifically, how have they established a new direction for the facility, how projects contained in the MAP application aid in the completion of the new direction and goals, and by what date they anticipate completing the MAP projects.

6-45. Typical MAP Projects.

The FAA will normally only consider MAP funding for projects that aid in the conversion of a military or former military facility to civilian use. These projects can include revenue generating projects that may not normally be eligible at the airport. These projects can also include lower priority AIP project that would not compete well for regular discretionary funding. A list of the MAP project requirements is contained in Appendix T.

It is FAA policy to use regular discretionary or entitlement funding, not MAP funding, for projects that compete well for discretionary funding or are not necessary to convert the airport to civilian use. Some examples of projects that APP-520 would anticipate an ADO use regular AIP funding are in Table 6-14.

Table 6-14 Examples of Projects That May Not Be Suitable for MAP Funding

The following project…	May not be suitable for MAP funding because…
a. Runway rehabilitation	This type of project normally competes well for regular AIP funding.
b. A runway extension	This type of project is normally not necessary to convert the airport to civilian use (most military runways are a suitable length for civilian use).

6-46. Use of Regular AIP on a MAP Designated Airport.

MAP designated airport projects are not limited to MAP funding. They may also qualify for other AIP funding if they meet all associated project eligibility and justification requirements. In fact, it is FAA policy that the ADO not recommend an airport for the MAP program unless the ADO is willing to support the airport's needs for higher priority projects with regular discretionary funding (if necessary).

6-47. MAP Funding Limitations.

Per 49 USC § 47118(e), total MAP funding may not exceed $7 million per year per airport for terminal projects. Per 49 USC § 47118(f), total MAP funding may not exceed $7 million per year per airport for construction, improvement, or repair of airport surface parking lots, fuel farms, utilities, hangars and air cargo terminal building facilities, only if the hangar or air cargo terminal building facility is 50,000 square feet or less.

6-48. Reimbursement with Discretionary.

Per 49 USC § 47118(f)(2), the FAA has the option to use discretionary to reimburse approved MAP projects if the sponsor incurred the costs during fiscal years 2003 and 2004.

6-49. Application Process.

A Federal Register Notice is published every year that provides a list of the information that a sponsor must submit if it wants to be designated or redesignated into the MAP program. The Federal Register Notice also announces the number of available MAP slots and the factors that the FAA will use to evaluate the MAP candidates for that fiscal year.

Each fiscal year, APP-520 will provide the regional offices and ADOs with instructions for the current internal MAP application review process.

Section 4. Innovative Finance Demonstration Program.

6-50. Legislative History.

Section 148 of the Federal Aviation Reauthorization Act of 1996 (Public Law 104-264) established an innovative finance demonstration program under AIP. This program has been retained in subsequent legislation (49 USC § 47135) as outlined in Table 6-15.

Table 6-15 Innovative Finance Demonstration Program Legislation

The following legislation…	Provided the following…
a. The Federal Aviation Reauthorization Act of 1996	Established the program and allowed the FAA to approve applications for 10 airport development projects.
b. AIR -21 (Wendell H. Ford Aviation Investment and Reform Act for the 21st Century)	Allowed the FAA to approve applications for 20 airport development projects during fiscal years 2000-2003.
c. Vision 100 – Century of Aviation Reauthorization Act	Allowed the FAA to approve applications for 20 airport development projects beginning in fiscal year 2004 and beyond.
d. The FAA Modernization and Reform Act of 2012 (Public Law 112-95)	Retained the program without change.

6-51. Program Rules.

The rules for the innovative finance demonstration program are included in Table 6-16.

Table 6-16 Innovative Finance Demonstration Program Rules

The current Innovative Finance Demonstration Program rules include…
a. Eligible Airports. Per 49 USC § 47135(a), the program is open to all airports except large and medium hub airports. Only 20 airport development projects may be approved beginning in fiscal year 2004.
b. No Guarantee of Debt Instruments. Per 49 USC § 47135(c)(1), FAA approval of the project does not (directly or indirectly) create a guarantee by the United States Government of any airport debt instrument.

Table 6-16 Innovative Finance Demonstration Program Rules

The current Innovative Finance Demonstration Program rules include…
c. Allowable Innovative Techniques. Per 49 USC § 47135(c)(2), the program is limited to the following innovative techniques. (1) Payment of interest. (2) Commercial bond insurance and other credit enhancement associated with airport bonds for eligible airport development. Per FAA policy, this may include underwriting fees. (3) Flexible non-federal matching requirements. (A) This may include increased local and state shares using contribution from private sources. (B) The FAA has determined that this technique has been adequately tested; therefore the FAA is less inclined to pursue future uses of these techniques. (4) Use of entitlement and state apportionment funds to pay principal and interest costs for terminal development if the costs were incurred before December 12, 2003 (the date of the enactment of Vision 100 – Century of Aviation Reauthorization Act). The FAA has determined that this technique has been adequately tested. Therefore the FAA is less inclined to pursue future uses of these techniques.
d. Justification. Per FAA policy, the sponsor must demonstrate that the innovative finance proposal will result in cost savings or improved performance of the national aviation system. For instance, it might show that the airport development would either not be built or would be built earlier than would have been possible without the program.
e. Application Deadline. Per FAA policy, sponsors may submit an innovative finance demonstration application to the ADO at any time unless otherwise established by APP-500.
f. Project Selections. Per FAA policy, ADOs must forward all applications to APP-500 for their review. APP-500 will approve or disapprove all project applications.
g. Normal AIP Requirements. Per FAA policy, all other applicable AIP sponsor, funding, project, and grant rules apply. Changes to FAA standards will not be considered under this program.
h. Additional Sponsor Reporting. Per FAA policy, sponsors must submit all additional documentation and reporting as required by the ADO.

Section 5. Voluntary Airport Low Emission Program (VALE).

6-52. Legislative History.

In fiscal year 2004, Sections 151, 158 and 159 of Vision 100 – Century of Aviation Reauthorization Act established a voluntary program to reduce airport ground emissions at commercial service airports located in nonattainment and maintenance areas designated by the U.S. Environmental Protection Agency.

6-53. Legislative References.

Table 6-17 contains the legislative references applicable to the VALE program.

Table 6-17 VALE Legislative References

The following…	Provides...
a. 49 USC § 47102(3)(K) and § 47102(3)(L)	The language that makes certain VALE projects eligible as airport development.
b. 49 USC § 47110(b)(6)	Guidance on VALE project funding restrictions.
c. 49 USC § 47117(e)(1)(A)	Guidance on the use of noise and environmental set aside funding.
d. 49 USC § 47139	Guidance on emission credits for air quality projects.
e. 49 USC § 47140	Guidance on the airport ground support equipment emissions retrofit pilot program.

6-54. Purpose and General Overview.

The goal of the Voluntary Airport Low Emission (VALE) Program is to improve airport air quality by providing commercial service airports with grants to acquire low emission vehicles and infrastructure. The VALE Program helps airport sponsors meet their general conformity obligations under the Clean Air Act (42 USC § 7401, et. seq.). It also assists state planning to meet health-based national ambient air quality standards.

The airports must be located in nonattainment or maintenance areas designated by the Environmental Protection Agency (EPA) per 49 USC § 47140(b). Some of the key equipment requirements are that the equipment must provide cleaner technology then the conventional equipment, be airport-owned, provide the best achievable emissions reductions based on EPA standards, and rely exclusively on alternative fuels that are substantially non-petroleum based (as defined by the U.S. Department of Energy, not excluding hybrid systems). Typical projects include gate electrification, boiler pollution control devices, and new or retrofitted low emission vehicles and ground support equipment.

6-55. Available Guidance.

The authorizing legislation requires the FAA to publish program guidance in areas of project eligibility, how air quality benefits are demonstrated, and how sponsors receive appropriate airport emission reduction credits. Specific program guidance is contained in the VALE Program Technical Report, which is available on the FAA Office of Airports website (see Appendix B for link) under the Environmental Program section. Associated guidance on airport emission reduction credits is contained in the EPA Report, Guidance on Airport Emission Reduction Credits for Early Measures through Voluntary Airport Low Emission Programs, which is available on the same website.

6-56. Application and Grant Process.

Sponsors interested in applying for VALE grants must submit a project application as outlined in the VALE Technical Report. VALE requirements and special conditions supplement AIP requirements and grant assurances unless otherwise stated in VALE guidance. APP-520 maintains a current list of special conditions that must be used for specific project or airport situations. Sponsors must submit VALE applications concurrently to the ADO, regional office and APP-400. VALE grants are processed similarly to other AIP grants.

APP-400 determines funding priority primarily on the basis of project cost-effectiveness, as defined by project lifetime emission reductions per dollar spent.

6-57. Project Funding Requirements.

Appendix S includes the funding requirements for environmental planning/mitigation projects, including VALE projects.

Section 6. Zero Emission Vehicle and Infrastructure Pilot Program.

6-58. Legislative History.

In fiscal year 2012, Section 511 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95) added a pilot program for zero emission vehicles and infrastructure.

6-59. Legislative References.

Table 6-18 contains the legislative references applicable to the zero emission vehicle and infrastructure pilot program.

Table 6-18 Zero Emission Vehicle and Infrastructure Pilot Program Legislative References

The following…	Provides...
49 USC § 47117	Guidance on the use of set aside funding for these projects. (*Note: The only set aside discretionary funding that the FAA anticipates using toward these projects is Noise and Environmental Set Aside funding, even though 49 USC § 47117 includes MAP and Reliever Set Aside funding.*)
49 USC § 47136a	Guidance on zero emission airport vehicles and infrastructure. (Note that this section is *after* 49 USC § 47136, not part of it.)

6-60. Purpose.

The goal of the Zero Emission Vehicle and Infrastructure Pilot Program is to improve airport air quality by providing eligible airports with grants to purchase zero emission airport vehicles and infrastructure.

6-61. Available Guidance.

Specific program guidance is contained in the Zero Emissions Airport Vehicle and Infrastructure Pilot Program Technical Guidance, which is available on the FAA Office of Airports website (see Appendix B for link) under the Environmental Program section.

6-62. Application and Grant Process.

ADOs and regional offices must contact APP-400 for application information and APP-500 for grant information.

6-63. Project Funding Requirements.

Appendix S includes the funding requirements for environmental planning/mitigation projects, including zero emission airport vehicles and infrastructure projects. The federal share for these projects is restricted to 50% per 49 USC § 47136a(d). These projects are eligible for noise and environmental set aside funding per 49 USC § 47136a(a), as further discussed in Paragraph 4-7.

Section 7. Program to Increase Energy Efficiency of Airport Power Sources.

6-64. Legislative History.

In fiscal year 2012, Section 512 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95) added a program for certain projects that increase the energy efficiency of airport power sources. This legislation simply made these projects eligible for AIP. The legislation did *not* make these projects eligible for any special set aside funding (including the noise and environmental set aside).

6-65. Legislative References.

Table 6-19 contains the legislative references applicable to the program to increase the energy efficiency of airport power sources.

Table 6-19 Program to Increase the Energy Efficiency of Airport Power Sources Legislative References

The following…	Provides...
49 USC § 47140a	Guidance on increasing the energy efficiency of airport power sources. (Note that this section is *after* 49 USC § 47140, not part of it.)

6-66. Purpose.

The goal of the program to increase the energy efficiency of airport power sources.

6-67. Available Guidance.

As of the publication date of this Handbook, APP-400 was developing guidance for the program to increase the energy efficiency of airport power sources. Until this new guidance is published, ADOs and regional offices must contact APP-400 for guidance.

6-68. Application and Grant Process.

As of the publication date of this Handbook, APP-400 was developing guidance for the program to increase the energy efficiency of airport power sources. Until this new guidance is published, ADOs and regional offices must contact APP-400 for application information and APP-500 for grant information.

6-69. Funding and Federal Share.

Because 49 USC § 47117(e)(1)(A) limits the funding of the noise and environmental set-aside to specific projects, projects to increase the energy efficiency of airport power sources are *not* eligible for noise and environmental set aside funding. In addition, the airport's regular federal share applies.

6-70. Project Funding Requirements.

Appendix S includes the funding requirements for environmental planning/mitigation projects, including airport energy assessments and projects to increase the energy efficiency of airport power sources.

Section 8. Airport Development Rights Pilot Program.

6-71. Legislative History.

In fiscal year 2004, Section 152 of Vision 100 – Century of Aviation Reauthorization Act created a pilot program for the purchase of development rights for up to 10 privately-owned public-use airports. The rules for this pilot program are provided for in 49 USC § 47138. This pilot program allows the FAA to issue a grant to a state (or a political subdivision of the state) for the purchase of airport development rights to ensure the airport property will continue to be available for use as a public use airport in perpetuity (in this case, *public use airport* means that the airport is open to the public). Through this pilot program, the FAA will evaluate the merits of purchasing airport development rights instead of the purchase of fee simple interests for the airports.

6-72. Rules of the Pilot Program.

The rules and requirements of the pilot program are outlined in Table 6-20.

Table 6-20 Rules for the Airport Development Rights Pilot Program

The requirements for…	Include…
a. The Number of Participants	**(1)** Per 49 USC § 47138(e), the FAA is only allowed to issue grants to purchase airport development rights at 10 airports under this pilot program.
b. The Airport and Airport Owner	**(1)** Per 49 USC § 47138(a), the airport must be a privately-owned public-use airport. **(2)** Per FAA policy, the airport owner must have filed a notice with the ADO in accordance with 14 CFR part 157, Notice of Construction, Alteration, Activation, and Deactivation of Airports, indicating that the airport status is privately-owned, public-use. **(3)** 49 USC § 47138 does not require the airport to meet the privately-owned public-use airport requirements in 49 USC § 47102(22)(B) or to be in the National Plan of Integrated Airports (NPIAS). **(4)** Per FAA policy, the airport owner must not have any existing grant obligations requiring the airport to remain open.
c. The Grant Sponsor	**(1)** Per 49 USC § 47138(a), the sponsor must be a state or a political subdivision of a state (such as a city, municipality, or state agency) in the same state as the airport.
d. The Grant Purpose	**(1)** Per 49 USC § 47138(b)(1)(A), the airport property must continue to be available for use as a public airport (in this case, public airport means that the airport is open to the public). **(2)** Per 49 USC § 47138(b)(1)(B), the airport must remain a public use airport in perpetuity.
e. Requesting Participation	**(1)** Per FAA policy, the FAA may contact potentially interested owners and/or sponsors at any time and informally invite them to express interest in the pilot program. **(2)** Per FAA policy, the sponsor must express interest in a letter to the FAA. If the airport owner does not cosign the letter, then the sponsor must indicate that the airport owner has agreed in the sponsor's letter.
f. The Selection	**(1)** Per FAA policy, the regional office will send a joint ADO/regional office recommendation to APP-500. APP-500 is the selecting office. Once an airport has been selected, the ADO will inform the sponsor of the selection and request a grant application.

Table 6-20 Rules for the Airport Development Rights Pilot Program

The requirements for…	Include…
g. The Grant Application	**(1)** 49 USC § 47138(c) requires that the FAA set the requirements for the grant application and approval procedures. **(2)** Per FAA policy, the sponsor must use the standard grant application as discussed in Paragraph 5-19. **(3)** Per FAA policy, grant application must include a property inventory map (Exhibit A) that is approved by both the sponsor and the airport owner and clearly shows the land and development subject to the agreement. **(4)** Per FAA policy, the airport owner must provide a letter to the FAA describing its concept for ownership and operation of the airport over the next ten years. **(5)** Per FAA policy, if the airport owner does not operate the airport, the airport owner must provide a copy of the associated lease or agreement. **(6)** Per FAA policy, the ADO must determine whether the costs of the proposed grant are less than buying the airport outright. The issuance of the grant documents a positive determination by the ADO. **(7)** Per FAA policy, the sponsor must provide a signed certification from their attorney as outlined in Table 6-21. **(8)** The FAA has the option of not issuing a grant for the purchase of airport development rights if the FAA determines that it is not in the best interest of the federal government or that the requirements will not be met.
h. Option for FAA Site Visit	**(1)** Per FAA policy, airport owner must agree to allow a site inspection by the FAA and sponsor prior to the grant being issued.
i. FAA Coordination	**(2)** Per FAA policy, the ADO must discuss the terms and conditions of the pilot program with the airport owner as well as the sponsor to ensure both parties understand their obligations.
j. Acquisition	**(1)** Per FAA policy, the FAA, sponsor, and airport owner must follow the same policies and procedures for airport acquisition in fee simple as contained in Appendix Q. This includes meeting the requirements of the current version of FAA Order 5100.37, Land Acquisition and Relocation Assistance for Airport Projects, and in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects.
k. AIP Fund Types	**(1)** 49 USC § 47138(a) allows of all types of apportionment and entitlement funds available to the sponsor that are listed under 49 USC § 47114 to be used on this type of grant.
l. AIP Federal Share	**(1)** Per 49 USC § 47138(b)(2), the federal share is limited to 90% of the costs to acquire the development rights.

Table 6-20 Rules for the Airport Development Rights Pilot Program

The requirements for…	Include…
m. AIP Grant Description and Amount	**(1)** Per FAA policy, the FAA can only compensate the airport owner for the market value of the development rights sold based on an acceptable before and after appraisal. Under this appraisal method, the market value of the development rights conveyed is appraised at the difference between the market value of the property for continued airport use and the current market value of the property for some other development. **(2)** Per FAA policy, planning costs to prepare the Exhibit A and/or associated documentation are allowable project formulation costs under the grant (not as a separate grant). **(3)** Per FAA policy, the property interests must be for a complete airfield or those combined parcels that collectively allow the airport to serve as a public-use airport. The property interests cannot be for only select areas of the airport (such as only the runway protection zones).
n. Grant Template	**(1)** The ADO must consult with APP-500 on how the standard grant template must be modified for a grant of this type.
o. Instrument Recording the Purchase of Airport Development Rights	**(1)** Per FAA policy, the instrument recording the purchase of airport development rights must include all of the terms and conditions listed in Table 6-22. The instrument recording the purchase of development rights is the document evidencing the purchase of the airport development rights by the sponsor, and the easement or covenant given by the airport owner that the airport must remain a public-use airport in perpetuity.
p. Grant Assurances	**(1)** Per FAA policy, the standard grant assurances (Sponsor, Planning Agency, or Non-Sponsors Undertaking Noise Compatibility Program Projects) must not be included in the grant. Instead, the requirements in Table 6-22 must be contained in the instrument recording the purchase of airport development rights, as discussed above.
q. Final Payment	**(1)** Per FAA policy, ADO must not allow the payment for the full amount of the grant until the instrument recording the purchase of development rights and easement has been recorded in the local registry of deeds and land transfers in compliance with local law.
r. Release of Purchase Rights and Covenant	**(1)** Per 49 USC § 47138(d), the state or political subdivision may not transfer or dispose of the development rights unless the FAA determines that it is in the best interest of the federal government.
s. Advisory Circular for Airport Safety Self-Inspection	**(1)** Per FAA policy, the ADO has the option to provide the airport owner/operator with the current version of Advisory Circular 150/5200-18, Airport Safety Self Inspection.

Table 6-21 Required Sponsor's Attorney Certification Language

The following certification language must be completed and signed by the sponsor's attorney…
CERTIFICATE OF SPONSOR'S ATTORNEY I, _____ , acting as Attorney for the Sponsor do hereby certify that in my opinion the Sponsor is empowered to file the Application for Federal Assistance for the purchase of development rights in accordance with Title 49, United States Code, section 47138, under the laws of the State of _____and has the authority from its governing body. Further, the actions taken by said sponsor and sponsor's representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State. Dated at _____ (location) this _____ day of _____, _____. By: _____ (Signature of Sponsor's Attorney)

Table 6-22 Requirements for the Instrument Recording the Purchase of Airport Development Rights

Per FAA policy, the instrument recording the purchase of airport development rights must include the following terms and conditions…
a. Exhibit A (Property Inventory Map). Parcels of land obligated under the development rights agreement must be described on the Exhibit A. The Exhibit A must be approved by both the sponsor and the airport owner.
b. Notice to Airmen. The airport owner must promptly notify pilots of any condition affecting aeronautical use of the airport property.
c. Acquisition of Development Rights. The acquisition of development rights by the sponsor is for the right to develop and use the property depicted on the Exhibit A for a purpose other than as an airport open to the public or enhancing convenience of aviation activities. The purpose of the acquisition of development rights is to ensure that the airport will continue to be available as a public use airport (in this case, *public use airport* means that the airport is open to the public).
d. Hazardous Substance. The FAA and state (or political subdivision of the state) do not assume any right to control the means by which the airport owner complies with restrictions on airport property; and do not assume any liability for discharge of a hazardous substance.
e. Public-Use Airport in Perpetuity. The airport owner, for good and valuable consideration, must grant the sponsor an easement or covenant that the airport must remain open to the public for use as an airport in perpetuity. Such easement or covenant must be in effect in perpetuity unless modified or released with the approval of the FAA.
f. Modification or Release of Purchased Rights and Covenant. The sponsor must not modify, transfer, or disposal of the airport development rights unless the FAA has made a written determination that the action is in the best interest of the federal government.

Table 6-22 Requirements for the Instrument Recording the Purchase of Airport Development Rights

Per FAA policy, the instrument recording the purchase of airport development rights must include the following terms and conditions…
g. Recordation. The sponsor must record the instrument evidencing the purchase of development rights and the granting of the easement or covenant that the airport must remain open to the public for use as an airport in perpetuity, in the local registry of deeds and land transfers in compliance with local law.
h. Sponsor's Obligation for Airport Operation. The sponsor may be obligated to operate and maintain the airport if it is closed during other than periods of temporary climatic conditions that interfere with safe operation and maintenance. The airport owner and sponsor agree that in the event the airport owner discontinues safe airport operation and maintenance, the sponsor, in consultation with the FAA, may be required to assume that obligation.
i. Airport Owner's Obligation for Airport Operation in Perpetuity. The airport owner or its successor is obligated to own the airport and operate it as an airport except for periods of temporary climatic conditions that interfere with safe operation and maintenance. In the event the airport owner discontinues safe airport operation and maintenance, the airport owner must notify the FAA within 24 hours.
j. Enforcement of Development Rights by the FAA. The instrument recording the purchase of development rights must grant the FAA third party beneficiary rights to enforce the easement or covenant that the airport must remain a public-use airport in perpetuity and the sponsor's obligation for airport operation.

Section 9. Redevelopment of Airport Properties Pilot Program.

6-73. Legislative History.

In fiscal year 2012, Section 822 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95) created a pilot program to fund activities related to the redevelopment of airport properties purchased for airport noise compatibility. Note that the pilot program language was not incorporated into 49 USC Chapter 471, therefore the text of the pilot program can only be found in Section 822 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95).

6-74. Purpose.

The purpose of this pilot program is to expedite redevelopment of airport property purchased for noise mitigation by the airport with AIP or Passenger Facility Charge (PFC) funds.

6-75. Availability of Guidance.

Due to the short duration of the program (which will sunset on September 30, 2015) and the limited number of airports that may participate (a maximum of four), the detailed guidance for this pilot program will be issued in a separate program guidance letter (PGL). This guidance will

not be included in this Handbook and the PGL will be canceled once the four grants are issued or the program sunsets on September 30, 2015.

Appendix A. Definitions of Terms Used in this Handbook

Definitions are an extremely important part of this Handbook. As with any large program, there are many words and phrases that have specific, defined meanings within the program. Table A-1 contains an alphabetical listing of the definitions used in this Handbook. The following letters are links to the appropriate alphabetical sections in Table A-1.

A	B	C	D	E	F	G	H	I	J	L	M	N	O	P	R	S	T	U	W

Table A-1 Definition of Terms Used in This Handbook

Definitions
A
Access Road. See Terminal Development. A portion of an access road or an access road can be considered *access road improvement* instead *of terminal development* is when it does not go directly to or from a terminal building.
The Act. The contents of this Handbook are based on the AIP related legislation contained in the United States Code (USC). Throughout this Handbook, the AIP related legislation under Title 49 is referred to as the *Act.* Previously, AIP was authorized by the Airport and Airway Improvement Act of 1982 (Public Law 97-248), which Congress repealed in 1994 and recodified as Title 49 § 47171, et seq. (Public Law 103-272)
Administrative Cost. Administrative costs are costs incurred in support of the general management and administration of the project, including all executive, organizational, and clerical costs rather than the specific costs like construction, or manufacturing. There are two types of Administrative Costs, Direct Administrative Costs and Indirect Administrative Costs. Direct administrative costs can be allowable costs in an AIP project if 1) it can be specifically documented to the project and 2) the ADO has approved the administrative costs in advance of incurring the administrative cost. OMB Circular A-87 Appendix C (2 CFR 200, Appendix V, State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans) establishes the procedures for calculating administrative costs. Indirect administrative costs cannot be readily identifiable with a particular project or cost objective. Indirect administrative costs can be allowed only if the ADO has an approved Cost Allocation Plan from the cognizant agency.
ADO. For the purposes of this Handbook, ADO means the local FAA Airports District Office. In regional offices that do not have ADOs, the use of the term ADO refers to the FAA Office of Airports branch within the regional office that deals directly with the sponsors. Where other FAA offices are discussed, those offices will be specifically identified.
Aeronautical Study. An aeronautical study is a study conducted to determine the effect a proposal has on the operation of air navigational facilities and on the safe and efficient use of navigable airspace. Aeronautical studies are also used by the FAA Office of Airports to coordinate airport construction projects and changes to Airport Layout Plans (ALPs) with the rest of the FAA.

Table A-1 Definition of Terms Used in This Handbook

Definitions
Air Carrier Airport. Per 49 USC § 47102(1), an air carrier airport is a public airport regularly served by: **a.** An air carrier certificated by the Secretary of Transportation under 49 USC § 41102 of this title (except a charter air carrier); or **b.** At least one air carrier: **(1)** Operating under an exemption from section 49 USC § 41101(a)(1) that the Secretary grants; and **(2)** Having at least 2,500 passenger boardings at the airport during the prior calendar year.
Airport. Per 49 USC § 47102(2), an airport is: **a.** An area of land or water used or intended to be used for the landing and taking off of aircraft; **b.** An appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way; **c.** Airport buildings and facilities located in any of those areas; Per 49 USC § 47102(2)(B), this specifically includes heliports.
Airport Development. Airport development is a legal definition in 49 USC § 47102(3). This definition contains development projects that are eligible under AIP. This list is extensive and is therefore not duplicated in this table. However, this list is reflected throughout this Handbook (most specifically in Chapter 3 and the associated appendices).
Airport Hazard. Per 49 USC § 47102(4), a structure or object of natural growth located on or near a public-use airport, or a use of land near the airport, that obstructs or otherwise is hazardous to the landing or taking off of aircraft at or from the airport. The FAA Air Traffic Organization (ATO) must make this determination (per the current version of FAA Order JO 7400.2, Procedures for Handling Airspace Matters).
Airport Layout Plan. As of the publication date of this Handbook, Advisory Circular 150/5070-6, Airport Master Plans, defines an airport layout plan set as a set of drawings that provides a graphic representation of the sponsor's long-term development plan for an airport. This plan must show both existing and proposed airport facilities and all proposed and existing access points used to taxi aircraft across the airport's property boundary; the approval of which is evidenced by the signature of the FAA Administrator or his duly designated representative.
Airport Master Plan. As of the publication date of this Handbook-Advisory Circular 150/5070-6, Airport Master Plans, defines airport master plan as a comprehensive study of the airport and typically describes short-, medium-, and long-term plans for airport development. Master planning studies that address major revisions are commonly referred to as master plans, while those that change only parts of the existing document and require a relatively low level of effort tend to be known as master plan updates.

Table A-1 Definition of Terms Used in This Handbook

Definitions
Airport Planning. Per 49 USC § 47102(5), airport planning means planning as defined by regulations the Secretary prescribes and includes: **a.** Integrated airport system planning. **b.** Developing an environmental management system. **c.** Developing a plan for recycling and minimizing the generation of airport solid waste, consistent with applicable state and local recycling laws, including the cost of a waste audit.
Airport Property Map. An airport property map is a drawing depicting the airport property boundary, land or property interests (including method of acquisition and type of interest), and future proposed land acquisition. The Airport Property Map is required as part of the Airport Layout Plan drawing set if any of the airport land was acquired with federal funds or through an FAA administered land transfer program. An airport property map is not a substitute for an Exhibit A (property inventory map), unless it is prepared in accordance with the Exhibit A requirements in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects.
Airport Purposes. All aviation activities normally found on an airport.
Airport Revenue. The current version of FAA Order 5190.6, Airport Compliance Manual, defines airport revenue. As of the publication date of this Handbook, that definition is as follows: 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. If this definition is modified in any succeeding version of FAA Order 5190.6, the new definition must be used.
Airside Needs/Development. All development within the areas accessible to aircraft including runways, taxiways, aprons, and aircraft gates and the land adjacent to these facilities required by current FAA standards. This may include airside facilities that are not justified for AIP grant funding.
Allocation. An allocation is the FAA notification to the sponsor of the intent to obligate funds (by issuing a grant). It does not involve a transfer of funds. It is an internal administrative re-delegation of the authority to incur obligations and make expenditures.
Allotments. After the FAA receives an Office of Management and Budget (OMB) apportionment, APP-520 requests the FAA Office of Budget and Performance – Operations and Capital Execution Branch (ABP-410) to make an allotment of funds to regional offices to support previously issued planning figures. Allotments and adjustments to allotments are made throughout the year.
Allowable Cost. The cost of an item or activity that can be funded with AIP per 49 USC § 47110.
Amendments. A formal change to the terms or scope of a grant agreement.

Table A-1 Definition of Terms Used in This Handbook

Definitions
Apportionments. There are two actions referred to as apportionments in AIP. Title 49 requires an apportionment of funds to be made each fiscal year to sponsors and states based on formulas in the Act. This notifies sponsors and states that these funds are available for eligible work but does not involve any transfer of funds. These funds are referred to interchangeably as state or sponsor *apportionments*, *entitlements*, or *formula* funds. The second type of apportionment is made by the Office of Management and Budget (OMB) to allow the FAA to use Congressionally approved AIP funds. The OMB apportionment is formally requested by the FAA, which provides a financial plan for orderly use of the funds. The OMB apportionment may contain restrictions on the use of funds, such as the amount that may be used quarterly.
Appropriation. The appropriation is the annual budget established by Congress each year. Generally speaking, the appropriation allows federal agencies to incur obligations and make payments for specific purposes. AIP gains the ability to incur its obligations through the Contract Authority set in the Authorization. This Contract Authority, however, is subject to the terms set forth in the annual appropriation each year. This means that Congress may use the appropriation to adjust the annual AIP funding level to exceed or reduce the amount of Contract Authority designated for any year.
Authorization. The authorization is commonly referred to as the FAA *Bill* or *Reauthorization* and may be passed by Congress for one or more years. The authorization sets yearly limits on the AIP funding levels and gives the FAA *contract authority* to issue grants.
Automated AIP System. This database integrates the project planning data necessary for the NPIAS Report, the project planning data necessary for the ADOs to create a three year ACIP, and the grant data for all grants issued into one system. This is an internal FAA system. As of the publication of this Handbook, this system is the System of Airport Reporting (SOAR).
B
Based Aircraft. Per the FAA Report: General Aviation Airports: A National Asset, May 2012, Based Aircraft are aircraft that are stored at an airport.
Brooks Act. A federal law (Public Law 92-582, codified at 40 USC § 1101) passed in 1972 that requires the federal government to use qualifications based selection (a special form of competitive negotiations) for obtaining professional services.
C
Carryover Entitlements. Entitlements that were provided in a prior fiscal year were not used and remain available for obligation for the original recipient.
Capacity Project. The current version of FAA Order 5100.39, Airports Capital Improvement Plan, defines capacity projects. As of the publication date of this Handbook, that definition is as follows: Development items that improve an airport or system of airports for the primary purpose of accommodating more passengers, cargo, aircraft operations or based aircraft. If this definition is modified in the next version of FAA Order 5100.39, the new definition must be used. In cases where it is unclear if a project is capacity or standards, the ADO must obtain a joint APP-400 and APP-510 concurrence on whether the project is considered capacity.

Table A-1 Definition of Terms Used in This Handbook

Definitions
Channeling Act State. Based on individual state law, typically all funds from AIP would be deposited in a state account. State legislative action may be required to release funds to individual airports.
Cognizant Agency. Per OMB Circular A-87, Attachment A, paragraph B.6. (2 CFR § 200.18, Cognizant agency for audit, and § 200.19, Cognizant agency for indirect costs), the federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under OMB Circular A-87 (2 CFR 200 Subpart E, Cost Principles) on behalf of all federal agencies.
Commercial Service Airport. Per 49 USC § 47102(7), a commercial service airport means a public airport in a state that the Secretary determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service.
Compatible Land Use. Per 14 CFR § 150.7, the use of land that normally compatible with the outdoor noise environment (or an adequately attenuated noise level reduction for any indoor activities involved) at the location because the yearly day-night average sound level is at or below that identified for that or similar use under appendix A (Table 1) of 14 CFR part 150.
Condemnation. The governmental authority to take private property for public use is known as the power of eminent domain, commonly referred as condemnation. Most airport owners have this power which is an inherent power of the local government derived from its sovereignty, as well as a power implied from Article 1, Section 8, and the Tenth Amendment of the Constitution. The property owner's right to just compensation (fair market value payment) for property taken by condemnation is reserved in the Fifth Amendment to the Constitution.
Congressional Notification. Senate and House members are notified of proposed grants in their states or districts before others are notified. The Talking Points are used to inform Senate and House members about the proposed grant. An allocation is not made until this *Congressional release* process is completed by OST/FAA headquarters offices. In some cases, certain Senate and House committees are also given advance notification.
Continuing Resolution. This is legislation that allows an agency to continue funding programs, usually at levels equal to the previous year, while Congress continues work towards annual appropriations legislation and is generally of a shorter duration than a fiscal year. Due to the nature of the AIP formulas, the FAA needs to compute the different entitlements and discretionary funding (including set-asides) to match the funding available for each continuing resolution.
Cost Allocation Plan. Sponsors that want to include a portion of their indirect costs in a project must have an approved Cost Allocation Plan. The Cost Allocation Plan must be prepared according to the requirements of OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR 200 Subpart E, Cost Principles). It is the formal means by which a sponsor identifies indirect costs (i.e., overhead) and assigns them to the benefiting departments/funds on a reasonable and consistent basis. The Cost Allocation Plan must be approved by the cognizant agency of the federal government. The approved indirect costs can only be applied to the sponsor's employee's salaries and wages, and cannot be applied to pass-through costs in the grant such as construction costs, consultant contracts, and equipment costs; or to other non-salary and wages costs.
Cost Analysis. A cost analysis is the evaluation of individual elements of a project, such as labor or materials that make up the total price, to determine if the elements are allowable, directly related to the project, and reasonable.

Table A-1 Definition of Terms Used in This Handbook

Definitions
Critical Aircraft. The critical aircraft is the most demanding airplane which is currently, or is planned to use a runway, taxiway, apron or other aeronautical facility on a regular basis. The weight, wingspan, performance characteristics of the airplane impact the design of the facility. APP-400 maintains guidance on how to determine the critical aircraft for specific projects and airport types.
D
DELPHI. The Department of Transportation's official accounting system of record. Each sponsor with a grant must have a designated user of the system in order to receive reimbursements on their grants. A grant cannot be issued until the sponsor has an account in the DELPHI system.
Design Standards. The engineering, design, and construction standards for various airport-related equipment, facilities, and structures defined by the FAA via the Advisory Circulars.
Design-Build Contracting. Per 49 USC § 47142, design-build contracting is defined as an agreement that provides for both design and construction of a project by a contractor.
Direct Cost. A direct cost is a cost that is only attributable to the work being performed. The payments for construction contract work for the project, contract design services of a design firm and contract planning services under a planning project are examples of direct costs. Project administrative costs are also considered direct costs (such as legal review, contract administration and oversight activities being performed specifically for the project) if the basis for the cost is easily identifiable through methods such as time cards used in cost accounting or other methods of capturing actual direct costs. Further information on direct cost can be found in Attachment A, Section E of OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR § 200.413, Direct costs).
Discretionary Funds. Discretionary funds are funds remaining within the obligation limitation after the entitlements are calculated. These funds, subject to certain restrictions in legislation, are available for distribution at the discretion of the FAA. The discretionary funds are not required to be distributed to specific states and sponsors. 49 USC § 47115 and 49 USC § 47117 provide statutory set-asides and minimum funding for noise, military, capacity, safety and security.
Drawdown. A series of payments made during a project reflecting the progress that is being made on the project.
E
Earmark. A legislative provision that directs funds to be spent on specific projects. Note that these projects must still be eligible and justified before the ADO can approve funding.
Easement. Per Black's Law Dictionary (9th ed. 2009), an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). See Paragraph 2-15 in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement (AIP) Assisted Projects, for description of typical *avigation* easement rights.

Table A-1 Definition of Terms Used in This Handbook

Definitions
Enplanement. Revenue passenger boardings at airports (including heliport or seaplane base) that receive scheduled or nonscheduled passenger service. The definition also includes passengers who continue on an aircraft in international flight that stops at an airport in any of the 50 states for a non-traffic purpose, such as refueling or aircraft maintenance rather than passenger activity.
Exclusionary Practices. Exclusionary practices are designed to eliminate rivals, enabling the surviving firm to reap the benefit of less competition. Exclusionary practices are prohibited on AIP projects and the costs associated with exclusionary practices are not allowable.
Exclusive Use (of an area such as a taxiway, apron, or hangar). Per the current version of Advisory Circular 150/5190-6, Exclusive Rights at Federally Obligated Airports, [an area] that by express agreement, from the imposition of unreasonable standards or requirements, or by any other means excludes others from using the area. A taxiway that leads only to a single hangar is an exclusive use taxiway. If this definition is modified in a succeeding version of the advisory circular, the new definition must be used.
Exclusive Right. Per the current version of Advisory Circular 150/5190-6, Exclusive Rights at Federally Obligated Airports, 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. If this definition is modified in a succeeding version of the advisory circular, the new definition must be used.
Exhibit A. A detailed airport property inventory map that is prepared in accordance with the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects. Note that this is a more detailed drawing than the airport property map that is sometimes required in the airport layout plan drawing set, and an Exhibit A can be substituted for an airport property inventory map.
F
Fair Market Value. Per 44 CFR § 79.2, the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. Different variations may apply when purchasing personal property.
Fee Simple. Per Black's Law Dictionary (9th ed. 2009), an interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs.
Future Development. Development of a facility more than five years from the date of the approval of the ALP or the land acquisition. For the ALP, future development is shown in 5, 10, and 15 year time frames.

Table A-1 Definition of Terms Used in This Handbook

Definitions
G
General Aviation Airport. Per 49 USC § 47102(8) a public airport that is located in a state that, as determined by the Secretary: **a.** Does not have scheduled service; or **b.** Has scheduled service with less than 2,500 passenger boardings each year.
Grant Assurances. The obligations airport owners, planning agencies, or other organizations undertake when they accept funds from FAA-administered airport financial assistance programs. These obligations require the recipients to maintain and operate their facilities safely and efficiently and in accordance with specified conditions. The assurances appear either in the application for federal assistance and become part of the final grant offer or in restrictive covenants to property deeds. The duration of these obligations depends on the type of recipient, the useful life of the facility being developed, and other conditions stipulated in the assurances.
Grant Agreement. Under 31 USC § 6304 and § 6305 (Federal Grant and Cooperative Agreement Act of 1977), a grant is a legal instrument used by a federal agency to provide aid to carry out a public purpose as authorized by a United States law.
Grantee. Many of the federal documents referenced in the Handbook use the term *grantee*. For purposes of this Handbook, it is the same as sponsor.
H
Handbook. The current version of FAA Order 5100-38, Airport Improvement Program.
Hangar. A hangar is a facility for the storage of aircraft (self-maintenance is allowed as defined in the current version of FAA Order 5190-6, FAA Airport Compliance Manual). Throughout this document, the term *hangar* applies only to aircraft storage facilities. This differs from a fixed based operator building or aircraft maintenance facility, both of which have revenue generating maintenance activities.
Hub Airport. 49 USC § 47102 defines hub airports as commercial service airports meeting the following criteria. **a.** *Large hub* airports enplane at least 1% of the national annual passenger boardings per 49 USC § 47102(11). **b.** *Medium hub* airports enplane at least 0.25% but less than 1% of the national annual passenger boardings per 49 USC § 47102(13). **c.** *Small hub* airports enplane at least 0.05% but less than 0.25% of the national annual passenger boardings per 49 USC § 47102(25). **d.** *Non hub* airports enplane less than 0.05% of the national annual passenger boardings per 49 USC § 47102(14).

Table A-1 Definition of Terms Used in This Handbook

Definitions
I
Incurred Cost. An expense that has been incurred during the course of business, and is a liability until it is paid.
Indian tribe. Per 25 U.S.C. 479a, the term “Indian Tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe. Pursuant to the Federally Recognized Indian Tribe List Act of 1994, the Secretary of the Interior publishes a list of federally acknowledged tribes.
Indirect Cost Allocation Plan. See *Cost Allocation Plan*.
Indirect Cost. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. For a public agency, indirect costs may include the costs of utilities or rent that are allocated to different departments of the agency.
Insular Areas. The Insular Areas of the United States includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands.
J
Joint Use Airport. Per 49 USC § 47175(7), an airport owned by the Department of Defense, at which both military and civilian aircraft make shared use of the airfield.
L
Landside Needs/Development. All development on airport property that does not meet the definition of airside needs/development.
Large hub airport. Per 49 USC § 47102(11), a commercial service airport that enplanes at least 1% of the national annual passenger boardings.
Letter of Intent. A formal document issued by the FAA that states an intention to provide future funding.
M
Maintenance. A comprehensive definition, including the differentiation between maintenance, rehabilitation, reconstruction, and replacement and examples are provided in Paragraph 3-6.
Medium hub airport. Per 49 USC § 47102(13), a commercial service airport that enplanes at least 0.25% but less than 1% of the national annual passenger boardings.

Table A-1 Definition of Terms Used in This Handbook

Definitions
Metropolitan Area. Per OMB Bulletin 06-01 Corrected, Update of Statistical Area Definitions and Guidance on Their Uses, the Office of Management and Budget (OMB) defines metropolitan areas (MSAs). The Office of Management and Budget (OMB) published the Standards for Defining Metropolitan and Micropolitan Statistical Areas in a Federal Register Notice (65 FR 82228 – 82238) on December 27, 2000. Mas comprise metropolitan statistical areas (MSAs), consolidated metropolitan statistical areas (CMSAs), and primary metropolitan statistical areas (PMSAs). These areas are defined in terms of entire counties, except in the six New England States where they are defined in terms of cities and towns. New England county metropolitan areas (NECMAs) are an alternative set of county-based areas defined for New England States.
Metropolitan Planning Agency. An organization whose is purpose is to ensure that government funding for transportation projects within a metropolitan area is based on continuing, cooperative, and comprehensive planning. Typical metropolitan planning agencies include metropolitan planning organizations (MPOs), councils of government, and regional planning commissions.
Modification to Standards. Any FAA approved change to FAA standards (other than dimensional standards for runway safety areas) applicable to an airport design, construction, or equipment procurement project.
N
NAVAID. An acronym for navigation aid. From the FAA Pilot/Controller Glossary, a navigational aid is any visual or electronic device airborne or on the surface which provides point-to-point guidance information or position data to aircraft in flight.
Near-Term Development. Per the current version of Advisory Circular 150/5070-6, Airport Master Plans, within the next five years.
Noncompatible Land Use. Per 14 CFR § 150.7, the use of land that normally not compatible with the outdoor noise environment (or an adequately attenuated noise level reduction for any indoor activities involved) at the location because the yearly day-night average sound level is at or below that identified for that or similar use under appendix A (Table 1) of 14 CFR part 150.
Nonhub Airport. Per 49 USC § 47102(14), a commercial service airport that enplanes less than 0.05% of the national annual passenger boardings.
Non-Primary Airport. An airport that is not a primary airport as defined under 49 USC § 47102(16). In other words, an airport that has 10,000 or less passenger enplanements each year.

Table A-1 Definition of Terms Used in This Handbook

Definitions
O
Obligations. The execution (signing) of a grant agreement with a sponsor constitutes an obligation of the federal government to eventually pay the amount specified in the grant. Obligations of funds are processed through the FAA Office of Finance and Management, FAA Accounts Payable Section B (AMK-314) in two steps: a *reservation of funds* is made before the grant is signed, and an *obligation* is reported when the grant is signed. Total obligations for a year may never exceed the total of funds allotted to a regional office. There are *gross* and *net* obligations. Gross obligations are the total obligations of all types of funds (including recovered funds) without deducting funds recovered from old obligations. Net obligations are total obligations (including obligations of recovered funds) minus total funds recovered during the year.
Office of Management and Budget (OMB). The federal agency responsible for providing fiscal accounting and budgeting services for the federal government.
Order. Per the current version of FAA Order 1320.1, FAA Directives Management, directives are the primary means within the FAA to issue, establish, and describe agency policies, organization, responsibilities, methods, and procedures. Orders are permanent directives and stay in effect until canceled. *Note: Although the AIP Handbook is published as an FAA order, it provides program requirements to airports, consultants and all involved with AIP.*
OST Release Date. The DOT Office of the Secretary (OST) release date is the date that the Congressional notification process is completed.
Overall Development Objective (ODO). The ODO is found in the current version of FAA Order 5100.39, Airport Capital Development Plan. The intent of the ODO is to recognize that many airport projects require several different projects in order to complete the overall objective. For example, a new runway project may require land acquisition, obstruction clearing and runway construction. Through the use of the ODO, the costs and effort involved with the land acquisition and obstruction clearing is captured as part of the new runway project.
P
Passenger Boardings. Per 49 USC § 47102(15), unless the context indicates otherwise, revenue passenger boardings in the United States in the prior calendar year on an aircraft in service in air commerce, as the Secretary determines under regulations the Secretary prescribes. This includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous states, Alaska, or Hawaii for a nontraffic purpose. Note that *revenue passenger* is further defined in Section 3 of 14 CFR part 241, Uniform System of Accounts and Reports of Large Certificated Air Carriers.
Passenger Facility Charge. A charge approved by the FAA which is imposed by a public agency on eligible revenue passengers enplaned at a commercial service airport it controls. Public agencies may use PFC revenue to finance FAA-approved projects that meet the requirements of 49 USC § 40117. Note that *revenue passenger* is further defined in Section 3 of 14 CFR part 241, Uniform System of Accounts and Reports of Large Certificated Air Carriers.

Table A-1 Definition of Terms Used in This Handbook

Definitions
Permissive Statute. Per Black's Law Dictionary (9th edition 2009), a statute that allows certain acts but does not command them.
Program Income. Gross income received by the sponsor directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report. To be considered program income, the sponsor must receive the income.
Precision Approach Procedure. From the FAA Pilot/Controller Glossary, a Precision Approach Procedures is a standard instrument approach procedure in which an electronic glide slope/glide path is provided, e.g., ILS (Instrument Landing System), MLS (Microwave Landing System), and PAR (Precision Approach Radar)
Price Analysis. A price analysis is a process analyzing a proposed total price without evaluating separate cost elements (including profit). The purpose is solely to ensure that a total price is fair and reasonable.
Primary Airport. Per 49 USC § 47102(16), primary airport means a commercial service airport the Secretary determines to have more than 10,000 passenger boardings each year.
Program Income or Program Revenue. Per 49 CFR § 18.25(b) (2 CFR § 200.80 Program Income), gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period.
Programming. The FAA process of moving a proposed grant through all of the appropriate levels of review required prior to reserving funds for that grant.
Project cost. A cost involved in carrying out a project.
Project. For the purposes of this Handbook, an item of work such as a runway extension or apron rehabilitation. Separate projects can be included in one grant application.
Public Agency. Per 49 USC § 47102(20), any one of the following: **a.** A state or political subdivision of a state (this includes state agencies, cities, and other municipalities). **b.** A tax-supported organization. **c.** An Indian tribe or pueblo. Except an Indian tribe or pueblo, a public agency requires specific state-enabling legislation that authorizes the agency and defines the responsibilities of the agency.
Public Airport. Per 49 USC § 47102(21), an airport used or intended to be used for public purposes that meet the following two criteria: **a.** The airport is under the control of a public agency. **b.** The area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is publicly owned.

Table A-1 Definition of Terms Used in This Handbook

Definitions
Public-Use Airport. Per 49 USC § 47102(22), a public-use airport is: **a.** A public airport; or **b.** A privately-owned airport used or intended to be used for public purposes that is: **(1)** A reliever airport; or **(2)** Determined by the Secretary to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service.
R
Reconstruction. A comprehensive definition, including the differentiation between maintenance, rehabilitation, reconstruction, and replacement and examples are provided in Paragraph 3-6.
Recoveries. As adjustments are made to grant amounts based on actual payments, funds may be recovered (deobligated) from existing obligations and reobligated for upward adjustments to existing projects and under certain circumstances may be reobligated for new projects. The amount of recoveries that may be reobligated is controlled by OMB and is communicated to regional offices in the allotment process as a *recovery ceiling*.
Rehabilitation. A comprehensive definition, including the differentiation between maintenance, rehabilitation, reconstruction, and replacement and examples are provided in Paragraph 3-6.
Regularly Scheduled Commercial Service. A 14 CFR part 121, 14 CFR part 129, or 14 CFR part 135 certificated air carrier operating on a published schedule and reporting scheduled commercial activity.
Reliever Airport. Per 49 USC § 47102(23), a reliever airport is an airport the Secretary designates to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community.
Replacement. A comprehensive definition, including the differentiation between maintenance, rehabilitation, reconstruction, and replacement and examples are provided in Paragraph 3-6.
Retainage. The money earned by a contractor but not paid to the contractor until the completion of construction or another predetermined date. The retainage is held back as assurance for the quality of the contractor's work. From 49 CFR part 18 (2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards), Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Section 18.21(g)(3) (2 CFR § 200.305(b)(5)(iv)), the ADO must not make payments to sponsors for amounts that the sponsor has retained or withheld from the contractor. 49 CFR § 26.29 requires that the retainage that is held for subcontracts must match or must not exceed the level of retainage held back from the contractor by the sponsor. (Although 49 CFR § 26.29 is the regulation for Disadvantaged Business Enterprises (DBE) in Department of Transportation federal assistance programs, the requirements for prompt payment apply to payment to all contractors and subcontractors, and are not limited to DBE only.)

Table A-1 Definition of Terms Used in This Handbook

Definitions
Revenue Producing Aeronautical Support Facilities. Per 49 USC § 47102(24), fuel farms, hangar buildings, self-service credit card aeronautical fueling systems, air plane wash racks, major rehabilitation of a hangar owned by a sponsor, or other aeronautical support facilities that the Secretary determines will increase the revenue producing ability of the airport.
Runway Protection Zone (RPZ). Per the current version of Advisory Circular 150/5300-13, Airport Design, area at ground level prior to the threshold or beyond the runway end to enhance the safety and protection of people and property on the ground. This advisory circular defines RPZ requirements.
S
Safety/Security Equipment. Per 49 USC § 47102(3)(B)(ii), equipment, including explosive detection devices, universal access systems, and emergency call boxes, the Secretary requires by regulation for, or approves as contributing significantly to, the safety or security of individuals and property at the airport and integrated in-pavement lighting systems for runways and taxiways and other runway and taxiway incursion prevention devices.
Secretary. For the purposes of this Handbook, Secretary refers to the Secretary of the Department of Transportation. For some limited instances, Secretary may mean the Secretary of Homeland Security.
Set-Aside Funding. The AIP funding structure contains certain funding percentages or amounts that represent a minimum requirement for dedicated AIP funding. These *set-asides* include money for noise compatibility planning and projects, Military Airport Program participants, certain reliever airports and projects for capacity, safety, and security and noise projects at primary and reliever airports. Since these *set-asides* represent a minimum annual amount, the FAA calculates these categories after the apportionment of entitlement funding (which represent specific amounts). Funding remaining after entitlement funding and set-asides is referred to as remaining or *pure* discretionary.
Small hub airport. Per 49 USC § 47102(25), a commercial service airport that enplanes at least 0.05% but less than 0.25% of the national annual passenger boardings.
Sponsor. A sponsor is defined in 49 USC § 47102(26) as: **a.** A *public agency* that submits to the Secretary under this subchapter an application for financial assistance; and **b.** A *private owner of a public-use airport* that submits to the Secretary under this subchapter an application for financial assistance for the airport.
Standards Projects. The current version of FAA Order 5100.39, Airports Capital Improvement Plan defines standards projects. As of the publication date of this Handbook, that definition is as follows: Projects to bring an airport up to standards recommended by the FAA based on the current design category of the airport. If this definition is modified in the next version of FAA Order 5100.39, the new definition must be used. In cases where it is unclear if a project is capacity or standards, the ADO must obtain a joint APP-400 and APP-510 concurrence on whether the project is considered capacity.

Table A-1 Definition of Terms Used in This Handbook

Definitions
State. Per 49 USC § 47102(27), a state, for the purposes of this Handbook, is defined as a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands (Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, the Republic of Palau).
State Planning Agency. A state organization whose purpose is to ensure that government funding for transportation projects within a state is based on continuing, cooperative, and comprehensive planning. Typical state planning agencies include, but are not limited to, planning offices, aeronautics commissions, and departments of transportation.
Subgrant. Typically under AIP, the subgrant is the award of federal funds to a subrecipient.
Subrecipient. Per OMB Circular A-133, Subpart A (2 CFR § 200.93, Subrecipient), a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. Typically under AIP grants, the subrecipient is the airport receiving a grant from a state in a block grant state.
Substantial Completion. Substantial completion is generally a defined term in a contract and is the stage of the project when work is sufficiently complete in accordance with the contract documents so that the sponsor can occupy or use the project for its intended purpose. The substantial completion date typically triggers: retainage release; the warranty period; determination of any actual or liquidated damages; the start of the statute of limitations; and related actions.
T
Terminal Development. Per 49 USC § 47102(28), terminal development includes: **a.** An airport passenger terminal building, including terminal gates. **b.** Access roads servicing exclusively airport traffic that leads directly to or from an airport passenger terminal building. (Note that per FAA policy, the boundaries of this road are the first road or driveway in either direction from the terminal.) **c.** Note that an on-airport road (or the portion of a road) that does not go directly to or from a passenger terminal building is considered *access road* rather than *terminal development*. **d.** Walkways that lead directly to or from an airport passenger terminal building. **e.** Vehicles to move passengers between terminal facilities and between terminal facilities and aircraft per 49 USC § 47119(a)(1)(B).
Through-The-Fence Operation. A through-the-fence operation consists of an individual or company who owns property with aircraft storage facilities near an airport accessing the airfield of the airport with aircraft from off-airport property.
Turbojet Aircraft. For purposes of this Handbook, includes aircraft that have jet engines.

Table A-1 Definition of Terms Used in This Handbook

Definitions
U
Unallowable Cost. The cost of an item or activity that is not allowed to be funded with AIP, either by FAA policy, published cost standards, or legal prohibition.
Uneconomic Remnant. A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the sponsor has determined has little or no value or utility to the owner. This is a parcel in addition to the property needed. Uneconomic remnants may be incorporated into airport property as feasible, or disposed.
Usable Unit of Work. A completed project that will result in an increase in safety, usefulness, or usability at the airport. For the purposes of AIP grants, a usable unit of work can be obtained over one or more grants, provided the end result is a usable unit of work. This also requires a special condition in the grant requiring the sponsor to complete the work regardless of whether the associated future grants are issued. APP-520 maintains a current list of special conditions that must be used for specific project or airport situations.
Used or Intended to be Used. Used means currently in use. Per FAA policy, *intended to be used* means that the use will be realized within the next three to five years.
Useful Life. Useful life is the period during which an asset or property is expected to be usable for the purpose it was acquired. It may or may not correspond with the item's actual physical life or economic life.
W
Wide Area Augmentation System (WAAS). Wide Area Augmentation System (WAAS). WAAS provides improved navigation accuracy, availability, integrity, and continuity for aircraft navigation during departure, en route, arrival, and approach operations including no precision approaches and approach procedures with vertical guidance. Without WAAS, aircraft using GPS navigation equipment under instrument flight rules (IFR) must be equipped with an approved and operational alternate means of navigation appropriate for the flight. WAAS corrects for GPS signal errors caused by ionospheric disturbances, timing, and satellite orbit errors, and it provides vital integrity information regarding the health of each GPS satellite.

Appendix B. References and Web Links

B-1. General.

Table B-1 contains a list of the references included in this Handbook. Web links are provided in this list (they are not given again in the Handbook) and were current on the Handbook publication date. The versions for specific documents are not given – the current version must be used. Also, where possible, website links do not link directly to documents because these types of links tend to break often. Instead, they link to source web pages to ensure links stay current (and for some documents this is required by FAA Web policy).

Table B-1 References and Web Links

Web links to references in this Handbook include…
AIP Grant Assurances The grant assurances are the obligations associated with a grant that require the sponsors to maintain and operate their facilities safely and efficiently and in accordance with specified conditions. Many of the assurances are based on 49 USC § § 47105, 47106 and 47107. http://www.faa.gov/airports/aip/grant_assurances/
AIP Program Guidance Letters (PGLs) Program guidance letters are interim guidance issued about AIP. A PGL is a change to the Handbook. http://www.faa.gov/airports/aip/guidance_letters
AIP Program Information Memorandums (PIMs) Program Information Memorandums are interim guidance that does not change the content of the AIP Handbook, but provides additional clarifying information. http://www.faa.gov/airports/aip/guidance_letters
Airport Business Practices and Their Impact on Airline Competition This document discusses the reduction and/or elimination of airline entry barriers to an airport. http://www.faa.gov/airports/planning_capacity/
AJW-144 Weather Processors and Sensors – Non-Federal AWOS This website describes the requirements for design, installation, commissioning and maintenance of a non-federal AWOS. http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/techops/safety_ops_support/nonfedawos/

Table B-1 References and Web Links

Web links to references in this Handbook include…
ASMB C-10 **Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government** The United States Department of Health and Human Services issued this guidance on cost allocation plans and indirect cost rate agreements. http://www.nhtsa.gov/nhtsa/whatsup/tea21/grantman/html/00_manl_contents1_01.html
Bulletin 05-02, Update of Statistical Area Definitions and Guidance on Their Uses This Office of Management and Budget (OMB) publication defines the term *metropolitan area*. http://www.whitehouse.gov/omb/bulletins_index2003-2005
Code of Federal Regulations (CFR) http://ecfr.gpoaccess.gov
Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects This is the list of advisory circulars that must be used on AIP and PFC funded projects. Other advisory circulars that are specific to the project may also be needed. The list is kept up-to-date by AAS-100. http://www.faa.gov/airports/aip/
Department of Defense Contract Pricing Reference Guides This document provides guidance to sponsor's preparing cost or price analyses. https://acc.dau.mil/CommunityBrowser.aspx?id=406579&lang=en-US
Department of Transportation (DOT) Office of Inspector General (OIG) **Regional Office Contact Information** This website provides the OIG regional office contact information that the ADO must use to notify the OIG of bid improprieties. http://www.oig.dot.gov/contact-us
Department of Transportation (DOT) Order 4200.5 **Governmentwide Debarment, Suspension and Ineligibility** This order outlines the requirements for suspending and debarring persons and companies from federally funded projects (including those funded by AIP). http://www.dot.gov/mission/administrations/administration/senior-procurement-executive/financial-assistance-policy

Table B-1 References and Web Links

Web links to references in this Handbook include…
Establishment and Discontinuance Criteria for Automated Weather Observing Systems FAA Report APO-83-6 This report provides benefit-cost analysis requirements for automated weather observing systems (AWOS) for publication in the current version of FAA Order 7031.2, Airway Planning Standard Number One. http://trid.trb.org/view.aspx?id=933426
FAA Advisory Circulars (ACs) http://www.faa.gov/airports/resources/advisory_circulars/
FAA Airport Benefit-Cost Analysis Guidance This document provides guidance to sponsors on benefit-cost analysis (BCA) for capacity projects. http://www.faa.gov/airports/aip/bc_analysis/
FAA CertAlerts http://www.faa.gov/airports/airport_safety/certalerts/
FAA Office of Airports Website This website contains many references, forms, guidance, and other information needed for AIP projects. http://www.faa.gov/airports/
FAA Orders http://www.faa.gov/regulations_policies/orders_notices/
Federal Accounting Standard Advisory Board (FASAB) Standards Statement of Accounting Standards No. 27, Identifying and Reporting Earmarked Funds, explains how earmarked funds are financed by specifically identified revenues. This document details the reporting requirements for these projects. http://www.fasab.gov/standards.html
Federal Contract Tower Minimum Equipment List The list is included in FAA Order JO 7210.54, FAA Contract Tower (FCT) Operation and Administration and lists the eligible equipment at contract towers. http://www.faa.gov/regulations_policies/orders_notices/
Federal Emergency Management Agency (FEMA) Flood Maps This website provides flood maps for federal agencies to determine if a sponsor requires flood insurance for certain projects prior to receiving a grant. http://www.fema.gov/hazard/map/flood.shtm

Table B-1 References and Web Links

Web links to references in this Handbook include…
Federal Funding Accountability and Transparency Act of 2006 (FFATA) This act outlines the subgrant reporting requirements for block grant states. https://www.fsrs.gov
Federal Register Notices http://www.archives.gov/federal-register/
FHWA Construction Program Guide (Suspension/Debarment) This website provides links to references on suspension and debarment. http://www.fhwa.dot.gov/construction/cqit/suspensi.cfm
Financial Assistance Guidance Manual This guidance manual replaces DOT Order 4600.17A, Financial Assistance Management Requirements, and outlines the requirements for administering AIP and prescribes the procedures for implementing laws, regulations, executive orders, and Office of Management and Budget (OMB) circulars, providing guidance for the administration of DOT financial assistance programs. http://www.dot.gov/sites/dot.dev/files/docs/Financial_Assistance_Guidance_Manual.pdf
Government Accountability Office's (GAO) Principles of Federal Appropriations Law (Red Book) This publication is a multi-volume publication that discusses federal fiscal law requirements and legal decisions. http://www.gao.gov/legal/redbook/redbook.html
GSAXcess This is the website for the Federal Excess Personal Property Utilization Program. Sponsors can go to this site to find free used equipment for their airport. http://gsaxcess.gov
Highlights of Reported Actions to Reduce Barriers to Entry and Enhance Competitive Access This document summarizes reported actions taken by covered airports to reduce barriers to entry and enhance competitive access. http://www.faa.gov/airports/planning_capacity/
Final Report – Life Cycle Cost Analysis for Airfield Pavements (AAPTP 06-06) This Federal Highway Administration document provides a good primer for sponsors who would like to learn about life-cycle cost analysis. http://www.aaptp.us/reports.html

Table B-1 References and Web Links

Web links to references in this Handbook include…
Life-Cycle Cost Analysis Primer This Federal Highway Administration document provides a good primer for sponsors who would like to learn about life-cycle cost analysis. http://www.fhwa.dot.gov/infrastructure/asstmgmt/lcca.cfm
National Fire Protection Association Handbook This Handbook provides many of the standards for ARFF. http://www.nfpa.org
Office of Management and Budget (OMB) Circulars http://www.whitehouse.gov/omb/circulars_default
Office of Management and Budget (OMB) **State Point of Contact Information for Intergovernmental Review** This website provides the contact information that the sponsor must use when a project is required to go through the intergovernmental review process. http://www.whitehouse.gov/omb/grants_spoc
Procurement and Contracting under AIP – Federal Contract Provisions This webpage provide links to all of the required federal contract provisions by contract type. http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/
Public Laws https://beta.congress.gov
Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients **United States Department of Housing and Urban Development** This document provides guidance to sponsor's preparing cost or price analyses. http://portal.hud.gov/hudportal/HUD?src=/program_offices/cpo/grantees/cstprice
Suggestions for the Detection and Prevention of Construction Contract Bid Rigging This paper discusses bid improprieties and how to detect them. http://www.fhwa.dot.gov/programadmin/contracts/dotjbid.cfm
System for Award Management (SAM) This website contains a list of suspended and debarred persons and companies that have been excluded from doing business with the federal government. https://www.sam.gov

Table B-1 References and Web Links

Web links to references in this Handbook include…
Uniform Appraisal Standards for Federal Land Acquisition This document is for use by appraisers to promote uniformity in appraising federally funded land acquisition. http://www.justice.gov/enrd/3044.htm
United States Code (USC) http://fdsys.gov
US Army Corps of Engineers Engineer Pamphlet (EP) 1110-1-8 **Construction Equipment Ownership and Operating Expense Schedule** This document provides the method for a sponsor to determine the hourly rate they can claim for construction equipment used in force account work. http://www.publications.usace.army.mil/USACEPublications/EngineerPamphlets
Voluntary Airport Low Emission Program (VALE) Technical Report This report presents information on the application process, project eligibility, vehicle low emission standards, and how to calculate project emission reductions, cost-effectiveness, and credits. http://www.faa.gov/airports/environmental/vale

Appendix C. Prohibited Projects and Unallowable Costs

C-1. Examples of General Prohibited Projects/Costs (for All Types of Projects).

The list in Table C-1 is not comprehensive. Instead, it contains examples of projects or costs specifically prohibited in the Act or whose eligibility is frequently questioned. Unless a specific reference to the Act is cited, these prohibitions are FAA policy.

Table C-1 Examples of General Prohibited Projects/Costs for All Project Types

Examples include, but are not limited to…
(1) ACIP Update as Project Formulation. Updates to an airport's capital improvement plan as part of the project formulation costs. Updates to an airport's capital improvement plan are only eligible if warranted as part of a master plan study or update grant.
(2) Administrative Costs as a Percent of the Grant Amount. Administrative costs must be based on work that is necessary for carrying out the project.
(3) Administrative Costs for AIP Program Management. Because AIP funds can only be used for costs to carry out a specific AIP project, program administrative costs incurred by the sponsor for managing the grant program are not allowable.
(4) Airfield Operations and Maintenance Costs.
(5) Approach Procedures – Design of, Costs associated with establishing. In general, AIP cannot be used to design new approach procedures or to fund the costs associated with establishing a new procedure except in very limited circumstances that are allowed under the Act.
(6) Budget Augmentation. Combining funds between different federal programs if not specifically allowed as discussed in Paragraph 4-12.
(7) Computer Software (Including Common Use Gate Software). Software that does not meet the requirements in Paragraph 3-69.
(8) Conferences, Seminars, and Courses. Tuition, travel, or subsistence for a sponsor's personnel to attend conferences, seminars, or courses.
(9) Contingencies or Allowances.
(10) Correcting or Doing Something More than Once – Construction/Equipment/Land. Cost to correct or do something more than once. This is based on the general AIP premise that AIP is intended for something to be done correctly one time. Therefore, costs not required to complete the project are not allowable. This includes restocking charges if a contractor orders too much or an incorrect material and wants to return the materials to the supplier. While the supplier may charge the contractor to restock the materials, the costs of restocking are not required to complete the projects. It also includes costs for replacing defective materials, or items that are warranty issues, and all costs associated with the removal and replacement of pavement or materials that do not meet the FAA specifications.

Table C-1 Examples of General Prohibited Projects/Costs for All Project Types

Examples include, but are not limited to…
(11) Correcting or Doing Something More than Once – Design/Planning. Cost for design more than once except as allowed in Paragraph 3-22 for advisory circular changes. Following the premise above, AIP grant funds cannot be used to redesign. The exception is for design omissions that were not negligent and the additional work was necessary and would have been done anyway under a correct set of plans. For example, if a sponsor is given a design-only grant and is delayed in starting the construction, the plans may need to be reviewed and some parts of it redesigned. The costs to redesign or to bring the plans up to date are not allowable costs since AIP paid the first time to correctly design the project.
(12) Costs to Recover Improper Payments. By FAA policy, the costs incurred by a sponsor to recover improper payments are not an allowable cost of an AIP grant project. Although 2 CFR § 200.428 considers costs to recover an improper payment an allowable costs, these costs are not allowable under AIP. This is because AIP grants are project specific and limited by 49 USC § 47110 to only those costs that are reasonable and necessary to carry out the project. The costs to recover improper payments do not meet that statutory requirement.
(13) Decorative Landscaping. This is per 49 USC § 47110(f). Planting can only be funded to the extent that it is a cost associated with an AIP project and required for erosion control, state and/or local construction practices or for noise mitigation. As with any ineligible work, where the sponsor desires to include landscaping for aesthetic effect with a project, the costs must be broken-out from the grant funded part of the project.
(14) DBE Plan Updates as a stand-alone plan. DBE updates are required when the anticipated amount of federal funding is $250,000 or greater in a fiscal year, and the cost of the plan update may be included as an allowable cost of the project that is triggering the need for the plan update.
(15) Equipment – Turned Over at End of Project. Acquisition of non-expendable equipment as part of an AIP development project. Some examples include: **(a)** Hand held radios **(b)** Vehicle beacons **(c)** Pavement marking machines **(d)** Joint sealing machines **(e)** Ohm meters **(f)** Sweeper brooms **(g)** Commercial barricades **(h)** Construction vehicles/trucks **(i)** Inspection vehicles/trucks **(j)** Construction office trailer/building **(k)** Hand held cameras **(l)** Lighted X's While the cost associated with the temporary use of non-expendable equipment is eligible under AIP, the acquisition of such equipment under a development grant is not. The practice of requiring a project contractor to transfer ownership of temporary non-expendable equipment to the owner at the

Table C-1 Examples of General Prohibited Projects/Costs for All Project Types

Examples include, but are not limited to…
end of the project is an impermissible procurement action. For example, it is reasonable to require the contractor to furnish hand-held radios during the duration of the project. It is not allowable under AIP to require the contractor to transfer ownership of these radios to the airport owner at the conclusion of the project. AIP may not participate in costs associated with acquiring equipment for day-to-day airport operations. This includes direct and indirect acquisitions.
(16) Emergency Repair of Eligible Infrastructure. FAA may not provide AIP funding for emergencies outside the normal capital improvement program without express Congressional authorization. From a disaster recovery aspect, AIP grant funding efforts are focused on restoring in the long term the capital improvements that have been damaged within the regular AIP program. FAA may not provide AIP funding for emergencies outside the normal capital improvement program without express Congressional authorization. From a disaster recovery aspect, AIP grant funding efforts are focused on restoring in the long term the capital improvements that have been damaged within the regular AIP program.
(17) Flight Checks – for Establishing Procedures or anything other than the initial flight check for an AIP funded NAVAID or weather aid.
(18) Fundraising. Any costs incurred in connection with raising funds by the sponsor, including interest and premium charges and administrative expenses involved in conducting bond elections and in selling bonds. Such costs are ineligible unless specifically allowed by statute, regulation, or a similar provision.
(19) Indirect Cost Applied to Costs Other Than Direct Salary and Wages. The rate approved under the cost allocation plan (also referred to as the indirect cost allocation plan rate, or ICAP rate) for a sponsor is applied only to the costs associated with sponsor's employee's hourly rate. The rate is not a multiplier on anything but the employee's hourly rate. This means that the ICAP cannot be applied to contract costs, construction costs, consultant costs, or any other type of cost that is not a sponsor's employees' salaries and wages for hours worked on an AIP project.
(20) Interest Charges. Interest charges, except payment of interest directed by a court in a condemnation proceeding, which then becomes part of the condemnation award and allowable. However, where the amount deposited in court as fair market value was adequate and could have been withdrawn by the property owner without prejudice to his/her rights in the condemnation proceeding, such interest payment is not allowable.
(21) Construction on Land Leased from a Private Entity. Projects must be on airport property with good title per Paragraph 3-16. As discussed in Table 2-8, leasing from a private entity does not meet the requirements for good title.
(22) Legal Fees Defending a Specification or Federal Contract Requirement. These costs are not required to complete the project.
(23) Liability Insurance – Excessive for Contractor/Consultant. Liability insurance well beyond that normally carried by the contractor or consultant for his own protection. This includes liability for damages beyond the scope of the consultant or contractors contract (such as making a consultant liable for acts of third party contractors not under the control of the consultant).

Table C-1 Examples of General Prohibited Projects/Costs for All Project Types

Examples include, but are not limited to…
(24) Liability Insurance – For the Airport Sponsor. The requirement that the sponsor be indemnified by the contractor against potential damages is not an FAA or AIP requirement, nor is it an essential element in completing the project. Rather, this third party coverage would simply protect the airport and its insurer against the presumed added risk of airport operations during periods of construction and add the cost of that protection to the construction costs.
(25) Lobbying. Cost of activities associated with the lobbying for a project or influencing federal employees. The regulations on lobbying or influencing federal employees do not restrict technical negotiations involving AIP projects.
(26) Unclassified Asset Airport Projects. By FAA policy, airports that are not classified as National, Regional, Local, or Basic airports in the latest edition of the FAA Asset report are only eligible for a project to rehabilitate the airport's primary runway at a frequency not to exceed 10 years, a one-time project to remove obstructions from each end of the primary runway, and runway maintenance projects allowed per 49 USC § 47102(3)(H). In cases where there is extraordinary justification and APP-500 has concurred with that justification, other projects may be considered.
(27) On the Job Training Programs. Agencies such as the Federal Highway Administration have specific statutory authorization to establish apprenticeship and training programs targeted to move women, minorities, and disadvantaged individuals into journey-level positions. The FAA does not have similar statutory authorization for AIP and therefore cannot participate in such programs.
(28) Procurements with Improper Bid Alternates. Using the procurement process as a cost estimating tool is not allowed. The sponsor is not allowed to bid alternates that it has no intention of putting under contract. An example would be where a sponsor is permitted by its 14 CFR part 139 index to acquire a 1,500 gallon ARFF vehicle, but wants a 3,000 gallon vehicle and intends to pay the additional cost using local funds. This is to avoid having contractors and suppliers incur significant costs to bid hypothetical projects.
(29) Projects That Have Not Been Determined to be Eligible. Any project that has not been determined to be eligible by the FAA. If this Handbook does not list a project as eligible, the ADO must receive an eligibility determination from APP-500.
(30) Repair, Replacement or Upgrading Computer Hardware and Software used in AIP Projects. Repair, replacement, or upgrading computer hardware or software before the useful life of the system has been met.
(31) Replacement, Repair, or Renovation of Ineligible Facilities/Equipment. Unless allowed under Paragraph 3-77, if AIP cannot be used to construct or acquire something, then AIP cannot be used to repair, replace, or renovate it.
(32) Sculptures or Works of Art. Per 49 USC § 47110(f).
(33) Training. Only acquisition of certain training systems and equipment is eligible, not the actual training.

C-2. Examples of Construction Prohibited Projects/Costs.

The list in Table C-2 is not comprehensive. Instead, it contains projects or costs specifically prohibited in the Act or whose eligibility is frequently questioned. Unless a specific reference to the Act is cited, these prohibitions are FAA policy.

Table C-2 Examples of Prohibited Projects/Costs for Construction

Examples include, but are not limited to…
(1) All of the Examples in Table C-1.
(2) Access Road – Ineligible Segments. A portion of an access road that meets any of the following criteria: **(a)** Does not exclusively serve airport traffic. **(b)** Is exclusively for the purpose of connecting parking facilities (or other non-aeronautical facilities such as rental car facilities and on-airport hotels) to an eligible portion of the access road. **(c)** Solely serves industrial or non-aeronautical areas or facilities. **(d)** Is necessary only to maintain FAA facilities installed under the F&E program. **(e)** Is not on airport property or an airport-owned easement. **(f)** Is not needed for the circulation of airport passengers or air cargo.
(3) Aircraft Deicing Buildings. Storage facilities or buildings for *aircraft* deicing equipment, vehicles, and fluids.
(4) Aircraft Self-Docking Systems. System to automatically guide pilots to the gate and allow the pilots to self –park aircraft without ramp personnel (advantageous during presence of lightning) through the use of laser range finders and light-emitting diode (LED) displays. This equipment is not required by rule or regulation and is typically airline owned.
(5) ARFF Buildings Bays for Non-Airport ARFF Vehicles or non-ARFF vehicles. ARFF building bays for fire trucks or vehicles that are stationed on the airport, but primarily provide services outside the airport boundaries, or for any vehicle that is not required by regulation except for a single structural fire truck that is used to provide backup support to ARFF vehicles and protection to airport buildings.
(6) Bid Alternates that are Not Possible. Sponsors must not use the procurement process, such as including bid alternates, as a means of determining project costs. Bidding a 1,500 gallon ARFF vehicle and a 3,000 gallon vehicle simply to determine the difference in costs of the two vehicles when the sponsor has no intent of actually acquiring the smaller vehicle.
(7) Buildings – Not in Act. Any building that is not an eligible facility at that airport for storing *airfield* deicing materials, terminal, ARFF building, snow removal equipment building, hangar, or contract tower (unless specifically allowed under a special AIP funding program in Chapter 6).
(8) Cell Phone Waiting Lots – Unnecessary Costs. Areas for unattended car parking and amenities such as flight information display boards are not considered necessary.

Table C-2 Examples of Prohibited Projects/Costs for Construction

Examples include, but are not limited to…
(9) Command and Control Centers Area/Cost Beyond Maximum. Any area or cost beyond what is allowed in Table O-3.
(10) Early Completion Bonuses.
(11) Explosive Detection System (EDS) or Associated Terminal Modification. Beginning in FY 2004, and in every year since then, the FAA appropriations bill has prohibited using AIP grant funds on EDS systems or any building modifications that are necessary to support or install an EDS system. Because PFC eligibility hinges on AIP eligibility, leaving the project eligible but prohibiting funding is a work-around that allows these projects to be funded with PFCs.
(12) Environmental Remediation. Environmental remediation and removal of fuel farms, underground fuel tanks, hazardous waste, or contaminated soil. This is because sponsors are required by the grant assurances to maintain facilities to environmental standards. In addition, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, provides that the responsible party causing the contamination can be accountable for recovery of clean-up costs, regardless of the level of negligence.
(13) Furniture. All furniture except fixed furniture for passenger seating (including fixed tables and counters) in holding areas of a terminal that is installed as an allowable cost of a terminal building project.
(14) Furniture, fixed. Replacement of fixed terminal furniture after the initial installation, unless the replacement is necessitated by an eligible terminal project.
(15) Law Enforcement Facilities. Law enforcement facilities that are not airfield facilities to provide for a law enforcement presence required for air transportation security. The FAA has determined that the only facilities that are eligible are guard shacks at airfield access points. Co-located Command and Control Centers or Emergency Operations Centers also have limited eligibility.
(16) Maintenance/Service Facilities. Construction of maintenance/service facilities, except that allowed to store snow removal equipment, and to store the aircraft rescue and firefighting equipment that is required under 14 CFR part 139.
(17) Multimodal Terminals. Areas not Directly Related to Air Commerce. Only the areas directly related to air commerce are eligible.
(18) NAVAID Relocation – Refurbishing/Enhancing/Upgrading. AIP participation to move FAA-owned NAVAIDS that impede an AIP funded project must not include refurbishing, enhancing, or upgrading the impacted facility.
(19) NAVAID Relocation. The relocation of NAVAIDs and other facilities except as allowed under Paragraph 3-77. Relocation strictly for the convenience of the owner (be it the sponsor, the FAA, or other type of owner) is not allowable.
(20) Noise Barriers – Exclusive Use.

Table C-2 Examples of Prohibited Projects/Costs for Construction

Examples include, but are not limited to…
(21) Obstruction Removal – Creation of Parks or Play Fields. Any redevelopment, such as the creation of parks or play fields, unless required as part of court ordered mitigation. This is because the redevelopment is not an essential element in completing the project.
(22) Obstruction Removal – Beyond the Aircraft Category on the Approved ALP for that Runway.
(23) Obstruction Removal – More than Once. Topping trees, or any other obstruction removal, more than once using AIP funding.
(24) Painting and Carpeting – Stand-Alone. Carpet replacement and painting as stand-alone projects. Carpet replacement or repainting impacted by an eligible project (and only within the boundaries of the eligible project) would be eligible as an incidental part of that project.
(25) Parking for Vehicles. Public parking facility for passenger vehicles at large, medium and small hub airports and revenue producing parking lots at non-hub airports (unless specifically allowed under a special AIP funding program in Chapter 6).
(26) Pavement – Adjacent to Terminal. The areas immediately adjacent to the terminal building that cannot be used by aircraft. This pavement may be eligible as terminal work provided it is associated with eligible terminal facilities.
(27) Pavement – Exclusive Use. This includes exclusive use and near exclusive use aprons, taxiways, and taxilanes. Near exclusive use means that the airport has no procedures for the management and operation of the apron, hangar, or taxiway to ensure prompt access by each potential user. Appendix A contains a more complete definition and references on exclusive use.
(28) Pavement – In Front of Hangar. Pavement in front of a hangar that cannot be used for public parking or taxiing of aircraft. For hangars for Group I aircraft, this is 27 feet, for Group II aircraft is 40 feet, and for Group III is 56 feet. Note that this is one half of the taxilane object free area minus one half of the taxilane width. This pavement may be eligible as hangar work provided it is associated with an eligible hangar.
(29) Pavement – Maintenance. Routine runway, taxiway, or apron maintenance except at nonhub primary airports and nonprimary airports under 49 USC § 47102(3)(H). Examples of eligible and ineligible maintenance are provided in Paragraph 3-6.
(30) Pavement – Unavailable for Aircraft Parking/Taxiing. Pavement for vehicle/aircraft maintenance, automobile parking, ground service equipment storage, areas to *square off* pavement if it is not needed or used for aircraft parking, or apron areas on the apron side of a hangar that cannot be used for public aircraft parking.
(31) Planning as Project Formulation. Including costs incurred preparing a metropolitan area or statewide airport planning as project formulation costs, even if the plan was not AIP funded. For example, photo slope or other obstruction analysis that was prepared in a non-AIP funded obstruction plan that is used as a basis for removing the obstructions at an airport.
(32) Price Escalation Increases.

Table C-2 Examples of Prohibited Projects/Costs for Construction

Examples include, but are not limited to…
(33) Revenue Producing Aeronautical Support Facilities – Construction. Revenue producing aeronautical support facilities at other than nonprimary and Military Airport Program airports.
(34) Revenue Producing Aeronautical Support Facilities – Maintenance/Repair/Minor Rehabilitation. The maintenance, repair, and minor rehabilitation of revenue producing facilities is only allowed as part of the MAP program under 49 USC § 47118((f). The major rehabilitation of a hangar at a nonprimary airport or a Military Airport Program airport is allowed per 49 USC § 47102(24).
(35) Roads – To federally owned NAVAIDS.
(36) Roads – To Non-Aviation Areas/Facilities. This includes driveways and other access points that connect the access road to off airport property.
(37) Roads – To Parking. Roads, whatever length, exclusively for the purpose of connecting public parking facilities to an access road except where the public parking facility is constructed with AIP grant funds.
(38) Seismic Retrofit. For any building completed after July 14, 1993. This is because the DOT regulation requiring seismic measures was issued on this date.
(39) SRE Buildings. SRE building space for personnel quarters, training space, or other non-equipment storage functions.
(40) Terminal People Mover or Access Rail – Operations/Maintenance. Costs to operate or maintain the terminal people mover or access rail. This includes all associated maintenance facilities and equipment (including storage facilities, spare parts, spare equipment, tracks to a maintenance facility, maintenance equipment, and administrative offices).
(41) Terminal People Mover or Access Rail – To Certain Areas. Terminal people mover or access rail cost associated with access to commercial areas, maintenance areas, employee parking lots, or ticketing or fare collection areas.
(42) Terminal – Certain Areas: **(a) Airline Frequent Flyer Lounge.** This is because these areas are not public use and are not necessary for the movement of passengers and baggage. **(b) Areas Behind Counters.** The areas behind airline, rental car, and concession counters are not eligible because they are not public use areas. **(c) Chamber of Commerce.** This is because these areas are not necessary for the movement of passengers and baggage. **(d) Conference Rooms.** Even if these areas are occasionally accessed by the public, they are not considered public-use. **(e) Garbage Rooms.** This is because these areas are not public use, are considered operations/maintenance, and are not necessary for the movement of passengers and baggage. **(f) Hallways (or Portions of Hallways) Not Serving Public Use Areas.** The portion of a hallway that is necessary to access a public use area (even if it also serves non-public use areas along

Table C-2 Examples of Prohibited Projects/Costs for Construction

Examples include, but are not limited to…
the way), is eligible. The portion of the hallway that only serves non-public use area (including mechanical and electrical rooms) is not eligible. **(g) Janitor's Room.** This is because these areas are not public use, are considered operations/maintenance and are not necessary for the movement of passengers and baggage. **(h) Loading Docks.** This is because these areas are not public use, are considered operations/maintenance, and are not necessary for the movement of passengers and baggage. **(i) Lost and Found Rooms.** Even if these areas are occasionally accessed by the public, they are not considered public-use. **(j) Offices.** All offices (airline, airport, tenant, TSA, etc.) are ineligible. Even if these areas are occasionally accessed by the public, they are not considered public-use and are not necessary for the movement of passengers and baggage. **(k) Passenger Screening Area Build Out and Equipment.** The area for passenger screening is eligible for terminal eligibility proration purposes. However, all build out costs and equipment (as with other terminal tenants) are ineligible. Unlike access control and perimeter fencing, passenger screening is not 49 CFR part 1542 requirement. **(l) Police and Law Enforcement Facilities.** The only facilities that are eligible are guard shacks at airfield access points. In addition, co-located Command and Control Centers or Emergency Operations Centers also have limited eligibility. **(m) Staff Break Rooms.** **(n) Training Rooms.** Even if these areas are occasionally accessed by the public, they are not considered public-use. **(o) Transportation Security Administration (TSA) Security Checkpoint Consolidation – For (TSA) Staff Purposes Only.** In order for a checkpoint consolidation project to be eligible, there must be a current to five-year problem with the capacity of the existing lanes and the consolidation must be a reasonable cost solution to this problem. Security checkpoint consolidation for the sole purpose of reducing TSA staff costs is not eligible. **(p) TSA Checkpoint Rooms.** The room required by TSA staff to observe the checkpoint through a one way mirror is not eligible because it is not public use. **(q) TSA Storage Room for Confiscated Items.** Even if these areas are occasionally accessed by the public, they are not considered public-use. **(r) United Service Organizations (USO) Facilities.** This is because these areas are not public use and are not necessary for the movement of passengers and baggage.
(43) Through-the-Fence. Any development project to serve a through-the-fence operation per 49 USC § 47107(t)(2)(B)(ii). This is because through-the-fence operations are considered exclusive use and are not the responsibility of the sponsor.
(44) Utility Work – Stand-Alone Project. This is an allowable cost to an AIP eligible project, not a stand-alone project.

C-3. Examples of Equipment Prohibited Projects/Costs.

The list in Table C-3 is not comprehensive. Instead, it contains projects or costs specifically prohibited in the Act or whose eligibility is frequently questioned. Unless a specific reference to the Act is cited, these prohibitions are FAA policy.

Table C-3 Examples of Prohibited Projects/Costs for Equipment

Examples include, but are not limited to…
(1) All of the Examples in Table C-1.
(2) Aircraft deicing fluids. Per 49 USC § 47102(3)(B)(v).
(3) Aircraft Removal Equipment.
(4) Airport Surface Detection Systems. This must not be confused with equipment that TSA determines to be required to meet 49 CFR part 1542 for securing the airport perimeter, which may be eligible as security equipment.
(5) ARFF Vehicles– Support Vehicles ARFF support vehicles, such as fire marshal vehicles, unless AAS-1 has determined that this will significantly contribute to safety of individuals and property at the airport per 49 USC § 47102(3)(B)(ii).
(6) ARFF Vehicles – Beyond Index. More than the minimum number, type, and size required by the ARFF index.
(7) ARFF Vehicles – Back-Up or Reserve.
(8) ARFF Vehicles – No 14 CFR part 139 Certificate. ARFF vehicles for airports that do not hold 14 CFR part 139 certificates unless AAS-1 has determined that this will significantly contribute to safety of individuals and property at the airport per 49 USC § 47102(3)(B)(ii).
(9) ARFF Vehicles – Requiring a delivery period that is less than 360 days. Specifying a shorter period of time limits competition to those manufacturers that have ARFF vehicles that are already built.
(10) Commercially available passenger vehicles or trucks. This includes all terrain vehicles (ATVs) and lawn or agricultural tractors. The exception is where AAS-1 has made a written determination that the vehicle or truck fills a unique safety or security need at that specific airport per Paragraph L-3.
(11) Emergency Power Equipment. Equipment to provide emergency power to an airport for emergency housing, marshaling of equipment or supplies for catastrophe relief or other purposes. In addition to not being allowed, this could be an augmentation of another federal agency's budgets since other agencies have the specific responsibility to provide those services.
(12) Expendable Items. Expendable items, such as extinguishing agents (except for one test charge and one refill at time of initial purchase of an ARFF vehicle), deicing materials (sand, chemicals, fluids, etc.), shotgun shells, chemicals, pyrotechnic devices (other than pyrotechnic pistols) and ammunition.

Table C-3 Examples of Prohibited Projects/Costs for Equipment

Examples include, but are not limited to…
(13) Extended Warranty Costs or Requirements for Extended Servicing. The cost of extended warranties beyond that which is common in business because this is a maintenance and operational expense. This includes requirements in the bidding documents for ability to be onsite within a specified number of hours or for having service personnel within a certain geographic proximity of the project site which have been determined to be anti-competitive.
(14) Fencing – Non-Aeronautical. Fencing to benefit non-aeronautical use areas of the airport that is not primarily for protection of the airfield or terminal building.
(15) Flight Checks – More than One. The cost for the FAA Air Traffic Organization (ATO) to conduct more than one flight check (also called flight inspections) during the commissioning of a NAVAID or weather aid.
(16) Foreign Object Debris (FOD) Detection Systems – Optional Features. Optional features that exceed FAA design standards for system output requirements are not eligible for AIP and may not be used as a basis for selection of the system.
(17) Gate Power. Mobile air conditioning, heating or electric power facilities or equipment for the benefit of aircraft. This equipment is not considered terminal-based and are not eligible (unless otherwise eligible and approved under VALE).
(18) Ineligible Equipment – use of AIP to reimburse any costs associated with ineligible equipment. The single exception is for the installation of a sponsor's preferred airfield lighting equipment as discussed in Paragraph 3-31.
(19) Interactive Training Systems – Rental.
(20) Land and Hold Short Equipment. Trucks, follow-me signs, and other associated Land and Hold Short Operations (LAHSO) equipment.
(21) Maintenance Equipment/Tools. The acquisition of equipment or tools that are used to maintain, repair, reconstruct, or rehabilitate an item or facility, including equipment or tools used for pavement maintenance at nonhub primary or nonprimary airports. (If pavement maintenance is done by the sponsor's own forces using force account methods, a portion of the cost of the use of the equipment may be allowable.)
(22) Mobile Command Vehicles. The FAA has determined that mobile command vehicles cannot be considered as eligible firefighting and rescue equipment. This is because mobile command vehicles do not deliver firefighting personnel, equipment and fire suppression agents to the site of an accident, nor are they used in physically extinguishing fire or physically assisting in rescue efforts.
(23) NAVAIDS at Airports without an ATO-designated Instrument Runway. Only airport rotating beacons, runway end identification lights, and visual glide-slope indicator systems are eligible at airports without a designated instrument runway.
(24) Paint Machines. Paint machines for any purpose.
(25) Pest Control Equipment for Rodent Extermination. This is considered a maintenance tool.

Table C-3 Examples of Prohibited Projects/Costs for Equipment

Examples include, but are not limited to…
(26) Police Vehicle – Any at an Airport without a 14 CFR part 139 certificates. A police vehicle is not eligible unless the airport has a 14 CFR part 139 certificate.
(27) Police Vehicle – More than One at an Airport without a 14 CFR part 139 certificates. Only one police vehicle is eligible at an airport with a 14 CFR part 139 certificate.
(28) Portable Emergency Generators. Portable emergency generators or light plants that function essentially as portable emergency generators.
(29) Radios and Communication Equipment – Stand-Alone and Portable (or hand held) Equipment. Radios and communication equipment are allowable costs only if they are part of the acquisition of an eligible ARFF vehicle, police vehicle, or a piece of snow removal equipment.
(30) Runway Surface Condition Sensors – Certain Features/Services. Service agreements, spare parts, and on-site service by the sensor system manufacturer required by the SAE document included in the current version of Advisory Circular 150/5200-30, Airport Winter Safety and Operations. In addition, wind sensors, air sensor, relative humidity sensor, precipitation sensor, present weather/visibility sensor, sub-surfaces sensors; requirements for field processing units that exceed the minimum needed to support the eligible system, and central processing systems to receive, accept and display weather forecasts. These features and services are not allowable costs for runway surface condition sensors.
(31) Safety Equipment - Not Specifically Required by 14 CFR part 139. Except as allowed under Paragraph L-3.
(32) Security and Access Control Equipment – Landside. Security and access control equipment (such as closed circuit cameras) for protection of the unsecured landside areas of the airport (such as parking garages, rental car facilities, and terminal areas prior to security screening checkpoints).
(33) Security Equipment. Projects exceeding the minimum requirements of 49 CFR part 1542 or are necessary to support local law enforcement. Examples include: **(a)** Video cameras that are not in the sterile terminal area or airfield operations area. **(b)** Handheld cameras. **(c)** Badging supplies. **(d)** Tow trucks to tow vehicles. **(e)** Canines (dogs) and kennels (live animals). With the transfer of responsibility to DHS, airports are no longer responsibility for canines for airport security. **(f)** Police radios (other than in an eligible police vehicle at time of acquisition). **(g)** Firearms for law enforcement or security purposes. **(h)** Law enforcement facilities except guard shacks at airfield access points.
(34) Sign Panel Replacement. See Paragraph 3-6 for further discussion.

Table C-3 Examples of Prohibited Projects/Costs for Equipment

Examples include, but are not limited to…
(35) Specialized Snow Removal Equipment (SRE) for Snow and Ice Removal on EMAS. There currently is no FAA requirement for the EMAS to be cleared of snow or ice.
(36) Squitters – Maintenance Contracts. This is an operational cost that is the responsibility of the sponsor.
(37) Towed FOD Sweepers. These are not considered eligible power sweepers.
(38) Tow Vehicles for Eligible Equipment.
(39) Visual Approach Slope Indicators (VASI). These have been replaced by the installation of Precision Approach Path Indicators (PAPI).
(40) Wildlife Reduction Equipment and Supplies. Shotgun shells, chemicals, pyrotechnic devices (other than pistols), and airport operations vehicles.

C-4. Examples of Land Prohibited Projects/Costs.

The list in Table C-4 is not comprehensive. Instead, it contains projects or costs specifically prohibited in the Act or whose eligibility is frequently questioned. Unless a specific reference to the Act is cited, these prohibitions are FAA policy.

Table C-4 Examples of Prohibited Projects/Costs for Land

Examples include, but are not limited to…
(1) All of the Examples in Table C-1.
(2) Land for Other than Airport Purposes. See Appendix A for definition of airport purposes.
(3) Costs Exceeding Requirements. Any costs that exceed what is required by 49 CFR part 24 or do not conform to the Uniform Appraisal Standards for Federal Land Acquisitions.
(4) Compensation for Loss of Business.
(5) Compensation for Goodwill.
(6) Compensation for Frustration of Development Plans.
(7) Costs to Lease Privately Owned Land. A lease of privately owned land is normally not considered adequate title and acquisition of the needed interest in the land is required.
(8) Real Estate Commissions.

Table C-4 Examples of Prohibited Projects/Costs for Land

Examples include, but are not limited to…
(9) Stand-Alone grants for appraisals.

C-5. Examples of Noise Mitigation Prohibited Projects/Costs.

The list in Table C-5 is not comprehensive. Instead, it contains projects or costs specifically prohibited in the Act or whose eligibility is frequently questioned. Unless a specific reference to the Act is cited, these prohibitions are FAA policy.

Table C-5 Examples of Prohibited Projects/Costs for Noise Mitigation

Examples include, but are not limited to…
(1) All of the Examples in Table C-1.
(2) Block Rounding with Lower Local Standards. For example, if a local standard has been adopted to include residences that lie within the DNL 60 dB noise contour, residences that lie outside the DNL 60 dB are not eligible for block rounding. This is because by accepting a lower local standard, the FAA has already accepted exterior noise that is below the land use compatibility with yearly day-night average sound levels that FAA has accepted in 14 CFR part 150.
(3) Block Rounding for Anything Other than a Residence. This includes buildings such as schools and places of worship.
(4) Building Code Corrections. If it is determined in the course of designing a sound insulation project that a building needs improvements in order to conform to local building codes, only the costs of the sound insulation are allowable. This includes making changes to meet current ventilation requirements where the existing central ventilation or air conditioning units do not meet current building code ventilation requirements.
(5) Cannot Be Implemented by an Eligible Sponsor. A 14 CFR part 150 approved NCP measure for a project that cannot be implemented by an eligible sponsor.
(6) Comfort or Attractiveness Improvements.
(7) Demonstration Programs. This may include installation of unproven methods of reducing sounds such as installing white noise generators in classrooms. This includes any 14 CFR part 150 approved NCP measure for a demonstration program intended to test the effectiveness of new noise mitigation technology.
(8) Fixed Noise Monitoring Equipment in Certain Situations. Fixed noise monitoring equipment where the 14 CFR part 150 noise exposure maps (existing and forecast) show no noncompatible land uses or the sponsor is unable to clearly show that portable monitors would be inadequate.

Table C-5 Examples of Prohibited Projects/Costs for Noise Mitigation

Examples include, but are not limited to…
(9) Follow-on Replacement. Follow-on replacement of windows, doors, equipment, or any items installed for noise reduction that appear to have met their useful life. Installation of noise reduction equipment is limited to the initial installation only.
(10) Inadequate Maintenance Corrections. Improvements to address inadequate maintenance.
(11) Inside DNL 75 dB or greater. Noise insulation projects for residences, schools, hospitals, places of worship, auditoriums, and concert halls within a DNL 75 dB or greater noise contour since these uses are never compatible in these noise contours, per Table 1 of Appendix A in 14 CFR part 150 —Land Use Compatibility With Yearly Day-Night Average Sound Levels. If a sponsor requests sound insulation in the DNL 75 dB contour, the ADO may consider consulting with APP-400 for guidance.
(12) Interior Noise Less than 45 dB. Noise mitigation inside the DNL 65 dB contour where the interior noise level is less than 45 dB unless the ADO has concurred that the limited costs are due to neighborhood equity.
(13) Mitigation of a Noise Sensitive Use in a Commercially Zoned Structure.
(14) Mitigation Outside DNL 65 dB. Noise mitigation outside the DNL 65 dB contour unless the interior noise level is greater than 45 dB and the ADO has concurred that the limited costs are due to block rounding, or the community has adopted a significant noise standard less than DNL 65 dB.
(15) Mobile Homes or Mobile Classrooms. Mobile homes and Mobile Classrooms are not viable noise compatibility projects since their design and construction do not lend themselves to effective noise reduction measures. (Note that this is not the same thing as permanent modular buildings.)
(16) Non-Aircraft Noise Mitigation. The mitigation must be based on aircraft noise associated with the airport.
(17) NCP Measures Approved in Fiscal Years 2004-2007 outside the DNL 65 dB Noise Contour. Per 49 USC § 47504(b)(4), a 14 CFR part 150 approved NCP measure for a project to mitigate aircraft noise less than DNL 65 dB if the FAA approved the NCP in fiscal years 2004-2007. This fiscal year requirement does not apply to soundproofing schools and hospitals since they are not required to be in an approved NCP.
(18) Old Noise Exposure Maps. Noise mitigation inside the DNL 65 dB contour using noise exposure maps that have not been determined to be current. Current noise exposure maps are those that are less than 5 years old or in the case of noise exposure maps that are older than 5 years, the ADO has specifically accepted for use. In no case can noise exposure maps that are older than 10 years old be used as the basis for issuing an AIP grant for noise mitigation.
(19) Operational or Administrative Costs for an Ongoing Program. A 14 CFR part 150 approved NCP measure for operational or administrative costs of a sponsor's ongoing noise mitigation program.
(20) Parts of Schools. Sound insulation of school facilities such as gymnasiums, cafeterias, and hallways unless approved by APP-400. These areas are not considered to be adversely affected by a given level of noise as areas such as classrooms that are eligible for funding.

Table C-5 Examples of Prohibited Projects/Costs for Noise Mitigation

Examples include, but are not limited to…
(21) Projects/Costs Based on Noise Exposure Maps that Are Not Current. The requirements and exceptions are provided in Paragraph R-7.
(22) Undefined Noise Benefit. A 14 CFR part 150 approved NCP measure for a project that is not described in sufficient detail to determine its noise mitigation benefits.
(23) Ventilation or Central Air Conditioning System Replacement. Ventilation systems or central air conditioning systems are allowable only in buildings that do not currently have a ventilation or central air conditioning system.

C-6. Examples of Planning or Environmental Prohibited Projects/Costs.

The list in Table C-6 is not comprehensive. Instead, it contains projects or costs specifically prohibited in the Act or whose eligibility is frequently questioned. Unless a specific reference to the Act is cited, these prohibitions are FAA policy.

Table C-6 Examples of Prohibited Projects/Costs for Planning or Environmental

Examples include, but are not limited to…
(1) All of the Examples in Table C-1.
(2) Airport Capital Improvement Plan – Stand-Alone. A stand-alone grant to update an airport's capital improvement plan. Capital plan development costs are only eligible if warranted as part of a master plan study or update grant.
(3) Airport Certification Manual Updates. Only the initial airport certification manual developed for a new 14 CFR part 139 airport with scheduled air carrier service greater than 9 seats and/or unscheduled air carrier service greater than 30 passenger seats is eligible. Per APP-500 policy, this is considered planning because it is necessary for the airport to begin operations. Updates are considered operational, not planning.
(4) Airport Geographic Information System (GIS). The pilot program is complete and stand-alone GIS grants are no longer eligible. GIS data collection is only reimbursable if surveying is needed as part of a planning or development project.
(5) Airport Emergency Plan – Stand-Alone. Preparation or update of an airport emergency plan as a stand-alone project. An Airport Emergency Plan is operational by nature and therefore ineligible. The cost of preparing an Airport Emergency Plan may be an allowable cost if it is included in an AIP funded airport master plan, is required by 14 CFR part 139, and will result in AIP eligible development.

Table C-6 Examples of Prohibited Projects/Costs for Planning or Environmental

Examples include, but are not limited to…
(6) Airport Zoning Ordinance. The cost of preparation and adoption of an airport zoning ordinance unless the work is done as part of an airport master plan, noise compatibility program, or land use compatibility planning program for states and units of local government for compatible land use planning and projects around large and medium hub airports that have either never submitted a noise compatibility program or have not updated such program within the preceding ten years.
(7) ALP Update to Make Current. A stand-alone project to update an ALP that has not been kept current by the sponsor is not allowed. However, the cost to update an ALP to reflect an AIP funded project is an allowable cost under the grant for that specific project.
(8) Benefit-Cost Analysis – Stand-Alone Grant. A benefit-cost analysis in a stand-alone grant. A benefit-cost analysis for a project can only be reimbursed as project formulation costs once the benefit-cost analyses has shown that the associated project is economically viable.
(9) Airport Master Planning Study - Certain Planning Elements. The following are not allowable elements in an airport master plan or as stand-alone planning projects. **(a)** Asset management planning **(b)** Aviation business park analysis **(c)** Business plans **(d)** Economic benefit studies **(e)** Information technology (IT) master plan or analysis **(f)** Marketing studies **(g)** Minimum standards development **(h)** Rates and charges analysis **(i)** Rules and regulations development **(j)** Snow removal plans **(k)** Strategic business plans **(l)** Surface movement guidance and control system (SMGCS) plans **(m)** Tower sighting studies beyond what general areas will work unless AIP is paying for the tower
(10) Competition Plans – Stand-Alone Grant. Development or update of a competition plan as a stand-alone grant.
(11) Computer Hardware – Planning Projects. Computer hardware in planning projects. This includes Geographic Information System planning and Safety Management System manual and implementation plan development.
(12) Planning Project Equipment such as aircraft counters.
(13) GIS Platform. If a sponsor wishes to integrate the FAA-required data with other GIS datasets, then the sponsor must secure the necessary platform to do so at their own expense, as with any other airport operating expense.

Table C-6 Examples of Prohibited Projects/Costs for Planning or Environmental

Examples include, but are not limited to…
(14) Ineligible Project Environmental Analysis. Preparing an EA or other environmental analysis for an ineligible project.
(15) Mitigation Site Management and Protection. Sponsors are responsible for funding long –term management and protection of mitigation sites past the period of establishment.
(16) Monitoring Mitigation Sites beyond the Period Specified in a Record of Decision. By FAA policy, funding for monitoring is limited to the period specified in a Record of Decision, up to five years maximum.
(17) Stand-Alone Planning Studies. Portions of system, metropolitan, or master planning projects as stand-alone planning studies unless they are listed as eligible stand-alone studies in Paragraph E-3, Appendix P, or Appendix Q.
(18) Surface Transportation Origin-Destination Surveys. If not required as part of Metropolitan Planning Organization coordination or as part of an eligible multimodal project, surveys to determine the modes of surface transportation airport users are using to get to and from the airport as well as where they are coming from or going to (hotel, home, etc.).

Appendix D. Miscellaneous Projects

D-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

D-2. Restrictions on the Use of Light Emitting Diode (LED) Lights.

At the time this Handbook was published, the FAA was reviewing the use of LED obstruction lights, LED approach lights and LED high intensity runway edge lights with aircraft using Enhanced Flight Vision Systems or Night Vision Imagery technology that rely on an infrared signature. LED fixtures may not provide this infrared signature. For these reasons, it is FAA policy that LED obstruction lights, LED approach lights, and LED high intensity runway edge lights are not currently AIP eligible.

D-3. Project Requirements Table.

In addition to the information provided in the above paragraphs and the following table, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table D-1 Miscellaneous Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Stand-Alone Design Only Projects	**(1)** The ADO has every expectation that the associated development project will begin within two years after the design is completed. **(2)** The development work has not been started. If the work has been started, the ADO must include the design work in the development grant.	A set of plans and specifications that is ready to be bid.	Same as development project
b. Construct Wash Rack	**(1)** A wash rack is a pavement area with proper drainage and water runoff collection available for washing aircraft. **(2)** A wash rack is not technically considered apron construction, but a revenue-producing aeronautical support facility project, and maintenance and repair is not eligible. **(3)** The airport must be a nonprimary airport and only nonprimary	A fully functional wash rack that charges for services and is not exclusive use.	OT OT WR

Table D-1 Miscellaneous Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	entitlements may be used for the project. **(4)** Per 49 USC § 47110(h), the sponsor must certify that all airfield needs have been accommodated. Per FAA policy, the sponsor must adequately demonstrate to the ADO that airside needs within the next three years will be accommodated through local funds or nonprimary entitlement funds. It is APP-500 policy that the sponsor requests for AIP would be limited to non-primary entitlement funds during that time unless there is a specific safety issue that must be addressed and was not foreseeable under normal planning efforts of the sponsor. **(5)** The ADO must ensure that the proper environmental permits have been obtained.		
c. Fuel Farms (Construct or Improve)	**(1)** For MAP funded projects, see Appendix T, as many of the following requirements do not apply. **(2)** The fuel farm must be owned by the sponsor. The current version of FAA Order 5190.6, FAA Airport Compliance Manual, contains detailed guidance on whether the sponsor may allow a fixed based operator to operate the fuel farm. **(3)** A fuel farm includes the bulk fuel storage tanks, the containment area, the pavement area needed for the fuel farm operations, and pumps and equipment needed to operate the fuel farm. In addition, since fuel trucks must be parked in a containment area when not in use, additional area in the containment area may also be included. It also may include self-service fuel pumps for the public (also referred to as credit card pumps). **(4)** Initial installation of self-service fuel pumps project can be done as a	A fully functional fuel farm that charges for services and is not exclusive use.	OT OT FF

Table D-1 Miscellaneous Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	stand-alone project. **(5)** A fuel farm is not technically considered apron construction, but a revenue-producing aeronautical support facility project, and maintenance and repair is not eligible. **(6)** While expanding an existing fuel farm to increase revenue production is eligible, rehabilitation is not. This includes improvements to address environmental deficiencies. **(7)** The airport must be a nonprimary airport and only nonprimary entitlements may be used for the project. **(8)** Per 49 USC § 47110(h), the sponsor must certify that all airfield needs have been accommodated. Per FAA policy, the sponsor must adequately demonstrate to the ADO that airside needs within the next three years will be accommodated through local funds or nonprimary entitlement funds. It is APP-500 policy that the sponsor will not be considered for discretionary during that time. **(9)** The facility must meet the requirements of 40 CFR § 112.8, Spill Prevention, Control, and Countermeasure Plan Requirements for On-Shore Facilities (excluding production facilities). **(10)** The ADO must ensure that the proper environmental permits have been obtained.		

Table D-1 Miscellaneous Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
d. Construct Deicing Pad *(Includes Associated Facilities)*	**(1)** An exclusive paved area for aircraft deicing or anti-icing activities is eligible if the improvements are to be owned by the airport and will become available on a non-exclusive use basis per 49 USC § 47102. **(2)** A ground deicing pad includes the paved areas, drainage collection structures, treatment and discharge systems, lighting, paved access for deicing vehicles and aircraft. **(3)** The airport must be a commercial service airport. **(4)** This is not the same as a separate deicing containment facility required to serve the aircraft gate area at a terminal. See Appendix S for these projects.	A fully functional aircraft deicing pad that meets FAA standards including aircraft and vehicle access.	ST AP DI
e. Parking Lot (Construct or Rehabilitate)	**(1)** For MAP funded projects, see Appendix T, as many of the following requirements do not apply. **(2)** The airport is a nonprimary commercial service, a nonhub primary airport, a reliever airport, or a general aviation airport. **(3)** The parking lot is non-revenue producing. **(4)** The parking lot is public-use. **(5)** Per 49 USC § 47119(c), this is considered an allowable cost of a terminal development project and must follow the terminal building funding rules in Table N-7. Stand-alone grants can be issued for eligible parking lots. **(6)** Per 49 USC § 47119(a)(1)(A), the airport has all safety equipment required for the airport per 49 USC § 44706 (Airport Operating Certificate), has all security equipment required by rule or regulation, and has provided for access by passenger to the area of	A fully functional parking lot.	OT OT PA

Table D-1 Miscellaneous Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	the airport for boarding or exiting aircraft that are not air carrier aircraft.		
f. Remove obstructions to support RNAV Approach	**(1)** The project must be supported by a RNAV obstruction removal survey based on the airport category on the approved ALP. **(2)** Per 49 USC § 47102(3)(A)(i) and § 47102(4), the removal, lowering, relocating, lighting, and marking obstructions is eligible. **(3)** Per FAA policy, this obstruction removal for RNAV approach purposes may include: **(a) Airport Design Advisory Circular.** Obstruction removal necessary to meet the object clearing criteria in the current version of Advisory Circular 150/5300-13, Airport Design. There are many surfaces and areas contained in the object clearing criteria. They include, but are not limited to, object free areas, runway and taxiway safety areas, obstacle free zones, threshold obstacle clearance surfaces, NAVAID critical areas, 14 CFR part 77 surfaces, approach and departure surfaces, runway protection zones, runway visibility zones, and inside the building restriction line. The ADO must consult the current version of the advisory circular to determine the current requirements. **(b) 14 CFR part 77 Surfaces.** Per FAA policy, obstructions to the 14 CFR part 77 primary approach and 7:1 transitional surfaces. **(c) TERPS.** Any of the United States Standard for Terminal Instrument Procedures (TERPS) requirements. **(4)** Obstruction removal is limited to	An RNAV approach that is clear of obstructions.	SP OT VI

Table D-1 Miscellaneous Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	obtain 100 feet vertical clearance above the elevation of the runway ends but no more than 5000 feet beyond the end of the runway. **(5)** Obstruction removal is limited to the airport category shown on the approved ALP. **(6)** Rebuilding a facility in a new location is only eligible if the facility meets the requirements in Paragraph 3-77**.** **(7)** Obstruction removal within runway safety areas must meet the requirements and use the work codes in Appendix G.		
g. Obstructions (Light, Mark, or Remove) *(For Hazards)*	**(1)** Per 49 USC § 47102(3)(A)(i) and § 47102(4), the removal, lowering, relocating, lighting, and marking of airport hazards is eligible. **(2)** Per FAA policy, the object must be determined by the FAA Air Traffic Organization (ATO) to be a hazard (per the current version of FAA Order JO 7400.2, Procedures for Handling Airspace Matters), or would be a significant adverse operational impact if no action were taken (such as cancelling an approach, raising an approach minimum, or relocating the runway threshold). **(3)** This code is limited to obstructions that have a written ATO hazard determination. **(4)** Obstruction removal is limited to obtain 100 feet vertical clearance above the elevation of the runway ends but no more than 5000 feet beyond the end of the runway.	The elimination or mitigation of an airport hazard.	SA OT OB
h. Obstructions (Light, Mark, or Remove) *(For Standards)*	**(1)** Per 49 USC § 47102(3)(A)(i) and § 47102(4), the removal, lowering, relocating, lighting, and marking obstructions is eligible. **(2)** Per FAA policy, obstructions are eligible standards projects based on	The elimination or mitigation of an airport obstruction.	ST OT OB

Table D-1 Miscellaneous Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	the aircraft category on the approved ALP for that runway and may include: **(a) Airport Design Advisory Circular.** Obstruction removal necessary to meet the object clearing criteria in the current version of Advisory Circular 150/5300-13, Airport Design. There are many surfaces and areas contained in the object clearing criteria. They include, but are not limited to, object free areas, runway and taxiway safety areas, obstacle free zones, threshold obstacle clearance surfaces, NAVAID critical areas, 14 CFR part 77 surfaces, approach and departure surfaces, runway protection zones, runway visibility zones, and inside the building restriction line. The ADO must consult the current version of the advisory circular to determine the current requirements. **(b) 14 CFR part 77 Surfaces.** Per FAA policy, obstructions to the 14 CFR part 77 primary approach and 7:1 transitional surfaces. **(c) TERPS.** Any of the United States Standard for Terminal Instrument Procedures (TERPS) requirements. **(3)** Obstruction removal, lowering, lighting or marking is limited to obtain 100 feet vertical clearance above the elevation of the runway ends but no more than 5000 feet beyond the end of the runway. **(4)** Rebuilding a facility in a new location is only eligible if the facility meets the requirements in Paragraph 3-77. **(5)** Obstruction removal within runway safety areas must meet the requirements and use the work codes		

Table D-1 Miscellaneous Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	in Appendix G. **(6)** Obstruction removal, lowering, lighting or marking is limited to the airport category shown on the approved ALP. **(7)** Obstruction removal, lowering, lighting or marking to support RNAV approaches is covered elsewhere in this table and has a different work code. **(8)** If the obstruction removal, lowering, lighting or marking is part of a larger AIP project, it can be included in the code for that project.		
i. Heliport/Helipad (Construct, Expand, Improve, Modify, Rehabilitate)	**(1)** The ADO must contact AAS-100 for guidance. **(2)** If the project meets the definition of a capacity project CA HE CO must be used. If the project meets the definition of a standards project, ST HE CO must be used. Appendix A contains these definitions.	A fully functional heliport or helipad that meets FAA design standards.	CA HE CO ST HE CO
j. Seaplane Base (Rehabilitate)	**(1)** The ADO must contact AAS-100 for guidance.	A fully functional seaplane base that meets FAA design standards.	RE SB IM
k. Seaplane Base (Construct or Improve)	**(1)** The ADO must contact AAS-100 for guidance.	A fully functional seaplane base that meets FAA design standards.	ST SB CO
l. Improve Airport Drainage	**(1)** Stand-alone projects for drainage improvements are eligible to the extent that they are needed to serve areas eligible for AIP assistance. **(2)** The ADO will determine the method of proration. Paragraph 3-97 contains proration examples.	Improved airport drainage that meets FAA design standards.	ST OT IM

Table D-1 Miscellaneous Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
m. Improve Airport Erosion Control	**(3)** Stand-alone projects for erosion control (blast pads, installation of sod, etc.) are eligible to the extent that they are needed to protect AIP eligible facilities. **(4)** The ADO will determine the method of proration. Paragraph 3-97 contains proration examples.	A reduction in erosion.	ST OT IM
n. Improve Airport Miscellaneous Improvements	**(1)** The ADO must not use this work code without first consulting with APP-520 or APP-400 and obtaining their approval.	N/A	ST OT IM

*The official list of work codes can be obtained from the automated AIP system.

Appendix E. Planning Projects

E-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

E-2. Conditions for Posting Planning Documents on the Internet.

If the sponsor, or a sponsor's agent such as a consultant, posts an AIP funded planning document on the internet, it is FAA policy that the public must not be required to register to view or download the document (even if the document is posted elsewhere without registration requirements). This is because the collection of personal data may be construed by the public as a surveillance tool for the airport, which may intimidate members of the public, dissuading them from reviewing the document. In addition 5 USC § 552a, The Privacy Act of 1974, prohibits the unnecessary collection of private data by federal agencies.

E-3. Stand-Alone Master Plan and System Plan (Metropolitan and State) Projects.

Table E-1 contains a list of studies can be funded as stand-alone system planning (either as a state system plan or metropolitan system plan) or master planning projects if the ADO determines that they are both necessary and reasonable in scope. Noise compatibility planning can be found in Appendix R and environmental assessments, sustainable master plans, environmental management plans, airport energy assessment studies, and drainage studies can be found in Appendix S.

Table E-1 Eligible Stand-Alone Master Plan or System Plan (State or Metropolitan) Projects

Eligible stand-alone projects are limited to…
a. Airport Certification Manuals (Master Plan). Only the initial airport certification manual developed for a newly certificated 14 CFR part 139 airport with scheduled air carrier service greater than 9 seats and/or unscheduled air carrier service greater than 30 passenger seats is eligible. Per APP-500 policy, this is considered planning because it is necessary for the airport to begin operations. Updates are considered operational, not planning.
b. Develop Environmental Management Systems (EMS) (Master Plan). The requirements for this type of planning project are included in Appendix S.
c. Disparity Studies (Master Plan or System Plan). The purpose of a disparity study is to determine whether there is evidence of discrimination or its effects showing a compelling need for an airport sponsor's DBE program. A disparity study will show whether there is evidence of discrimination supporting the need for race-based measures. The ADO must contact the FAA Office of Civil Rights (ACR) as soon as this type of study is proposed**.**
d. Feasibility Studies (Master Plan). These are eligible for establishing a new airport or replacing an existing airport.

Table E-1 Eligible Stand-Alone Master Plan or System Plan (State or Metropolitan) Projects

Eligible stand-alone projects are limited to…
e. Obstruction Surveys (Master Plan or System Plan). This normally involves a survey for all of the runways on an airport and is performed to identify existing obstructions to the existing runway approaches. Aeronautical surveys for RNAV approaches have a separate work code as listed in Table E-2.
f. Pavement Management Programs (Master Plan or System Plan). This is a two part planning process. First, a pavement condition index (PCI) survey is conducted on eligible public use airfield pavements to establish the current condition of the airfield pavement. Second, a pavement maintenance program is developed to address how the airfield pavement will be maintained or upgraded to acceptable PCI levels. The current version of Advisory Circular 150/5380-7, Airport Pavement Management Program, provides detailed guidance on the preparation of pavement management programs. These two parts can be completed together, or under separate grants, however, the end result must be a pavement management program.
g. Recycling Plans (Master Plan). These types of plans are eligible under 49 USC § 47102(5)(C) and include developing a plan for recycling and minimizing the generation of airport solid waste, consistent with applicable state and local recycling laws. The cost of a waste audit is an allowable cost under these plans. These plans are newly eligible under the FAA Modernization and Reform Act of 2012 (Public Law 112-95), and until APP-400 issues guidance on the requirements for recycling plans, the ADO must coordinate the scope of these plans with APP-400.
h. Site Selection Studies (Master Plan). A site selection study requires a completed ADO approved feasibility study.
i. State or Metropolitan System Plan Economic Impact Study (System Plan).
j. State or Metropolitan System Plan Multi-Airport Acoustical Counting Study (System Plan).
k. Terminal Area Narrative Reports (Master Plan). This may be appropriate if a terminal lacks capacity, has specific security needs, or if the aircraft fleet mix has changed at the airport impacting the terminal building space and use. This is limited to the passenger terminal building and associated facilities (a triggering event narrative report is appropriate for all other facilities). In addition, only planning, not preliminary design, is eligible under this project. The deliverable for a Terminal Area Narrative Report may result in an information revision to an ALP rather than a formal revision reissuing a new ALP.
l. Triggering Event Narrative Reports and Airport Layout Plan (Master Plan). If a specific area of an airport has changed functionality due to a triggering event, and a complete master plan is not necessary, a narrative report (and associated update to the airport layout plan) may be appropriate. Examples of triggering activities that may drive a narrative report are the introduction of new carriers, increased or decreased cargo activity, increased or decreased general aviation activity, a proposed residential through-the-fence operation, new availability of building areas or property, or changes to a nearby airport. The deliverable for a Triggering Event Narrative Report may result in an information revision to an ALP rather than a formal revision reissuing a new ALP.

Table E-1 Eligible Stand-Alone Master Plan or System Plan (State or Metropolitan) Projects

Eligible stand-alone projects are limited to…
m. Other Specifically Approved Stand-Alone Projects (Master Plan or System Plan). Stand-alone projects that APP-500 and APP-400 have approved in writing prior to the ADO approving the scope of the project, such as a state system plan general aviation security study, or a state or metropolitan system plan surface access study.

E-4. Project Requirements Table.

In addition to the information provided in the above paragraphs and the following table, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table E-2 Planning Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	WorkCode*
a. State System Plan Study (Conduct or Update)	**(1)** The ADO must have determined that the plan is necessary and justified and approved the scope of work. The needs of airports differ in as many ways as there are airports. Although similar airports with similar roles may share common characteristics, system planning looks at specific needs and assets at the airports in question. Not all of the elements identified in the current version of Advisory Circular 150/5070-7, The Airport System Planning Process will be required for all airports in the system plan. **(2)** APP-400 is available to answer questions regarding which elements in these plans are justified and how often the plans must be updated. **(3)** Table E-1 contains the list of planning elements that can be funded as stand-alone state system plan projects.	A completed state system plan that meets FAA advisory circular requirements and the ADO has officially accepted.	PL PL ST (full state system plan study) *Note: The ADO must use Conduct/ Update Miscellaneous Study (PL PL MS) for eligible stand-alone projects in Paragraph E-3.*

Table E-2 Planning Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	WorkCode*
	(4) The sponsor is a planning agency sponsor as defined in Table 2-4.		
b. Metropolitan System Plan Study (Conduct or Update)	**(1)** The ADO must have determined that the plan is necessary and justified and approved the scope of work. The needs of airports differ in as many ways as there are airports. Although similar airports with similar roles may share common characteristics, metropolitan planning looks at specific needs and assets at the airports in question. Not all of the elements identified in the current version of Advisory Circular 150/5070-7, The Airport System Planning Process will be required for all airports in the system plan. **(2)** APP-400 is available to answer questions regarding which elements in these plans are justified and how often the plans must be updated. **(3)** Table E-1 contains the list of planning elements that can be funded as stand-alone metropolitan system plan projects. **(4)** The sponsor is a planning agency sponsor as defined in Table 2-4.	A completed metropolitan system plan that meets FAA advisory circular requirements and the ADO has officially accepted.	PL PL ME (full metropolitan system plan study) *Note: The ADO must use Conduct/ Update Miscellaneous Study (PL PL MS) for eligible stand-alone projects in Paragraph E-3.*
c. Airport Master Plan Study (Conduct or Update)	**(1)** The ADO must have determined that the plan is necessary and justified and approved the scope of work. The needs of airports differ in as many ways as there are airports. Although similar airports with similar roles may share common characteristics, master planning looks at the specific needs and assets at the airport in question. Not all airports need to do all of the elements identified in the current version of Advisory Circular 150/5070-6, Airport Master Plans. In some cases, a narrative	An FAA accepted master plan and FAA approved airport layout plan that meet FAA advisory circular requirements.	PL PL MA (full master plan study) *Note: The ADO must use Conduct/ Update Miscellaneous Study (PL PL MS) for eligible stand-alone projects in Paragraph E-3.*

Table E-2 Planning Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	WorkCode*
	report and an ALP update may suffice. **(2)** APP-400 is available to answer questions regarding which elements in these plans are justified and how often the plans must be updated. **(3)** Table E-1 contains the list of planning elements that can be funded as stand-alone master plan projects. **(4)** The ADO must contact APP-520 for sponsors that own multiple airports to issue a single grant to conduct master plans for the sponsor's airports. This is not considered a state or metropolitan system plan, but is similar to a state's Various Locations grants. APP-520 will advise the ADO whether or not the automated AIP system will allow tracking projects at different sponsor airports under one grant. **(5)** Per 49 USC § 47102(5)(C), the master plan must address issues related to solid waste recycling at the airport. This is a new master plan requirement under the FAA Modernization and Reform Act of 2012 (Public Law 112-95), and until APP-400 issues guidance on this requirement, the ADO must coordinate this portion of the master plan scope with APP-400. **(6)** Per 49 USC § 47102(5)(C), the FAA Modernization and Reform Act of 2012 (Public Law 112-95) also made the cost of a waste audit an allowable master planning element.		

Table E-2 Planning Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	WorkCode*
d. Conduct an Aeronautical Survey for RNAV Approach	**(1)** APP-400 must have concurred with the survey (to avoid duplication of effort with the RNAV office) before the ADO can program the grant. **(2)** The project may include the allowable cost to upload the data in the FAA Airports GIS program. **(3)** The project must meet the minimum requirements of the current versions of FAA advisory circulars addressing airport surveys.	A set of electronic airport data that meets FAA standards.	PL PL VI
e. Prepare SMS Manual	**(1)** The project must meet the minimum requirements of the current version of FAA Order 5200.11, FAA Airports (ARP) Safety Management System. **(2)** This is an eligible project for all airports, however, the ADO must determine that the project costs for airports that are not 14 CFR part 139 certificated are reasonable and reflect the scale and complexity of the airports infrastructure and operating environment. **(3)** The sponsor must receive ADO approval of the scope of work, deliverables, and cost estimates in order for the costs to be considered allowable. **(4)** Development of an SMS manual remains eligible even if an airport chooses to include the SMS manual in its Airport Certification Manual. **(5)** Only the portions of the Implementation Plan and SMS Manual that outline the sponsor's initiatives to enforce airport policies and procedures, such as rules and regulations, minimum standards, or other existing controls are	An SMS manual and implementation plan that meets the requirements of AAS-300.	SA PL MS

Table E-2 Planning Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	WorkCode*
	allowable. The plan can help establish safety protocols that affect users of the airport, but the costs associated with helping users of the airport manage their own operations are not allowable costs. **(6)** If a sponsor chooses to include aspects in the SMS manual and implementation plan that are outside the control of the sponsor, the sponsor must provide proration calculations for the ADO to exclude these costs from the grant. If the ADO does not agree with the prorated costs, the sponsor must revise the proration to address the concerns. The ADO also has the option to disallow the inclusion of these aspects from the SMS manual and implementation plan. In addition, the requirements for including ineligible or non-AIP funded work in the contract in Paragraph 3-42 must be met. **(7)** One time (initial) acquisition of airport-owned software applications that are specifically designed to support airport SMS implementation will be considered an allowable cost providing all of the following requirements are met: **(a)** The sponsor has demonstrated to the ADO that the software is necessary for successful SMS implementation consistent with the size and complexity of the airport; **(b)** The sponsor has completed the SMS manual for FAA review and acceptance before selecting or specifying computer software; **(c)** The sponsor agrees to share sanitized data with the FAA; **(d)** The software is a deliverable		

Table E-2 Planning Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	WorkCode*
	as part of the SMS planning study; and **(e)** The allowable cost of the software is limited to $50,000 per airport sponsor, based on demonstrated justification. **(8)** Other SMS activities and costs associated with a project must be included as project formulation costs or preliminary project costs for the grant for that project (see Paragraph 3-87 for additional details).		
f. Wildlife Hazard Assessments *(Or Site Visits)*	**(1)** AAS-300 has made a determination that Wildlife Hazard Assessments are justified at the following types of airports: **(a)** General aviation (and reliever) airports that have 100 or more based jets. **(b)** General aviation (and reliever) airports that have 75,000 or more annual operations. **(c)** 14 CFR part 139 airports. **(2)** AAS-300 has determined that general aviation (and reliever) airports with fewer than 100 based jets or less than 75,000 annual operations may only need a wildlife hazard site visit. AAS-300 will determine if a wildlife hazard assessment is needed based on the results of the site visit. **(3)** A wildlife hazard management plan must be based on the wildlife hazard assessment or site visit. This wildlife hazard management plan is eligible as part of the wildlife hazard assessment project. Normally the wildlife hazard management plan is done within the same grant. However, the wildlife hazard management plan is	For a wildlife hazard site visit, a letter to the ADO along with the wildlife hazard site visit report. This letter will summarize pertinent wildlife information, any immediate mitigation activities the airport can do to alleviate or reduce wildlife hazards, and a recommendation as to whether a more comprehensive wildlife hazard assessment is necessary. For a wildlife hazard assessment, an FAA accepted wildlife hazard assessment mitigation plan with an associated wildlife hazard	PL PL WH

Table E-2 Planning Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	WorkCode*
	eligible as a stand-alone grant as long as it is based on an FAA-approved wildlife hazard assessment. **(4)** The sponsor must first solicit qualifications from private sector firms under either the competitive proposal process or the small procurement process (see 49 CFR § 18.36(c) (2 CFR § 200.319, Competition) and 18.36(d) (2 CFR § 200.320, Methods of procurement to be followed) in Appendix U for these requirements). Since the U.S. Department of Agriculture (USDA) Wildlife Services (WS) is a governmental entity, the sponsor cannot include USDA WS as a qualified source under these procurement processes. However, the sponsor can separately obtain price and schedule information from USDA WS. If the sponsor determines that the qualified sources cannot reasonably or expeditiously provide the services, the sponsor may opt to use USDA WS as long as the sponsor provides a written statement to the ADO to this affect prior to the grant application. The ADO must include this written statement in the grant files. **(5)** AAS-300 is available for specific guidance on the scope of wildlife hazard assessments.	management plan.	

*The official list of work codes can be obtained from the automated AIP system.

Appendix F. New Airport Projects

F-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

F-2. Project Requirements Tables.

In addition to the information provided in the above paragraphs and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table F-1 New Airport Work Codes

If the project is justified as follows…	Use the following work codes…
a. The project meets the definition of a capacity project (see Appendix A).	CA NA CO
b. The project meets the definition of a standards project (see Appendix A).	ST NA CO

Table F-2 New Airport Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Construct New Airport *(Replacement)*	**(1)** The airport is needed to replace an existing airport that is unable to meet long-term aviation demand in the community because the existing airport is constrained. **(2)** The ADO must notify APP-400 as soon the ADO becomes aware that a new airport is being considered and the ADO must keep APP-400 involved during the entire process. **(3)** APP-400 concurrence and APP-1 approval are required prior to issuing a grant for the feasibility study. A feasibility study to replace a NPIAS airport can be undertaken without adding the new airport to the NPIAS. **(4)** The ADO must not issue a grant for	A new airport constructed to FAA design standards.	ST NA CO CA NA CO See Table F-1 for the correct work code.

Table F-2 New Airport Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	any work beyond the feasibility study unless all of the following criteria have been met: **(a)** The sponsor has completed the feasibility study. **(b)** The ADO has concurred that the feasibility study supports the replacement airport. **(c)** ADO has obtained APP-400 concurrence and APP-1 approval prior to APP-400 adding the airport to the NPIAS. **(d)** The FAA must have approved the release of the old airport and approved how the federal share must be reinvested per the current version of FAA Order 5190.6, FAA Airport Compliance Manual. **(e)** The sponsor has agreed to permanently close the existing airport when the new airport opens. **(f)** If the airport is a capacity project (historically, the majority have been standards projects), the benefit-cost analysis (BCA) requirements in Paragraph 3-14 have been met. **(5)** Value Engineering must be used for new primary airports as outlined in Paragraph 3-56. **(6)** Per 49 USC § 47106(c)(1)(A)(i), the sponsor must provide an opportunity for a public hearing as part of meeting the environmental requirements. **(7)** The justifications for AIP funded airport facilities (runways, terminals, etc.) must follow the guidelines in the specific tables for those items.		

Table F-2 New Airport Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
b. Construct New Airport *(Supplemental)*	**(1)** The airport is needed to supplement an existing NPIAS airport and the existing NPIAS airport stays open. It would be unusual to have a new general aviation airport supplement an existing general aviation airport. Typically, a supplemental airport would be considered to provide additional capacity for a large, medium, or small hub airport. **(2)** The ADO must notify APP-400 as soon the ADO becomes aware that a new airport is being considered and the ADO must keep APP-400 involved during the entire process. **(3)** The ADO has obtained APP-400 concurrence and APP-1 approval prior to issuing a grant for the feasibility study. A feasibility study to supplement a NPIAS airport can be undertaken without adding the new airport to the NPIAS. **(4)** The ADO must not issue a grant for any work beyond the feasibility study unless all of the following criteria have been met: **(a)** The sponsor has completed the feasibility study. **(b)** The ADO has concurred that the feasibility study supports the replacement airport. **(c)** ADO has obtained APP-400 concurrence and APP-1 approval prior to APP-400 adding the airport to the NPIAS. **(d)** The benefit-cost analysis (BCA) requirements in Paragraph 3-14 have been met. **(5)** Value Engineering must be used for new primary airports as outlined in Paragraph 3-56. **(6)** Per 49 USC § 47106(c)(1)(A)(i), the sponsor must provide an opportunity	A new airport constructed to FAA design standards.	CA NA CO

Table F-2 New Airport Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	for a public hearing as part of meeting the environmental requirements. **(7)** The justifications for AIP funded airport facilities (runways, terminals, etc.) must follow the guidelines in the specific tables for those items.		
c. Construct New Airport *(Additional)*	**(1)** The community must not have an existing NPIAS airport. **(2)** The ADO must notify APP-400 as soon the ADO becomes aware that a new airport is being considered and the ADO must keep APP-400 involved during the entire process. **(3)** The ADO has obtained APP-400 concurrence and APP-1 approval that an additional NPIAS location is feasible and would meet entry criteria. APP-400 must identify the additional airport in the NPIAS before the ADO can program any grants for the additional airport. A feasibility study can be undertaken once the new location is added to the NPIAS. **(4)** The ADO must not program a grant for any work other than a feasibility study until all of the following criteria have been met: **(a)** The sponsor has completed the feasibility study. **(b)** The ADO has concurred that the feasibility study supports the replacement airport. **(c)** ADO has obtained APP-400 concurrence and APP-1 approval prior to APP-400 adding the airport to the NPIAS. **(d)** The benefit-cost analysis (BCA) requirements in Paragraph 3-14 are met. **(5)** Value Engineering must be used for new primary airports as outlined in Paragraph 3-56.	A new airport constructed to FAA design standards.	CA NA CO

Table F-2 New Airport Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(6) Per 49 USC § 47106(c)(1)(A)(i), the sponsor must provide an opportunity for a public hearing as part of meeting the environmental requirements. **(7)** The justifications for AIP funded airport facilities (runways, terminals, etc.) must follow the guidelines in the specific tables for those items.		
d. Acquire Existing Airport	**(1)** These requirements are typically for a public sponsor acquiring a privately-owned airport or possibly another public-owned airport. **(2)** These requirements do not apply to airports under the Military Airport Program (those requirements are contained in Chapter 6, Section 3). **(3)** The ADO must notify APP-400 as soon the ADO becomes aware that acquisition is being considered and the ADO must keep APP-400 involved during the entire process. **(4)** If the airport is not in the NPIAS (including non-NPIAS former military or joint use airports not in the Military Airport Program), the ADO must obtain APP-400 concurrence and APP-1 approval prior to issuing a grant for the feasibility study. A feasibility study to replace a NPIAS airport can be undertaken without adding the new airport to the NPIAS. If the airport is in the NPIAS, a feasibility study is not required. **(5)** The ADO must not issue a grant for any work beyond the feasibility study unless all of the following criteria have been met: **(a)** The sponsor has completed the feasibility study. **(b)** The ADO has concurred that the feasibility study supports the replacement airport.	Acquisition of an airport that meets, or can be upgraded to meet FAA standards.	ST NA AQ

Table F-2 New Airport Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(c) If the airport is not in the NPIAS, the ADO has obtained APP-400 concurrence and APP-1 approval prior to APP-400 adding the airport to the NPIAS. **(d)** If the existing airport is in the NPIAS, the ADO has obtained ACO-100 and APP-500 approval prior to programming the grant. **(6)** The justifications for AIP funded acquisition of the airport facilities (runways, terminals, etc.) must follow the guidelines in the specific tables for those items. **(7)** If the airport is a former military or joint use airport (not in the Military Airport Program), the AIP eligible work is limited to buying out the non-federal tenants for eligible facilities. This is because the federally owned portions of the airport must be transferred, not purchased. The ADO must contact APP-400 and obtain additional guidance on this process.		

*The current list of work codes can be obtained from the automated AIP system.

Appendix G. Runway Projects

G-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

G-2. Project Requirements Tables.

In addition to the information provided in the above paragraph and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table G-1 Distinctions between Construct, Extend, Widen, Strengthen, and Rehabilitate

Use the following description…	If the project will…
a. Construct	Build a brand new runway.
b. Extend	Add additional length to a runway.
c. Widen	Increase the pavement width.
d. Strengthen	Will allow the pavement to accommodate a heavier class of aircraft.
e. Rehabilitate	Improves the pavement for the same class of aircraft.

Table G-2 Runway Work Codes

If the project is justified as follows…	Use the following work codes…
a. The project meets the definition of a capacity project (see Appendix A).	CA RW CO (construct) CA RW EX (extend)
b. The project meets the definition of a standards project (see Appendix A).	ST RW CO (construct) ST RW IM (extend) ST RW IM (widen) ST RW IM (strengthen)
c. The project is justified in an environmental finding or 14 CFR part 150 program for environmental reasons. The project must be a condition of the environmental finding or 14 CFR part 150 program.	EN RW CO (construct)

Table G-3 Runway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Runway (Construct, Extend, Widen, Strengthen)	**(1)** Where a study is required to demonstrate need, the FAA must have accepted the study and concurred with the need. **(2)** For a runway capacity project intended to relieve scheduled commercial air service congestion or add capacity for scheduled commercial air service in metropolitan areas with a large or medium hub airport, the ADO must confirm consistency with a regional or state system plan document (if available) prior to programming the grant. **(3)** The length, width, and strength of the pavement work must be based on critical aircraft justification per Paragraph 3-11. The exception is if the project meets the requirements in Paragraph 3-24 to exceed FAA design standards. **(4)** Runways must be planned, designed and constructed in accordance with current FAA standards, including clearing the approach slopes that will be used upon completion of the project. For runway projects, object clearing and approach surfaces must be appropriate to the instrument approach procedures for that runway. If the approaches to a new runway or extended runway end will not be clear, the project does not meet FAA standards. **(5)** If the runway has a non-standard runway protection zone (RPZ), the RPZ requirements per the current version of Advisory Circular 150/5300-13, Airport Design must be followed. **(6)** Crosswind runways may be justified if the crosswind criteria of 95% wind coverage are not met on the primary runway. In addition,	An operational runway constructed to FAA design standards, including required proper access, clear approaches, shoulders, turf along edge of shoulders, signs, marking, and lighting.	CA RW CO CA RW EX ST RW CO ST RW IM EN RW CO See Table G-2 for the correct work code.

Table G-3 Runway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	the justification must be based upon the number and type of aircraft that would use the crosswind in accordance with current APP-400 policy. **(7)** The approval criteria and coding for turf and aggregate runways is the same as for paved runways. The design requirements for unpaved runways may be found in Unpaved (Turf) Runway Criteria (see Appendix B for link). If this project is required because the FAA Office of Aviation Safety (AVS) has issued a finding that ultralight aircraft must be relocated from the paved runway, the ADO must contact AAS-100 for further guidance. **(8)** Per 49 USC § 47106(c)(1)(A)(i), the sponsor must provide an opportunity for a public hearing for a new runway or major runway extension as part of meeting the environmental requirements. **(9)** The project may include runway safety area improvements (stand-alone projects are also covered in this table) or other runway approach obstruction removal (stand-alone projects are covered in Appendix D). **(10)** Runway lighting may be included for the new runway pavement as long as it meets the runway lighting requirements in Appendix J. Per APP-520 policy, runway lighting for existing pavement must be separated into a stand–alone project. **(11)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table G-1.		

Table G-3 Runway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
b. Apply Friction Course or Groove Runway	**(1)** Surface treatment for primary and secondary runways at commercial service airports is high priority, and documentation for the project files must include an explanation when it is not accomplished. **(2)** Surface treatment is eligible as a stand-alone project at a commercial service airport. **(3)** Surface treatment may include treatments such as grooving. **(4)** Surface treatment for a non-commercial service airport is justified if the runway serves turbojet aircraft and the runway length is 5,000 feet or more.	An operational runway with surface treatment.	SP RW FR (for commercial service airports) Contact APP-520 for the code for non-commercial service airports.
c. Rehabilitate Runway *(Pavement Maintenance)*	**(1)** Maintenance is generally ineligible. However, per 49 USC § 47102(3)(H), the exception is routine runway, taxiway, or apron pavement maintenance at nonhub primary airports and nonprimary airports. Maintenance of a turf or aggregate runway is ineligible at any size airport. Paragraph 3-6 contains additional guidance and examples. **(2)** It is FAA policy that the sponsor must be unable to fund maintenance with its own resources.	An operational runway.	RE RW IM

Table G-3 Runway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
d. Rehabilitate Runway (*Seal Coat or Resealing of Joints in Concrete Pavement*)	**(1)** A major portion of the pavement is being addressed. **(2)** The ADO concurs with the need for the project. **(3)** The sponsor has satisfactorily complied with assurances on pavement maintenance. **(4)** The length and width of the pavement work must be based on critical aircraft justification per Paragraph 3-11. The exception is if the project meets the requirements in Paragraph 3-24 to exceed FAA design standards. **(5)** Paragraph 3-6 contains additional guidance (including useful life requirements) and examples that the ADO must use to differentiate between pavement maintenance, rehabilitation, and reconstruction.	A fully functional runway with extended useful life.	RE RW IM
e. Rehabilitate Runway *(Rehabilitate, Reconstruct)*	**(1)** The work must be supported a Pavement Condition Index (PCI) or planning study. The ADO has the option to consult AAS-100 for assistance with justifying pavement rehabilitation or reconstruction. **(2)** The length and width of the pavement work must be based on critical aircraft justification per Paragraph 3-11. The exception is if the project meets the requirements in Paragraph 3-24 to exceed FAA design standards. **(3)** Paragraph 3-6 contains additional guidance (including useful life requirements and that turf and aggregate runway rehabilitation is eligible) and examples that the ADO must use to differentiate between pavement maintenance, rehabilitation, and reconstruction. **(4)** The pavement must not have been reconstructed within the last 20	A fully functional runway with extended useful life.	RE RW IM

Table G-3 Runway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	years, rehabilitated within the last 10 years or resealed within the last 3 years without further justification acceptable to the ADO. **(5)** The project may include runway safety area improvements (stand-alone projects are also covered in this table) or other runway approach obstruction removal (stand-alone projects are covered in Appendix D). **(6)** Only in pavement runway lighting can be included in the rehabilitation project (as long as it meets the runway lighting requirements in Appendix J). Per APP-520 policy, all other runway lighting must be separated into a stand-alone project.		
f. Construct, Extend or Improve a Runway Safety Area *(For 14 CFR part 139 certificated runways only)*	**(1)** The project must be supported by a regional determination under the current version of FAA Order 5200.8, Runway Safety Area Program, to establish a safety area. **(2)** Engineered Material Arresting Systems (EMAS) must be supported by a runway safety area determination. **(3)** The only EMAS rehabilitation that is eligible is lid rehabilitation for EMAS installed with AIP funds prior to fiscal year 2007. This is because the EMAS installed before 2007 did not have the plastic lids. After fiscal year 2007, the manufacturer began fully encasing the blocks, which eliminated the need for lid replacement. **(4)** EMAS panels that were destroyed by an aircraft are eligible only if the sponsor can prove that there is no other avenue, such as insurance, for funding the replacement. **(5)** Where an airport is improving its RSA and existing FAA-owned	A runway safety area that incorporates all of the improvements outlined in the regional determination.	SA RW SF

Table G-3 Runway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	equipment will be impacted by the airport's RSA project, it is FAA policy that the ADO may be able to include the relocation of the FAA-owned equipment as part of the AIP project. However, where the airport's RSA meets the RSA standards except for FAA-owned equipment, it is FAA policy that the Air Traffic Organization is responsible for relocating and/modifying the FAA-owned equipment in the RSAs. This policy is contained in the Relocation of FAA-owned Equipment from Runway Safety Areas jointly signed on July 31, 2012 by ARP-1 and AJO-0.		
g. Construct, Extend or Improve a Runway Safety Area *(For runways that are not 14 CFR part 139 certificated)*	**(1)** The project must be supported by a regional determination under the current version of FAA Order 5200.8, Runway Safety Area Program, to establish a safety area. **(2)** Engineered Material Arresting Systems (EMAS) must be supported by a runway safety area determination. **(3)** The only EMAS rehabilitation that is eligible is lid rehabilitation (encasing the top of the blocks) for EMAS installed with AIP funds prior to fiscal year 2007. This is because the EMAS installed before 2007 did not have the plastic lids. After fiscal year 2007, the manufacturer began fully encasing the blocks, which eliminated the need for lid replacement. **(4)** EMAS panel replacement for panels that were destroyed by an aircraft is eligible if the sponsor has determined that there is no other avenue, such as insurance, for funding the replacement. **(5)** Where an airport is improving its RSA and existing FAA-owned	A runway safety area that incorporates all of the improvements outlined in the regional determination.	ST RW SF

Table G-3 Runway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	equipment will be impacted by the airport's RSA project, it is FAA policy that the ADO may be able to include the relocation of the FAA-owned equipment as part of the AIP project. However, where the airport's RSA meets the RSA standards except for FAA-owned equipment, it is FAA policy that the Air Traffic Organization is responsible for relocating and/modifying the FAA-owned equipment in the RSAs. This policy is contained in the Relocation of FAA-owned Equipment from Runway Safety Areas jointly signed on July 31, 2012 by ARP-1 and AJO-0.		
h. Runway Surface Condition Sensors	**(1)** The runway sensors must transit airfield conditions so that the timing of chemical applications may be determined. **(2)** The ADO must have concurred that the local weather conditions justify the need for the equipment. **(3)** The purpose is to ensure that aircraft can land and take off safely. Therefore, only runways are eligible for sensors. **(4)** Based on the current version of Advisory Circular 150/5200-30, Airport Winter Safety and Operation, three or four sensors are normally sufficient for a runway. The ADO has the option to fund additional sensors if the ADO determines additional sensors are justified. **(5)** The runway surface condition sensor system is limited to a system that reports: **(a)** Runway surface temperature (actual temperature of pavement at the sampling site), **(b)** Presence or absence of	An operational system that successfully transmits runway conditions, indicates when chemical treatment must be applied, and meets FAA standards.	ST RW SR

Table G-3 Runway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	moisture (dry pavement - no perceptible moisture, or wet pavement – perceptible moisture on surface), **(c)** Pre-ice conditions – advance alert of incipient ice formation prior to actual formation on the pavement, **(d)** Actual ice – visible or otherwise detectable ice on pavement; and **(e)** Ambient air temperature – at ground level in the vicinity of the runway.		

*The current list of work codes can be obtained from the automated AIP system.

Appendix H. Taxiway Projects

H-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

H-2. Taxiway Types (and Associated AIP Funding Rules).

AIP participation in a taxiway is limited to the requirements of the current version of Advisory Circular 150/5320-6, Airport Pavement Design and Evaluation, and the current version of Advisory Circular 150/5300-13, Airport Design. The common forms of taxiway pavements projects are listed below. For the purposes of this Handbook, the term *taxiway* refers to any of these types of projects so long as they are public-use.

a. Parallel and Partial Parallel Taxiway. A full length parallel taxiway connected to each end of a runway. If the runway is eligible and justified, then a parallel taxiway is eligible. A partial parallel taxiway is also eligible if the runway is eligible and justified and is normally considered at low activity airports where cost to construct the full length is excessive and the benefits do not warrant a full parallel taxiway.

b. Turnarounds. Turnarounds (also referred to as teacups) are small taxiways constructed at the end of a runway so that aircraft can change direction on the runway. A turnaround is eligible if the runway is eligible and justified. They are normally constructed at low activity airports when it is not economically feasible to construct a parallel or partial taxiway.

c. Holding Bays. Holding bays (also referred to as run-up pad and holding pads) are a paved area off the taxiway near the end of the runway where aircraft can conduct their final preflight activities or can wait for departure clearance or tower instruction. A holding bay is eligible if the runway is eligible and justified and the holding bay meets the justification requirements in the current version of Advisory Circular 150/5300-13, Airport Design.

d. Other Taxiways. A taxiway is a defined path for taxing of aircraft from one point to another. Taxiways on, or connecting to, aprons available for use by the general public are eligible.

e. Taxilanes. Taxilanes are used for access between taxiways and aircraft parking positions or buildings/hangars. They are outside the aircraft movement area controlled by the tower (if a towered airport). Public use taxilanes are eligible.

f. Converting Runways to Taxiways. A project to convert an ineligible runway to a taxiway will be eligible only if the ADO has determined that the taxiway is justified based on an operational need and the costs are reasonable to convert the pavement. Such projects must be identified on the airport layout plan and the pavement markings must be modified to meet FAA design standards.

H-3. Project Requirements Tables.

In addition to the information provided in the above paragraphs and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table H-1 Distinctions between Construct, Extend, Widen, Strengthen, and Rehabilitate

Use the following description…	If the project will…
a. Construct	Build a brand new taxiway.
b. Extend	Add additional length to a taxiway.
c. Widen	Increase the pavement width.
d. Strengthen	Will allow the pavement to accommodate a heavier class of aircraft.
e. Rehabilitate	Improves the pavement for the same class of aircraft.

Table H-2 Taxiway Work Codes

If the project is justified as follows…	Use the following work codes…
a. The project meets the definition of a capacity project (see Appendix A).	CA TW CO (construct) CA TW EX (extend)
b. The project meets the definition of a standards project (see Appendix A).	ST TW CO (construct) ST TW IM (extend) ST TW IM (widen) ST TW IM (strengthen) RE TW IM (rehabilitate)
c. The project is justified in an environmental finding or 14 CFR part 150 program for environmental reasons. The project must be a condition of the environmental finding or 14 CFR part 150 program.	EN TW CO (construct)

Table H-3 Taxiway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Taxiway (Construct, Extend, Widen, Strengthen)	**(1)** The taxiway must connect runways, taxiways, public-use aprons, or buildings eligible at that airport. **(2)** The length, width, and strength of the pavement work must be based on critical aircraft justification per Paragraph 3-11. The exception is if the project meets the requirements in Paragraph 3-24 to exceed FAA design standards. **(3)** Taxiway lighting may be included for the new taxiway pavement as long as it meets the taxiway lighting requirements in Appendix J. Per APP-520 policy, taxiway lighting for existing pavement must be separated into a stand-alone project. **(4)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table H-1. **(5)** Construction of parallel taxiways to support an approved RNAV approach is covered elsewhere in this table and has a different work code. **(6)** A taxiway or taxilane that exclusively serves a building is considered part of the building (and the associated building funding rules apply).	An operational taxiway constructed to FAA design standards, including required proper access, shoulders, turf along edge of shoulders, signs, taxiway safety areas, marking, and lighting.	CA TW CO CA TW EX EN TW CO ST TW CO ST TW IM See Table H-2 for the correct work code.
b. Install Infrastructure to support RNAV Approach *(Parallel Taxiway)*	**(1)** This is for a parallel taxiway required for an approved RNAV approach.	An operational taxiway constructed to FAA design standards, including required proper access, shoulders, turf along edge of shoulders, signs, marking, and taxiway lighting.	SP OT VI

Table H-3 Taxiway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
c. Rehabilitate Taxiway *(Pavement Maintenance)*	**(1)** Maintenance is generally ineligible. However, per 49 USC § 47102(3)(H), the exception is routine runway, taxiway, or apron pavement maintenance at nonhub primary airports and nonprimary airports. Paragraph 3-6 contains additional guidance and examples. **(2)** It is FAA policy that the sponsor must be unable to fund maintenance with its own resources. **(3)** The taxiway must connect runways, taxiways, public-use aprons, or buildings eligible at that airport. **(4)** A taxiway or taxilane that exclusively serves a building is considered part of the building (and the associated building funding rules apply).	An operational taxiway.	RE TW IM
d. Rehabilitate Taxiway (Seal Coat or Resealing of Joints in Concrete Pavement)	**(1)** A major portion of the pavement is being addressed. **(2)** The ADO concurs with the need for the project. **(3)** The sponsor has satisfactorily complied with assurances on pavement maintenance. **(4)** The length and width of the pavement work must be based on critical aircraft justification per Paragraph 3-11. The exception is if the project meets the requirements in Paragraph 3-24 to exceed FAA design standards. **(5)** Paragraph 3-6 contains additional guidance (including useful life requirements) and examples that the ADO must use to differentiate between pavement maintenance, rehabilitation, and reconstruction. **(6)** The taxiway must connect runways, taxiways, public-use aprons, or buildings eligible at that airport. **(7)** A taxiway or taxilane that exclusively serves a building is considered part of	A fully functional taxiway with extended useful life.	RE TW IM

Table H-3 Taxiway Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	the building (and the associated building funding rules apply).		
e. Rehabilitate Taxiway (Rehabilitate or Reconstruct)	**(1)** The work must be supported a Pavement Condition Index (PCI) or planning study. The ADO has the option to consult AAS-100 for assistance with justifying pavement rehabilitation or reconstruction. **(2)** The length and width of the pavement work must be based on critical aircraft justification per Paragraph 3-11. The exception is if the project meets the requirements in Paragraph 3-24 to exceed FAA design standards. **(3)** Paragraph 3-6 contains additional guidance (including useful life requirements) and examples that the ADO must use to differentiate between pavement maintenance, rehabilitation, and reconstruction. **(4)** The pavement must not have been reconstructed within the last 20 years, rehabilitated within the last 10 years or resealed within the last 3 years without further justification acceptable to the ADO. **(5)** The taxiway must connect runways, taxiways, public-use aprons, or buildings eligible at that airport. **(6)** Only in-pavement taxiway lighting can be included in the rehabilitation project (as long as it meets the taxiway lighting requirements in Appendix J). Per APP-520 policy, all other taxiway lighting must be separated into a stand-alone project. **(7)** A taxiway or taxilane that exclusively serves a building is considered part of the building (and the associated building funding rules apply).	A fully functional taxiway with extended useful life.	RE TW IM

*The official list of work codes can be obtained from the automated AIP system.

Appendix I. Apron Projects

I-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

I-2. Non-Exclusive Use Available for Public Aircraft Parking/Access.

Apron pavement is only eligible if it will be used for aircraft parking or as a compass calibration pad and is not exclusive use (see Appendix A for a definition and references on exclusive use). A good rule of thumb is that the public should be able to park on the pavement in order for it to be considered eligible apron area.

The portion of the apron project that will be used for support areas, such as service vehicle parking and fixed based operator equipment storage, is not eligible.

I-3. Apron in Front of a Hangar/Building.

The apron in front of a building that cannot be used for public parking or taxiing of aircraft is considered part of the building (and the associated building funding rules apply). This includes the wingtip clearance from the building as defined in the current version of Advisory Circular 150/5300-13, Airport Design.

The rest of the apron pavement in front of a hangar is only eligible as apron work if is available for public aircraft parking and is not exclusive use.

I-4. Project Requirements Tables.

In addition to the information provided in the above paragraphs and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table I-1 Distinctions between Construct, Expand, Strengthen, and Rehabilitate

Use the following description…	If the project will…
a. Construct	Build a brand new apron.
b. Extend	Add additional area to an apron.
c. Widen	Add additional area to an apron by widening the apron.
d. Strengthen	Will allow the pavement to accommodate a heavier class of aircraft.

Table I-1 Distinctions between Construct, Expand, Strengthen, and Rehabilitate

Use the following description…	If the project will…
e. Rehabilitate	Improves the pavement for the same class of aircraft.

Table I-2 Apron Work Codes

If the project is justified as follows…	Use the following work codes…
a. The project meets the definition of a capacity project (see Appendix A).	CA AP CO (construct) CA AP EX (expand)
b. The project meets the definition of a standards project (see Appendix A).	ST AP CO (construct) ST AP IM (expand) ST AP IM (strengthen) RE AP IM (rehabilitate)
c. The project is justified in an environmental finding or 14 CFR part 150 program for environmental reasons. The project must be a condition of the environmental finding or 14 CFR part 150 program.	EN AP CO (construct)

Table I-3 Apron Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Apron (Construct, Expand, Strengthen)	**(1)** The project cannot include pavement for auto parking or other non-aeronautical uses. **(2)** The project cannot include pavement for exclusive use areas (must be open to the public to park their aircraft). **(3)** Cargo aprons are limited use and the public is not allowed to freely use the apron. However, apron for freight or cargo activity is eligible if the opportunity to compete for use of the apron is available.	An operational apron constructed to FAA design standards, including required proper access, shoulders, turf along edge of shoulders, signs, marking, and lighting.	CA AP CO CA AP EX ST AP CO ST AP IM EN AP CO See Table I-2 for the correct work code.

Table I-3 Apron Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
b. Rehabilitate Apron (Pavement Maintenance)	**(1)** The project cannot include pavement for auto parking or other non-aeronautical uses. **(2)** The project cannot include pavement for exclusive use areas (must be open to the public to park their aircraft). **(3)** Maintenance is generally ineligible. However, per 49 USC § 47102(3)(H), the exception is routine runway, taxiway, or apron pavement maintenance at nonhub primary airports and nonprimary airports. Paragraph 3-6 contains additional guidance and examples. **(4)** It is FAA policy that the sponsor must be unable to fund maintenance with its own resources.	An operational apron.	RE AP IM
c. Rehabilitate Apron (Seal Coat or Resealing of Joints in Concrete Pavement)	**(1)** A major portion of the pavement is being addressed. **(2)** The ADO concurs with the need for the project. **(3)** The sponsor has satisfactorily complied with assurances on pavement maintenance. **(4)** The project must not include pavement for auto parking or other non-aeronautical uses. **(5)** The project must not include pavement for exclusive use areas (must be open to the public to park their aircraft). **(6)** The length and width of the pavement work must be based on critical aircraft justification per Paragraph 3-11. The exception is if the project meets the requirements in Paragraph 3-24 to exceed FAA design standards.	A fully functional apron with extended useful life.	RE AP IM

Table I-3 Apron Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(7) Paragraph 3-6 contains additional guidance (including useful life requirements) and examples that the ADO must use to differentiate between pavement maintenance, rehabilitation, and reconstruction.		
d. Rehabilitate Apron (Rehabilitate or Reconstruct)	**(1)** The project must not include pavement for auto parking or other non-aeronautical uses. **(2)** The project must not include pavement for exclusive use areas (must be open to the public to park their aircraft). **(3)** The work must be supported a Pavement Condition Index (PCI) or planning study. The ADO has the option to consult AAS-100 for assistance with justifying pavement rehabilitation or reconstruction. **(4)** The length and width of the pavement work must be based on critical aircraft justification per Paragraph 3-11. The exception is if the project meets the requirements in Paragraph 3-24 to exceed FAA design standards. **(5)** Paragraph 3-6 contains additional guidance (including useful life requirements) and examples that the ADO must use to differentiate between pavement maintenance, rehabilitation, and reconstruction. **(6)** The pavement must not have been reconstructed within the last 20 years, rehabilitated within the last 10 years or resealed within the last 3 years without further justification acceptable to the ADO.	A fully functional apron with extended useful life.	RE AP IM

*The official list of work codes can be obtained from the automated AIP system.

Appendix J. Airfield Marking, Signage, and Lighting Projects

J-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

J-2. New and Faded Marking as a Stand-Alone Project.

New marking that is necessary for a runway, taxiway, or apron pavement project is not considered a stand-alone project, but an allowable cost under the associated pavement project.

New marking that is necessary due to a change in magnetic variation is not considered a stand-alone project and is only eligible if it meets the requirements in Paragraph 3-6, and if eligible, must be coded as runway rehabilitation (pavement maintenance).

Remarking faded airfield pavement marking is only eligible if it meets the requirements in Paragraph 3-6, and if eligible, must be coded as runway, taxiway, or apron rehabilitation (pavement maintenance).

The replacement of faded markings is not eligible except as pavement maintenance because 14 CFR part 139.311 includes replacing faded or inaccurate markings as a maintenance activity at an airport.

J-3. Replacement of Sign Panels as a Stand-Alone Project.

Replacement of sign panels is not considered a stand-alone project, but an allowable cost under the associated pavement project.

Replacement of sign panels that is necessary due to a change in magnetic variation or because the panels have faded is not considered a stand-alone project and is only eligible if it meets the requirements in Paragraph 3-6, and if eligible, must be coded as runway, taxiway, or apron rehabilitation (pavement maintenance).

The replacement of faded panels is not eligible except as pavement maintenance because 14 CFR part 139.311 includes replacing faded or inaccurate signs as a maintenance activity at an airport.

J-4. Airport Lighting Control Panel Modification.

Airfield lighting projects may include modification of the airport lighting control panel in the air traffic control tower to accommodate the changes to the airfield lighting. The panel modification is considered a noncompetitive proposal must follow the additional requirements that are located in Paragraphs 3-35 and U-15.

J-5. Certified Lighting Equipment for which There is Only a Single Manufacturer.

Airfield lighting projects may include acquisition of certified airfield lighting equipment for which there is only a single manufacturer. The procurement of this equipment is considered a noncompetitive proposal and must follow the additional requirements that are found in Paragraphs 3-35 and U-15.

J-6. Lighting for Pavement that Exceeds FAA Design Standards.

For pavements that exceed FAA design standards width, the ADO must not fund installation of edge lighting to the extra width unless the sponsor agrees that it will not seek pavement rehabilitation funds for 10 years (which is the useful life of a lighting project). The sponsor must also agree that if pavement rehabilitation is needed within the 10 year period, the pavement will be rehabilitated to the FAA design standards width and the cost of removing and replacing the airfield lighting to the corrected width will be funded with non-AIP funds. The ADO must include a special condition in the associated grant outlining this requirement. APP-520 maintains a current list of special conditions that must be used for specific project or airport situations.

J-7. Restrictions on the Use of Light Emitting Diode (LED) Lights.

At the time this Handbook was published, the FAA was reviewing the use of LED obstruction lights, LED approach lights and LED high intensity runway edge lights with aircraft using Enhanced Flight Vision Systems or Night Vision Imagery technology that rely on an infrared signature. LED fixtures may not provide this infrared signature. For these reasons, it is FAA policy that LED obstruction lights, LED approach lights and LED high intensity runway edge lights are not currently AIP eligible.

Table J-1 Airfield Marking, Signage, and Lighting Work Codes

If the project is justified as follows…	Use the following work codes…
a. The project is one of the special emphasis items listed in 49 CFR § 47101(f) for a primary or secondary runway or taxiway at a commercial service airport.	**SP** XX XX
b. The project meets all of the associated eligibility requirements for that type of project *and* is needed to satisfy a safety issue identified by a 14 CFR part 139 violation, be identified by a 14 CFR part 139 certification inspector as needed runway incursion prevention measure, or a Runway Safety Action Team (RSAT) recommendation. ADO must review the project to verify that it is eligible. For instance, runway marking is not eligible at a small hub airport and a 14 CFR part 139 violation does not make it eligible.	**SA** XX XX
c. The project is required to meet current FAA design standards in accordance with applicable advisory circulars and meets the above two sets of criteria.	**ST** XX XX

J-8. Project Requirements Table.

In addition to the information provided in the above paragraphs and the following table, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table J-2 Airfield Signage and Lighting Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Install Guidance Signs	**(1)** If the airport is a 14 CFR part 139 certificated airport, the sponsor must have included the proposed signs in the sign plan, and the FAA must have reviewed and accepted the airport sign plan. For non-certificated airports, the 14 CFR part 139 certification inspector and/or the ADO have the option to impose this same requirement. **(2)** Lighted guidance signs must be supported by night or instrument approach operations.	Fully functional guidance signs that meets FAA standards.	SP OT SG SA OT SG ST OT SG See Table J-1 for the correct work code.
b. Install Runway Lighting	**(1)** Installation of runway lighting may include modifications of the airfield electrical vault as part of the overall project. **(2)** The lighting must be supported by night or instrument approach operations. **(3)** Per APP-520 policy, taxiway and/or apron lighting must not be included in the runway lighting project. These projects must be separated into stand-alone projects. **(4)** For centerline lights, the runway must have a Category II or III approach. Touchdown zone lights are considered an integral part of a centerline lighting system.	A fully functional runway lighting system that meets FAA standards.	SP RW LI SA RW LI ST RW LI See Table J-1 for the correct work code.

Table J-2 Airfield Signage and Lighting Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
c. Rehabilitate Runway Lighting	**(1)** Rehabilitation of runway lights may include replacing a significant number of fixture lenses, transformers, and cabling. The main light base and conduit will normally remain in place. **(2)** If new light bases and fixtures are installed for a major part of the runway, the project is no longer considered rehabilitation, and the appropriate install work code must be used instead. **(3)** The lighting must be supported by night or instrument approach operations. **(4)** Per APP-520 policy, taxiway and/or apron lighting must not be included in the runway lighting project. These projects must be separated into stand-alone projects. **(5)** The rehabilitation must be supported by analysis demonstrating a need for rehabilitation and that rehabilitation will result in the useful life being extended by at least five years.	A fully functional runway lighting system that meets FAA standards.	RE RW LI
d. Install Land and Hold Short Lights	**(1)** Justification for land and hold short (LAHSO) lights requires an approved LAHSO plan per the current version of FAA Order 7110.118.	A runway lighting system that allows LAHSO at the airport.	SP RW LI SA RW LI ST RW LI See Table J-1 for the correct work code.

Table J-2 Airfield Signage and Lighting Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
e. Install Runway Distance-To-Go Signs	**(1)** Per FAA policy, the runway must have turbojet aircraft operations. **(2)** These signs are also called distance remaining signs. **(3)** This would only rarely be a stand-alone grant. The ADO can only allow this as a stand-alone grant if an airport begins having turbojet operations. **(4)** Lighted signs must be supported by night or instrument approach operations.	A fully functional set of distance-to-go signs that meet FAA standards.	SP RW SG
f. Improve Airport Miscellaneous Improvements (Install/Rehabilitate Airfield Lighting Vault)	**(1)** The vault must serve eligible airfield lighting. **(2)** Rehabilitation of a vault must include replacement of major equipment such as the regulators. **(3)** Rehabilitation must be supported by analysis demonstrating a need for rehabilitation and that rehabilitation will result in the useful life being extended by at least five years. **(4)** The vault work may be coded under another project if it is required by the other project and is done as part of that project (such as runway lighting rehabilitation that requires an upgrade to the vault).	A fully functional vault that meets FAA standards.	ST OT IM
g. Install Taxiway Edge Lighting	**(1)** Taxiway lighting is only justified for taxiways that are associated with lighted runways. **(2)** Reflectors are eligible in lieu of taxiway edge lights.	A fully functional taxiway lighting system that meets FAA standards.	SP TW LI SA TW LI ST TW LI See Table J-1 for the correct work code.

Table J-2 Airfield Signage and Lighting Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
h. Install Taxiway Centerline Lighting	**(1)** Taxiway centerline lighting is only justified for taxiways that are associated with runways that have centerline lighting. **(2)** One of the following conditions must be met: **(a)** The taxiway connects to a Category II or III runway. **(b)** The lighting is a Runway Safety Action Team recommendation. The ADO must review RSAT recommendations on a case by case basis to determine if they are eligible and justified.	A fully functional taxiway lighting system that meets FAA standards.	SP TW LI SA TW LI ST TW LI See Table J-1 for the correct work code.
i. Rehabilitate Taxiway Lighting	**(1)** Taxiway lighting is only justified for taxiways that are associated with lighted runways. Taxiway centerline lighting is only justified for taxiways that are associated with runways that have centerline lighting. **(2)** Rehabilitation of taxiway lights may include replacing a significant number of fixture lenses, transformers, and cabling. The main light base and conduit will normally remain in place. **(3)** If new light bases and fixtures are installed for a major part of the taxiway, the project is no longer considered rehabilitation, and the appropriate install work code must be used instead. **(4)** The rehabilitation must be supported by analysis demonstrating a need for rehabilitation and that rehabilitation will result in the useful life being extended by at least five years.	A fully functional taxiway lighting system that meets FAA standards.	RE TW LI

Table J-2 Airfield Signage and Lighting Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
j. Install Runway Incursion Lighting *(Including Lighted X's)*	**(1)** Runway incursion lighting may include lighted X's, runway status lights, runway guard lights, clearance bars, and/or stop bars. Lighted X's may also be purchased. **(2)** The sponsor cannot transfer the ownership and maintenance of these systems to the FAA Air Traffic Organization (ATO). **(3)** Except for lighted X's, the project must be identified as a safety issue by a 14 CFR part 139 certification inspector or in a Runway Safety Action Team recommendation. The ADO must review RSAT recommendations on a case by case basis to determine if they are eligible and justified.	A fully functional runway incursion lighting system or a lighted X that meets FAA standards.	SA OT SG
k. Install Runway Incursion Marking	**(1)** This is also referred to as enhanced taxiway centerline marking. **(2)** Runway incursion markings cannot be applied to select airfield locations. They must be applied to every runway holding position on the airport.	A set of runway incursion markings that meets FAA standards and are applied to all runway holding positions on the airport.	SA OT SG (14 CFR part 139) SP OT SG (non 14 CFR part 139 Commercial Service)
l. Install Surface Movement Guidance and Control System (SMGCS) Lighting	**(1)** SMGCS lighting may include runway guard lights, clearance bars, and/or stop bars. **(2)** The airport must have an FAA approved SMGCS plan.	A complete SMGCS lighting pattern that allows aircraft to taxi from a Category II/ III runway to the apron.	SP OT SG
m. Install Apron Edge Lights	**(1)** The apron must be eligible.	An apron with edge lights that meet FAA standards.	ST AP LI

Table J-2 Airfield Signage and Lighting Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
n. Install Apron Flood Lighting	**(1)** The ADO must coordinate the project with AAS-100 to ensure the added lighting will not cause confusion for aircraft operations. **(2)** Apron flood lighting must be free standing. Lighting that is attached to a building is coded as the building, not the apron. **(3)** Although apron lighting may be a recommendation from TSA, a TSA letter is not mandatory.	An illuminated apron area.	ST OT LI
o. Install Terminal Gate Position Lead-In Lights	**(1)** The ADO must coordinate the project with AAS-100 to ensure the added lighting will not cause confusion for aircraft operations. **(2)** Gate position lead-in lighting must be free standing. Lighting that is attached to a building is coded as the building, not the apron. **(3)** The associated terminal gate must not be exclusive use.	An operational lead in system to an eligible gate.	ST OT LI

*The official list of work codes can be obtained from the automated AIP system.

Appendix K. Navigational Aid (NAVAID) and Weather Reporting Equipment Projects

K-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

K-2. Installation of Instrument Landing Systems.

The FAA Air Traffic Organization (ATO) is transitioning to Performance Based Navigation (PBN) approaches, as enabled by satellite navigation, rather than adding new ILS ground based equipment to the National Airspace System. These GPS approaches using Area Navigation (RNAV) provide equivalent instrument approach capability as ground based equipment can for Category I approaches.

On December 15, 2011, the FAA announced in 76 Federal Register 77939 that "In order to maximize operational benefits and take advantage of the cost savings associated with WAAS, the FAA no longer intends to establish new Category I ILSs using Facilities and Equipment (F&E) funding."

In the same notice, FAA announced consideration of "…programmatic changes under AIP that would favor WAAS for new precision approaches at airports, rather than ILS." Consistent with the notice, the FAA policy is that AIP funds must not be used to install a new Instrument Landing System (ILS) where the FAA has determined that an RNAV approach can provide similar capabilities. Therefore, where the ATO has determined that an RNAV approach cannot be implemented on a new or extended runway, and APP-500 has determined that the ILS installation is justified, the installation of a ground-based ILS installation is allowable with AIP. In accordance with the FAA Office of Airports and the Air Traffic Organization written agreement, the ADO must not program a new ILS on an existing runway.

A copy of the Office of Airports and the Air Traffic Organization written agreement is in Appendix BB.

K-3. Transfer of Equipment to the FAA Air Traffic Organization (ATO).

Under 49 USC § 44502(e), an AIP-funded ILS project consisting of a localizer, glideslope, associated Approach Lighting Equipment (ALS), and associated runway visual range indicator (RVR) can be taken over by ATO at the option of the airport. Anything less than a complete system with these four components is subject to different takeover rules. At a minimum, the project must contain both a localizer and glideslope in order for ATO take over. In addition, once the initial ILS project is completed, no additional components can be taken over. Once equipment has been transferred to ATO, AIP cannot be used to upgrade, modify, or replace the equipment unless the equipment is impacted by an AIP project as outlined in paragraph 3-77. The various scenarios for ATO ILS takeover are outlined in Table K-1. However, because the FAA is transitioning away from installing new ground based ILS, by FAA policy, installation of an ILS that is planned for ATO takeover must be approved in advance by APP-1.

Except for the specific statutory exception that allows a full ILS to be transferred to the ATO for ownership and maintenance, all NAVAIDs and signs installed under AIP will be owned and operated by the airport.

Table K-1 ATO ILS Takeover Scenarios

For the following situation…	The takeover rules are…
a. AIP funded glideslope, localizer, RVR, and ALS	ATO must take over the equipment (provided the equipment meets ATO requirements per 49 USC § 44502(e)).
b. AIP funded glideslope, localizer, and RVR	ATO must take over the equipment (provided the equipment meets ATO requirements per 49 USC § 44502(e)) that was installed in the same project as the glideslope and localizer. Note that if an ALS is funded in a later project, it cannot be taken over by the FAA.
c. AIP funded glideslope, localizer, and ALS	ATO must take over the equipment (provided the equipment meets ATO requirements per 49 USC § 44502(e)) that was installed in the same project as the glideslope and localizer. Note that if an RVR is funded in a later project, it cannot be taken over by the FAA.
d. AIP funded glideslope and localizer	ATO must take over the equipment (provided the equipment meets ATO requirements per 49 USC § 44502(e)) that was installed in the same project as the glideslope and localizer. Note that if an RVR and ALS is funded in a later project, it cannot be taken over by the FAA.
e. AIP funded localizer	ATO cannot take over the localizer because it is not a full ILS.
f. AIP funded RVR or ALS	ATO cannot take over the equipment because it is not a full ILS.

K-4. Required ATO Coordination.

If the project impacts or involves the relocation of an FAA-owned NAVAID, the ADO must complete all required coordination with AJW.

K-5. Designated Instrument Runway Requirement.

Airport approach and landing systems are not eligible unless the ATO has designated the associated runway as an instrument runway. The ATO designation considers safety requirements, relevant meteorological history, NAS-wide capacity, delays at individual airports, aviation activity forecasts, changes in the airfield and operational environment (including relocation of existing systems), as well as overall airport capital improvement costs regardless of the funding source.

Only airport rotating beacons, runway end identification light systems, and visual glide-slope indicator systems are eligible at airports without a designated instrument runway.

K-6. NAVAID and Weather Reporting Equipment Communication Requirements.

All NAVAID and weather reporting equipment must directly communicate with pilots, rather than directly communicate with the air traffic control tower, in order to be considered eligible. This is because equipment that communicates with the air traffic control tower is funded through the FAA Air Traffic Organization (ATO)'s budget.

K-7. Restrictions on the Use of Light Emitting Diode (LED) Lights.

At the time this Handbook was published, the FAA was reviewing the use of LED obstruction lights, LED approach lights and LED high intensity runway edge lights with aircraft using Enhanced Flight Vision Systems or Night Vision Imagery technology that rely on an infrared signature. LED fixtures may not provide this infrared signature. For these reasons, it is FAA policy that LED obstruction lights, LED approach lights and LED high intensity runway edge lights are not currently AIP eligible.

In addition, it is FAA policy that AIP funds cannot be used to replace AIP funded lighting fixtures with LED fixtures if the existing AIP funded fixtures have not met the end of their useful life.

K-8. Compass Calibration Pad.

A compass calibration pad is normally planned and constructed with adjacent taxiway or apron pavements. A compass calibration pad is not normally a stand-alone project. If the ADO determines that a stand-alone project is appropriate, the project is coded as an apron project rather than a NAVAID.

K-9. Project Requirements Table.

In addition to the information provided in the above paragraphs and the following table, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table K-2 NAVAID and Weather Reporting Equipment Work Codes

If the project is justified as follows…	Use the following work codes…
a. The project is for a primary or secondary runway or taxiway at a commercial service airport.	**SP** XX XX
b. The project is needed to satisfy a safety issue identified by a 14 CFR part 139 violation or a Runway Safety Action Team (RSAT) recommendation. The ADO must review RSAT recommendations on a case by case basis to determine if they are eligible and justified.	**SA** XX XX
c. The project is required to meet current FAA design standards in accordance with applicable advisory circulars and does not meeting the above to sets of criteria.	**ST** XX XX

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Install Instrument Approach Aid *(Instrument Landing System)*	**(1)** The ADO must not program a ground-based ILS without specific written APP-1 approval. The guidance for funding an ILS can be found in Paragraph K-2. **(2)** The ADO must not program a ground-based ILS unless the ADO has received written notification from the ATO that the ATO has determined that an RNAV approach is not suitable for a given location (e.g., ILS is needed to maintain efficiency with merging and spacing, approach transition guidance, or substantially better minima). **(3)** An instrument landing system (ILS) will not necessarily include installing an Approach Lighting System, which must be separately justified. Per APP-500 policy, an ALS is not justified for AIP funding unless the airport will have a reduction in minimums of at least 1/4 mile and records 300 or more annual instrument approaches to the runway.	A fully functional ILS that meets FAA standards.	ST RW IN

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(4) The project must be designed to meet the requirements in the current version of Advisory Circular 150/5300-13, Airport Design, and the requirements in the ATO reimbursable agreement. **(5)** Unless the ADO has received APP-1 approval per (1), and ATO notification that an RNAV approach is not suitable per (2), the airport must be: **(a)** a large, medium, or small hub primary airport, **(b)** an ILS is for a new or extended runway, and **(c)** the ILS will provide Category II or III minimums. **(6)** APP-500 has conducted a benefit-cost analysis that resulted in a benefit-cost ratio of 1.0 or more.		
b. Install Instrument Approach Aid *(Runway Visual Range (RVR))*	**(1)** The ATO must have designated the runway as an instrument runway. **(2)** The visibility information is made available directly to pilots. **(3)** Per FAA policy, the ADO can program an RVR at a nonprimary airport using nonprimary entitlement funds only. **(4)** Per FAA policy, the ADO can only program an RVR at an airport that has a published instrument flight procedure that has published RVR minimums. **(5)** The airport cannot transfer ownership of AIP-funded RVR equipment to the ATO unless it will be associated with an ILS that is being installed in the same project. **(6)** ADOs must contact APP-500 for assistance with proposed RVR projects.	A fully functional RVR that meets FAA design standards.	ST RW IN

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
c. Install Miscellaneous NAVAIDs *(Airport Beacon)*	**(1)** The airport rotating beacon equipment must be necessary for visual approaches to the airfield at night. **(2)** The airport must be open at night and must have runway lights in order to have a justified beacon.	A fully functional airport beacon that meets FAA design standards.	SP OT IN ST OT IN See Table K-2 for the correct work code.
d. Install Miscellaneous NAVAIDs (*Wind Cone)*	**(1)** The airport must be open at night and must have runway lights in order to justify a lighted wind cone.	A fully functional wind cone that meets FAA standards.	SP OT IN ST OT IN See Table K-2 for the correct work code.
e. Install Miscellaneous NAVAIDs (*Segmented Circle)*	**(1)** Where warranted, segmented circles used for landing direction, traffic pattern indicators or right turn indicators are allowed.	A fully functional segmented circle that meets FAA standards.	SP OT IN ST OT IN See Table K-2 for the correct work code.
f. Install Runway Vertical/Visual Guidance System *(Approach Light System (ALS))*	**(1)** The ATO must have designated the runway as an instrument runway. **(2)** Per APP-500 policy, an ALS is not justified for AIP funding unless the airport will have a reduction in minimums of at least 1/4 mile. **(3)** APP-500 has conducted a benefit-cost analysis that resulted in a benefit-cost ratio of 1.0 or more. **(4)** The sponsor cannot transfer the ownership and maintenance of these systems to ATO unless installed as part of a complete ILS that includes an ALS. **(5)** An ALS is only eligible on a runway that either has a precision approach procedure published	A complete ALS installation with clear approaches that reduces the minimums and meets FAA standards.	SP RW VI ST RW VI See Table K-2 for the correct work code.

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	instrument flight procedure and 300 or more recorded annual instrument approaches or is forecast to have a published instrument flight procedure and 300 or more recorded annual instrument approaches within five years. **(6)** Eligible ALSs include: **(a)** Approach Lighting System (ALS). **(b)** Approach Lighting System with Sequenced Flashing Lights (ALSF). **(c)** Medium-Intensity Approach Light System and Runway Alignment Indicator Lights (MALSR). **(d)** Medium-Intensity Approach Light System without Runway Alignment Indicator Lights (MALS). This is rare and requires additional justification because Runway Alignment Indicator Lights are an integral part of most ALS installations. **(e)** Medium-Intensity Approach Lights System with Sequenced Flashing Lights (MALSF).		
g. Install Runway Vertical/Visual Guidance System (Omni-Directional Approach Lighting System (ODALS))	**(1)** The ATO must have designated the runway as an instrument runway. **(2)** The ODALS must result in a reduction of minimums of at least 1/4 mile. **(3)** An ODALS is only eligible on a runway that either has a published instrument flight procedure and 300 or more recorded annual instrument approaches or is forecast to have a published instrument flight procedure and 300 or more recorded annual instrument approaches within five	A complete ODALS installation with clear approaches that reduces the minimums and meets FAA standards.	SP RW VI ST RW VI See Table K-2 for the correct work code.

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	years. **(4)** APP-500 has conducted a benefit-cost analysis that resulted in a benefit-cost ratio of 1.0 or more. **(5)** The airport cannot transfer the ownership of these systems to the ATO.		
h. Install Runway Vertical/Visual Guidance System *(Runway End Identification Light System (REILS))*	**(1)** This project will provide visual approaches on runways that are not equipped with an approach light system. **(2)** Per FAA policy, the ADO can fund REILs at a nonprimary airport only if the REILS are funded using nonprimary entitlement funds only. **(3)** The airport cannot transfer the ownership of these systems to the ATO.	A fully functional REILS that meet FAA standards.	SP RW VI ST RW VI See Table K-2 for the correct work code.
i. Install Runway Vertical/Visual Guidance System *(Visual Glide-Slope Indicator System (PAPI))*	**(1)** The precision approach path indicator (PAPI) is the only eligible visual glide-slope system eligible for an airport holding a 14 CFR part 139 certificate. **(2)** Although there are some other older types of visual glideslope systems still in use by some airports, the PAPI is the only eligible visual glide-slope system eligible for funding at facilities used by fixed-wing aircraft without the sponsor providing significant justification to the ADO as to why a PAPI cannot be installed. **(3)** For non-PAPI installations, the sponsor must obtain a Modification of Standards for siting and installation requirements. **(4)** Per FAA policy, the ADO can only fund a PAPI at a nonprimary airport using nonprimary entitlement funds. **(5)** Per the current versions of Advisory	A PAPI system that meets FAA standards.	SP RW VI ST RW VI See Table K-2 for the correct work code.

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	Circular 150/5340-30, Design and Installation of Airport Visual Aids, a four box PAPI is only justified for runways with any jet operations. **(6)** The airport cannot transfer the ownership of these systems to the ATO. **(7)** The design threshold crossing height angle must not limit the airport or aircraft from the Airplane Design Group shown or forecast on the approved ALP. **(8)** The project must have a benefit-cost analysis (BCA) ratio of 1.0 or more based on the criteria in the current version of FAA Order 7031.2, Airway Planning Standard Number One Terminal Air Navigation Facilities and ATC Services (APS-1), Appendix 2.		
j. Acquire Snow Removal Equipment *(Weather Support to Deicing Decision-Making)*	**(1)** The WSDDM equipment must be included in an FAA approved snow and ice control plan. If not, the ADO must make this a requirement in the grant offer.	A fully functional WSDDM system.	ST EQ SN
k. Install Weather Reporting Equipment *(AWOS III or better)*	**(1)** The AJW-144 Weather Processors and Sensors – Non-federal AWOS website identifies the reference documents for the design, installation, commissioning, and maintenance requirements for non-federal AWOS equipment. **(2)** The sponsor must have notified the Service Center non-Federal Program Implementation Manager (PIM) of its intent to procure and install an AWOS and have received concurrence by the PIM to proceed with the proposed project. **(3)** The sponsor must have filed for, and received a radio frequency spectrum assignment, if does not	A fully functional, operational, commissioned and FAA-inspected AWOS that meets FAA design standards.	ST EQ WX

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	transmit over the existing UNICOM frequency. **(4)** The sponsor must provide the ADO the evidence of PIM concurrence and radio frequency spectrum assignment information. **(5)** A benefit-cost analysis is not required for an AWOS-III or greater if the airport is a primary airport, or if the airport is a National or Regional Airport in the latest published edition of FAA's ASSET report. **(6)** An AWOS of AWOS-III capability or greater must demonstrate a benefit-cost analysis ratio greater than one. **(7)** Any airport that is not a primary, National, or Regional airport must demonstrate a benefit-cost analysis ratio greater than one to be justified. **(8)** The sponsor must provide the documentation required by APP-500 to the ADO in order to allow APP-500 to prepare the benefit-cost analysis, using the FAA Form, Data Requirements for an Office of Airports AWOS BCA. The ADO must advise the sponsor that incomplete documentation will not be accepted, and that the sponsor must allow at least three months after APP-500 has received the data to complete the analysis. **(9)** Because the benefit-cost analysis is based principally on published factual data, unless the sponsor can demonstrate that significant circumstances have changed that may alter the result, APP-500 will not rerun the benefit-cost analysis once the analysis is completed. **(10)** When preparing the BCA, APP-500 will include the full costs of the		

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	AWOS, including all fixed costs and variable costs, not simply the incremental cost increase over the basic cost of an AWOS installation. Inclusion of the AWOS data into the WMSCR is not considered a benefit and must not be included in the BCA to increase the BCA score. **(11)** The ADO must not program the project unless the ADO has received verification that the sponsor has completed PIM coordination, radio spectrum frequency assignment, and received a greater than one benefit-cost analysis. **(12)** No other FAA-owned and/or maintained weather reporting systems must exist or be planned at the airport. The ADO must confirm this with the PIM. If another FAA-owned system exists or is planned, AIP cannot be used to install an AWOS. **(13)** The sponsor is willing and able to operate and maintain the AWOS equipment during its life cycle. **(14)** The sponsor is willing and able to obtain a third party contract, for the life of the equipment, to report the minimum METAR data to the Weather Message Switching Center for the dissemination of weather data. The first 60 days of a subscription cost are allowable costs of the AIP grant, however all costs after the first 60 days are the responsibility of the sponsor. **(15)** The ADO should advise the sponsor that AWOS are not eligible for ATO-takeover under the FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, and that the sponsor will be responsible for		

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	regular maintenance, including the costs of third party reporting contract, and yearly inspections. **(16)** The sponsor must not limit a bid for an AWOS based on the method of radio transmission. **(17)** Automatic telephone answering systems or radio transmitters are an allowable cost to an AWOS.		
I. Install Weather Reporting Equipment *(AWOS A, A/V, I or II)*	**(1)** The AJW-144 Weather Processors and Sensors – Non-federal AWOS website identifies the reference documents for the design, installation, commissioning, and maintenance requirements for non-federal AWOS equipment. **(2)** The AWOS-A, AWOS-A/V, AWOS-I and AWOS-II are eligible without additional justification. **(3)** No other FAA-owned and/or maintained weather reporting systems must exist or be planned at that airport. The ADO must confirm this with AJW-14, and if another FAA-owned system exists or is planned, AIP cannot be used to install an AWOS. **(4)** The sponsor is willing and able to operate and maintain the AWOS equipment during its life cycle. **(5)** The ADO should advise the sponsor that AWOS are not eligible for ATO-takeover under the current version of FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, and that the sponsor will be responsible for regular maintenance and participation in yearly inspections. **(6)** The sponsor must not limit a bid for an AWOS based on the method of radio transmission. Different manufacturers of FAA-certified AWOS may use Unicom or radio	A fully functional, operational, commissioned and FAA-inspected AWOS that meets FAA design standards.	ST EQ WX

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	discrete frequency transmission. **(7)** Automatic telephone answering systems or radio transmitters are eligible as an allowable cost to an AWOS.		
m. Install Infrastructure to support RNAV Approach *(Parallel Taxiway)*	**(1)** The requirements for parallel taxiway projects that are required for an approved RNAV approach are provided in Appendix H.	N/A	N/A
n. Remove obstructions to support RNAV Approach	**(1)** The requirements for obstruction removal projects that are required for an approved RNAV approach are provided in Appendix D.	N/A	N/A
o. Install Approach Aid *(NextGen Equipment such as Ground Based Augmentation System (GBAS)*	**(1) APP-400 Coordination**. The ADO (and/or the regional office) must coordinate with APP-400 and have received APP-400 and APP-500 written concurrence with the project. **(2) Equipment Location**. AIP funding can install equipment that is physically located on the airfield. This will typically be transmitters and related equipment that augment satellite navigation feeds. No effort has been made to list the eligible types of equipment. Rather, any equipment that meets the prescribed guidelines will be eligible for AIP. **(3) Cable Ducts and Cabling**. For AIP funded NextGen equipment, AIP can be used for incidental cable ducts for cabling from the equipment to the processors. ATO will install the cabling, work in the tower, or computer hardware or software work. This is consistent with current guidance that allows for installation of duct banks for ATO. If the airport installs the empty ducts when it is installing the	A fully functional NextGen system that meets FAA standards.	ST RW IN May be replaced with a new work code.

Table K-3 NAVAID and Weather Reporting Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	equipment, the ducts are in-place and ready for ATO to pull cables, install wiring and activate the system at a future date without impacting airport operations. The equipment will be installed and the associated earthwork, grading, and construction of gravel access roads will included in the AIP grant. **(4) ATO's Responsibility**. Cabling, computer programming and verification testing will remain ATO's responsibility. The integrity of the NAS relies on a computer system that drives the communication, tracking, and surveillance systems together. This entire system is mission-critical. ATO cannot ensure the system integrity if individual airports are asked to modify or install the data systems. **(5) Operation/Maintenance.** As a non-federal system, the airport should expect to be responsible for the maintenance and operation of the approach aid. ATO is not expected to take over the maintenance and operation of the equipment under current NAS strategic plans.		

*The official list of work codes can be obtained from the automated AIP system.

Appendix L. Safety and Security Equipment Projects

L-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

L-2. Justification for Safety and Security Equipment.

Safety and security projects are not automatically justified. In all cases, the ADO must review these projects to determine if the project meets the eligibility and justification requirements outlined in this Handbook. Safety and security projects that require additional review by the ADO include, but are not limited to, those listed in Paragraph 3-9.

L-3. Safety Equipment beyond 14 CFR part 139 Requirements.

The basic criteria for eligibility of equipment beyond 14 CFR part 139 requirements will be that it is needed to meet a significant safety requirement at a particular airport. The sponsor's justification or reasoning to acquire the equipment with documentation of the features and costs, as well as the 14 CFR part 139 inspector recommendation, must be sent to APP-500. Decisions on funding of safety equipment contributing significantly to the safety of persons and property at an airport will be referred on a case-by-case basis to AAS-1.

L-4. Use of Safety and Security Equipment.

AIP funded equipment cannot be used for non-airport purposes. The exception is when a mutual aid agreement is approved by the 14 CFR part 139 certification inspector. In that case, an AIP funded ARFF vehicle can be used to meet the requirements of that agreement.

L-5. Off-Airport Storage of ARFF Equipment.

The option to allow a sponsor to store ARFF equipment off airport was originally introduced in Program Guidance Letter 07-02.1. This exception was in response to changes in 14 CFR part 139 that required many smaller airports to obtain certification. In order to approve off airport storage of ARFF Equipment the conditions in Table L-1 must be met.

Table L-1 Requirements for Off-Airport Storage of ARFF Vehicles

The requirements include…
a. The vehicle must be available for airport use at times necessary to meet 14 CFR part 139 requirements.
b. The vehicle must not be used for local community needs (AIP funding cannot be used for non-airport purposes and use of the vehicle for non-airport purposes must not reduce the useful life of the vehicles).

Table L-1 Requirements for Off-Airport Storage of ARFF Vehicles

The requirements include…
c. The sponsor must demonstrate to the satisfaction of the ADO that there is no viable on-airport storage solution and the off-airport storage provides a tangible benefit to the airport.
d. The sponsor and the local government entity must execute an agreement that: **(1)** Restricts the use of the vehicle for airport purposes only (except for FAA-approved mutual aid agreement uses). **(2)** Contain language that use of the vehicle of other than airport purposes could require repayment of the grant funding since it would be in violation of the grant conditions. **(3)** Contains provisions for documenting the use of the vehicle.
e. The ADO must forward a copy of the agreement between the sponsor and the local government entity to the 14 CFR part 139 certification inspector so that the certification inspector can ensure that the requirements are included in the certification manual and are being met.
f. The ADO must obtain approval for this request from AAS-300 and ACO-100 prior to issuing approval to the sponsor.

L-6. Radios and Communication Equipment.

Radios and communication equipment for an eligible AIP vehicle or piece of equipment is an allowable costs of the eligible AIP vehicle or piece of equipment. This may include installation of ADS-B out vehicle squitters per Advisory Circular 150/5220-26, Airport Ground Vehicle Automatic Dependent Surveillance – Broadcast (ADS-B) Out Squitter Equipment, for vehicles that are used at an airport with FAA ADS-B Surface Surveillance.

L-7. Security Equipment beyond 49 CFR part 1542 Requirements.

Projects exceeding the minimum requirements of 49 CFR part 1542 or that are necessary to support local law enforcement are ineligible. The security equipment that is currently eligible for AIP is included in Table L-2 and the commonly requested security equipment that have been determined ineligible is included in Table C-3.

L-8. Sensitive Security Information.

The ADO must coordinate with a TSA official to identify planning and material that must be protected under 49 CFR part 1520, which governs the release of such information.

L-9. Project Requirements Table.

In addition to the information provided in the above paragraphs and the following table, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Acquire Aircraft Rescue & Fire Fighting Vehicle	**(1)** The airport must currently hold a 14 CFR part 139 certificate. **(2)** If an airport that does not hold 14 CFR part 139 certificate, AAS-1 must have made an airport specific determination that the vehicle will contribute significantly to the safety or security at the airport (as allowed under 49 USC § 47102(3)(B)(ii)). **(3)** 14 CFR part 139 sets forth minimum extinguishing agents and water required for ARFF vehicles. AIP funding is limited to the minimum number of ARFF vehicles and the minimum size of ARFF vehicles required to satisfy 14 CFR part 139 requirements. **(4)** A rapid response vehicle (also called a rapid intervention vehicle) is only eligible if specifically required to satisfy 14 CFR part 139 requirements. **(5)** For an airport that currently holds a 14 CFR part 139 certificate, the ADO may calculate the number of eligible vehicles based on the airport index in accordance with the criteria specified in 14 CFR part 139 for conditions forecast within five years of the proposed ARFF equipment acquisition date provided that the ADO has received written confirmation from its regional certification inspector that the airport meets the other requirements associated with owning an ARFF vehicle, including training, staffing, and maintaining the vehicle. **(6)** In the event of a conflict between the requirements in any applicable advisory circular and 14 CFR part 139, the requirements in 14 CFR part 139 take precedence.	A fully operational ARFF vehicle that meets FAA design standards.	SA EQ RF The ST EQ RF is no longer available because it applied to a situation that was in place prior to the 2004 revision to 14 CFR part 139.

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(7) For vehicles that are 10 or more years old, a major rehabilitation is eligible if it extends the useful life by 10 or more years. Forcible aircraft entry tools may also be replaced at this time. **(8)** One set of forcible aircraft entry tools per vehicle is eligible if it is included in the grant for acquisition of an eligible ARFF vehicle and is not acquired as a stand-alone grant. For assistance and/or a list of standard equipment, contact AAS-300. **(9)** Emergency lighting that is mounted to the ARFF vehicles is eligible if it is included in the acquisition of an ARFF vehicle and is not acquired as a stand-alone grant. **(10)** One test charge and one refill of expendable items at the time of initial purchase of an ARFF vehicle are eligible. **(11)** The sponsor must separate the acquisition purchase of the ARFF vehicle and the acquisition of the gear and tools into two procurements. This is because including the gear and tools in the ARFF vehicle procurement documents unnecessarily increases the costs of those items. **(12)** The airport must either include a line item in the ARFF vehicle procurement to mount the necessary ARFF gear to the vehicle or must mount the equipment using its own forces. **(13)** The upgrade of an ARFF vehicle to add enhanced struts is eligible for ARFF vehicles built before 2002. Those built after 2002 are required to come equipped with the enhanced struts so an upgrade is neither necessary nor eligible.		

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
b. Acquire Aircraft Rescue & Fire Fighting Vehicle *(Structural Fire Fighting Vehicle)*	**(1)** The airport must hold a 14 CFR part 139 certificate. **(2)** If an airport that does not hold 14 CFR part 139 certificate, AAS-1 must have made an airport specific determination that the vehicle will contribute significantly to the safety or security at the airport (as allowed under 49 USC § 47102(3)(B)(ii)). **(3)** Only one vehicle per airport is eligible. **(4)** The vehicle must be stored on-airport. **(5)** The 14 CFR part 139 certification inspector has determined that the response time for an off airport structural unit exceeds 10 minutes. **(6)** For vehicles that are 10 or more years old, a major rehabilitation is eligible if it extends the useful life by 10 or more years. Forcible aircraft entry tools may also be replaced at this time. **(7)** One set of forcible aircraft entry tools per vehicle is eligible if it is included in the acquisition of an eligible ARFF vehicle and is not acquired as a stand-alone grant. For assistance, contact AAS-300. **(8)** Emergency lighting that is mounted to the ARFF vehicles is eligible if it is included in the acquisition of an ARFF vehicle and is not acquired as a stand-alone grant. **(9)** One test charge and one refill of expendable items at the time of initial purchase of an ARFF vehicle are eligible. **(10)** The sponsor must separate the acquisition of the ARFF vehicle and the acquisition of the gear and tools into two procurements. This is because including the gear and tools in the ARFF vehicle	A fully operational structural fire fighting vehicle that meets FAA design standards.	SA EQ RF

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	procurement documents unnecessarily increases the costs of those items. **(11)** The airport must either include a line item in the ARFF vehicle procurement to mount the necessary ARFF gear to the vehicle or must mount the equipment using its own forces. **(12)** The upgrade of an ARFF vehicle to add enhanced struts is eligible for ARFF vehicles built before 2002. Those built after 2002 are required to come equipped with the enhanced struts so an upgrade is neither necessary nor eligible.		
c. Acquire Driver's Enhanced Vision System (DEVS)	**(1)** The airport must have a 14 CFR part 139 certificate and published operations below 1200 feet runway visual range. **(2)** The primary fire station that services the airfield can have DEVS on a maximum of two vehicles per the current version of Advisory Circular 150/5210-19, Driver's Enhanced Vision System. This will provide driver's enhanced vision system (DEVS) equipment to an ARFF vehicle and one additional vehicle. **(3)** In addition, one more DEVS is eligible for each fire station that services the airfield beyond the first station. For instance, an airport with two fire stations that service the airfield is eligible for three DEVS. **(4)** Forward-looking infrared system (FLIRS) is a component of DEVS. A stand-alone FLIRS mounted is eligible for AIP eligible ARFF vehicles.	A fully functional DEVS added to an existing ARFF vehicle in accordance with FAA standards.	ST EQ MS
d. Forward Looking Infrared System	**(1)** Forward looking infrared system (FLIRS) is a component of DEVS. A stand-alone FLIRS mounted is	A fully functional FLIRS added to an existing ARFF	ST EQ MS

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	eligible for AIP eligible ARFF vehicles in accordance with the current version of Advisory Circular 150/5210-19, Driver's Enhanced Vision System.	vehicle in accordance with FAA design standards.	
e. Acquire Aircraft Rescue & Fire Fighting Vehicle *(Protective Clothing)*	**(1)** The airport must hold a 14 CFR part 139 certificate. **(2)** If an airport that does not hold 14 CFR part 139 certificate, AAS-1 must have made an airport specific determination that the clothing will contribute significantly to the safety or security at the airport (as allowed under 49 USC § 47102(3)(B)(ii)). **(3)** One suit is eligible for each fire fighter employed full-time to fight aircraft fires. **(4)** For part time positions, the number of suits is limited to a maximum of two per lightweight vehicle and five per large type vehicle. These limitations may be exceeded if approved by the 14 CFR part 139 certification inspector. **(5)** The replacement of personal protective equipment is eligible after the useful life has been reached (see Paragraph 3-12). Self-contained breathing apparatus is only replaced when the gear is replaced. **(6)** In addition, the replacement of protective clothing is eligible if the 14 CFR part 139 inspector has verified that the clothing has been destroyed accidentally, or may be otherwise deemed inoperable through no fault of the sponsor.	Protective clothing that meets FAA standards.	SA EQ RF
f. Regional ARFF Training Facility	**(1)** Project costs may include land, the burn area, maneuvering areas, a control center, a dual-agent ARFF vehicle with capacity not to exceed 1,500 gallons for foam production, the vehicle bay(s), utilities,	A fully operational regional ARFF training facility that meets FAA standards.	ST OT RF

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	maintenance facilities, environmental protection, fencing, the access road, and a building for classrooms, showers, and lockers. **(2)** One additional ARFF vehicle may be eligible if justified in the view of the 14 CFR part 139 certification inspector based on the mix of area airport indices. **(3)** The 14 CFR part 139 certification inspector must coordinate proposals for such an area-wide training facility with nearby facilities to ensure inappropriate duplication is avoided. The FAA CertAlerts contain the latest list of facilities. At the time this Handbook was published, the current list was in FAA CertAlert 09-07 (see Appendix B for link). **(4)** Not all states need such a facility, but if the 14 CFR part 139 certification inspector determines several area-wide training facilities in a state are required due to the area served they must contact APP-500 for additional assistance.		
g. Mobile ARFF Training Facility	**(1)** The airport has a 14 CFR part 139 certificate and is required to comply with Index A or B ARFF standards. **(2)** The airport must be more than 100 miles from the nearest area-wide training facility. The FAA CertAlerts contain the latest list of facilities. At the time this Handbook was published, the current list was in FAA CertAlert 09-07 (see Appendix B for link). **(3)** The ADO has the option to contact AAS-100 regarding the design requirements of this equipment. **(4)** Mobile training equipment is also eligible for acquisition by states if it will benefit more than one airport.	A fully operational mobile ARFF training facility that meets FAA design standards.	ST OT RF

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
h. Acquire Aircraft Rescue & Fire Fighting Vehicle *(Water Rescue Equipment)*	**(1)** The airport must hold a 14 CFR part 139 certificate. **(2)** If an airport that does not hold 14 CFR part 139 certificate, AAS-1 must have made an airport specific determination that the equipment will contribute significantly to the safety or security at the airport (as allowed under 49 USC § 47102(3)(B)(ii)). **(3)** The 14 CFR part 139 certification inspector determines that the equipment is need at the airport. **(4)** Acquisition of a helicopter for water rescue must be supported by additional justification and AAS-1 and APP-1 must have concurred with the action.	A fully operational piece of water rescue equipment that meets FAA design standards.	SA EQ RF
i. Acquire Equipment *(Power Vacuum Sweeper for Foreign Object Debris (FOD))*	**(1)** The power sweeper is for the control of debris on the airport. **(2)** Per FAA policy, eligibility is limited as follows. **(a)** Where the primary areas are less than 500,000 square yards and the where the airports annual operations level is 40,000 or less, one power sweeper is eligible. **(b)** Where the primary areas are 500,000 square yards or more, or where the airports annual operations level is more than 40,000, two power sweepers are eligible.	A fully operational sweeper that meets FAA design standards.	ST EQ MS
j. Acquire Equipment *(Acquire Fixed Foreign Object Debris (FOD) Detection Equipment)*	**(1)** AAS-100 has determined that FOD detection equipment contributes "significantly to the safety or security of individuals and property" at an airport as described in 49 USC § 47102(3)(B)(ii). **(2)** The airport must be a large hub airport.	A fully operational fixed FOD Detection System that meets FAA standards.	ST EQ MS

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(3) The sponsor must provide the following information to the ADO: **(a)** Number of aircraft operations per average 24-hour period for the selected runway. **(b)** Distribution of operations and percentage of airport departures over a 24-hour period on the selected runway. **(c)** Percentage of wide body aircraft using selected runway per day and overall diversity of fleet-mix using the runway. **(d)** Surface material and condition of selected runway. **(e)** Climatic conditions at the airport. **(f)** Significant construction activity on or near the airfield. **(g)** If available, historical data of FOD at the airport and/or on the specific runway being considered. **(4)** The airport is eligible for either one fixed system for a single primary runway at the airport, or one mobile system, not both. **(5)** Selection of airports receiving FOD detection systems will be made by APP-1; therefore, after the sponsor has submitted the required information to the ADO, the regional office must submit the proposal to APP-1. **(6)** AIP participation is limited to 50% of the eligible items associated with the project at the normal federal share. **(7)** Reimbursement of administrative costs is limited to $2,000. **(8)** The system must be configured to provide real time alerts, FOD identification, and FOD location to		

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	airport operations personnel. **(9)** The airport must continue to comply with all 14 CFR part 139 requirements for detection and removal of FOD. **(10)** Installation of a FOD detection system is a categorically excluded action unless extraordinary circumstances exist. **(11)** Optional features that exceed FAA design standards for system output requirements are not eligible for AIP and may not be used as a basis for selection of the system.		
k. Acquire Equipment *(Acquire Mobile Foreign Object Debris (FOD) Detection Equipment)*	**(1)** AAS-100 has determined that FOD detection equipment contributes "significantly to the safety or security of individuals and property" at an airport as described in 49 USC § 47102(3)(B)(ii). **(2)** The airport must be a large hub airport. **(3)** The sponsor must provide the following information to the ADO: **(a)** Number of aircraft operations per average 24-hour period for the selected runway. **(b)** Distribution of operations and percentage of airport departures over a 24-hour period on the selected runway. **(c)** Percentage of wide body aircraft using selected runway per day and overall diversity of fleet-mix using the runway. **(d)** Surface material and condition of selected runway. **(e)** Climatic conditions at the airport. **(f)** Significant construction activity on or near the airfield.	A fully operational mobile FOD Detection System that meets FAA standards.	ST EQ MS

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(g) If available, historical data of FOD at the airport and/or on the specific runway being considered. **(4)** The airport is eligible for either one fixed system for a single primary runway at the airport, or one mobile system. **(5)** Selection of airports receiving FOD detection systems will be made by APP-1; therefore, after the sponsor has submitted the required information to the ADO, the regional office must submit the proposal to APP-1. **(6)** AIP participation is limited to 50% of the eligible items associated with the project at the normal federal share. **(7)** Reimbursement of administrative costs is limited to $2,000. **(8)** Acquisition of a mobile FOD detection system may also include the vehicle on which the equipment is mounted if the airport does not already own a suitable vehicle that can be converted to FOD detection system use. The use of the FOD detection vehicle is strictly limited to FOD detection. The maximum reimbursement for the vehicle is $15,000, regardless of the type, size, or options selected for the vehicle. **(9)** A separate Buy American determination must be made for the vehicle. **(10)** The system must be configured to provide real time alerts, FOD identification, and FOD location to airport operations personnel. **(11)** The airport must continue to comply with all 14 CFR part 139 requirements for detection and		

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	removal of FOD. **(12)** Installation of a FOD detection system is a categorically excluded action unless extraordinary circumstances exist. **(13)** Optional features that exceed FAA design standards for system output requirements are not eligible for AIP and may not be used as a basis for selection of the system.		
I. Acquire Equipment *(Avian Radar System)*	**(1)** On October 4, 2010, AAS-1 determined that avian radar systems contribute significantly to the safety or security at an airport, which makes them eligible under 49 USC § 47102(3)(B)(ii). **(2)** The airport has a wildlife hazard management plan that has been accepted by the FAA. **(3)** The airport has an ongoing bird harassment plan in place incorporating the recommendations for continued harassment by airport employees to reduce wildlife hazards. **(4)** If the airport is a 14 CFR part 139 airport and has an Airport Certification Manual, the manual must include the requirements for operation and maintenance of the avian radar system, as well as requirements for analyzing the incoming data feeds, tracking the data, and acting on the data trends. **(5)** The airport must have a training plan in place that includes initial and yearly follow-up training on the proper use of radar readings, analysis and interpretation. **(6)** The costs of acquiring the radar equipment, installing the antenna(s) and radar equipment, and acquiring the Digital Radar Signal Processor are allowable costs. However,	A fully operational avian radar system that meets FAA standards.	ST EQ MS *Note: Do not use SA EQ MS. APP-500 decided that ST EQ MS is the work code that must be used.*

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	because accommodating the equipment is essentially providing space for airport employees to monitor the radar, the costs of modifying existing office space to accommodate the radar equipment, acquiring a mobile trailer, and constructing a permanent structure to support the avian radar equipment is not allowable. **(7)** Because the proper placement of the antenna includes an initial trial placement, the costs of a trial installation and a final operational installation are allowable. **(8)** The airport must maintain data to evaluate the radar performance until advised otherwise by the FAA. This must include the daily archives or radar recordings of birds tracked, related logs of birds harassed, hours in service, hours out of service, service and repair records, and updates to software or hardware. The data must be available for review by the FAA upon request. **(9)** Replacement of the system is only eligible after the useful life of the whole system has been met.		
m. Acquire Equipment *(Initial Squitter Acquisition)*	**(1)** The acquisition of squitters is limited to the 35 ASDE-X equipped airports or the 8 civil airports that are scheduled to receive ASSC. **(2)** APP-1 must select the specific airport for participation in the squitter acquisition program. **(3)** Acquisition is limited to 75 squitters. **(4)** By FAA policy, the APP-1 sets the maximum grant amount for a squitter project on an annual basis. **(5)** Squitters may use either the 1090 ES or 978 MHz/UAT link.	Up to 75 squitter units installed and operational in existing sponsor-owned and operated vehicles.	ST EQ MS

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(6) Only products that have been approved following certification testing may be acquired. **(7)** ATO Surveillance and Broadcast Services will generate the squitter transmit map. **(8)** Only ADS-B out is allowable (ADS-B In is not eligible). **(9)** Squitters are limited to installation in airport-owned, airport employee-operated vehicles that operate on pavements that are controlled by FAA Air Traffic Control, such as snow plows, airport rescue and firefighting vehicles, and airside operations vehicles. **(10)** The sponsor must provide a listing of the vehicle, assigned use (such as airside operational vehicle), and its airside designation (such as Operations Vehicle OPS-1, ARF-2) to the ADO. **(11)** The costs of acquiring computer hardware, software or software subscription services used in support of airport surface displays are not allowable. **(12)** Costs for installation and commissioning services, including Site Acceptance Testing (SAT) are allowable.		

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
n. Wildlife Hazard Reduction Equipment	**(1)** Equipment for broadcasting distress calls, exploding gas cannons, shotguns, and pyrotechnic pistols are eligible if recommended in a Wildlife Hazard Management Plan or a wildlife hazard site visit conducted by an approved wildlife biologist. **(2)** The airport has an ongoing bird harassment plan in place incorporating the recommendations for continued harassment by airport employees to reduce wildlife hazards.	A fully operational piece of equipment.	ST EQ MS
o. Install Perimeter Fencing required by 14 CFR 139	**(1)** The fencing is for operational and/or secure areas on a 14 CFR part 139 certificated airport. **(2)** The fencing is required per 14 CFR part 139 letter of correction or is included in a Wildlife Hazard Management Plan. **(3)** Closed circuit cameras required by 14 CFR part 139 for access control in the secured airfield areas are allowable as a part of the fencing project. **(4)** Unless the ADO approves the use of an electric locking device or automatic gate because the traffic flow at the gate will otherwise result in backups, only standard gate and mechanical locking devices are eligible.	A complete fencing installation that meets the requirements of 14 CFR part 139.	SA EQ SE

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
p. Install Perimeter Fencing required by 49 CFR 1542	**(1)** TSA must have approved the airfield access control project in writing as being needed to meet the minimum requirements of 49 CFR part 1542. **(2)** The fencing project may include closed circuit monitoring of the airfield boundary or guard shacks. Guard shacks must be minimal in nature (no additional office space, restrooms, etc.). **(3)** The closed circuit cameras must be for the sterile airfield area. **(4)** Unless the TSA has approved the use of an electric locking device or automatic gate, only standard gate and mechanical locking devices are eligible.	A complete fencing installation that meets the 49 CFR part 1542 requirements.	SA EQ SE
q. Command and Control Centers, also known as Emergency Operations Centers	**(1)** Command and Control Centers, or Emergency Operations Centers are not specifically required under 49 CFR part 1542 and are not consider security or safety equipment. **(2)** The requirements for Command and Control Centers or Emergency Operations Centers are found in Appendix O.	A fully operational command and control center console for airfield security.	ST BD MS

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
r. Install Perimeter Fencing *not* Required by 14 CFR 139/49 C FR 1542	**(1)** Fencing at airports not required by 14 CFR part 139 or 49 CFR part 1542 must be identified on the approved airport layout plan to be eligible. **(2)** The purpose of the fencing must be to discourage unauthorized access to the airfield by people or vehicles, or wildlife. **(3)** The ADO must have concurred that the project will contribute to the safety of the airfield and is appropriate for the type of situation. **(4)** Unless the ADO has approved the use of an electric locking device or automatic gate, only standard gate and mechanical locking devices are eligible. **(5)** The fencing is required per 14 CFR part 139 letter of correction or is included in a Wildlife Hazard Management Plan.	A complete fencing installation that increases safety of the airfield.	ST EQ SE
s. Security Enhancements *(Fingerprinting Equipment for Background Checks)*	**(1)** The TSA must have approved, in writing, that the airport is required by 49 CFR part 1542 to have a badging system that requires background checks. **(2)** The type of equipment and quantity to permit processing of three employees per hour is eligible provided the airport has that turnover rate. **(3)** Equipment certified by the Federal Bureau of Investigation is listed on their website.	Fully functional fingerprinting equipment.	SA EQ SE

Table L-2 Safety and Security Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
t. Security Enhancements *(Terminal Access Control)*	**(1)** TSA must have approved the terminal access control system, in writing, as being needed to meet the minimum requirements of 49 CFR part 1542. **(2)** Replacement of the systems and software is only eligible after the useful life of the system has been met. **(3)** The closed circuit cameras must be for the sterile terminal area. **(4)** If the terminal access control system is being installed as part of larger terminal project, the ADO has the option of coding the project as a separate security project or as part of the terminal project.	A fully operational access control system that meets 49 CFR part 1542.	SA EQ SE
u. Security Enhancements *(Police Vehicle)*	**(1)** TSA must have approved the police vehicle, in writing, as being needed to meet the minimum requirements of 49 CFR part 1542. **(2)** The primary purpose of the police vehicle must be for perimeter patrol of the airfield operational area or other sterile airfield area. **(3)** Only one police vehicle is allowed. The vehicle must be a standard police vehicle. **(4)** The airport must have a 14 CFR part 139 certificate.	A fully operational standard police vehicle that meets 49 CFR part 1542.	SA EQ SE
v. Security Enhancements *(Badging Equipment)*	**(1)** TSA have approved the badging equipment, in writing, as being needed to meet the minimum requirements of 49 CFR part 1542.	Fully operational badging equipment that meets 49 CFR part 1542.	SA EQ SE
w. Security Enhancements *(Apron Lights)*	**(1)** Although apron lighting may be a recommendation from TSA, a TSA letter is not mandatory. Apron lighting requirements are listed in Table J-2.	N/A	N/A

*The official list of work codes can be obtained from the automated AIP system.

Appendix M. Other Equipment Projects

M-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

M-2. Project Requirements Table.

In addition to the information provided in the above paragraph and the following table, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table M-1 Other Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Acquire Aircraft Deicing Equipment	**(1)** The equipment must be owned by the airport and be available on a non-exclusive use basis for any aircraft owner. **(2)** Vehicles and equipment for aircraft deicing and anti-icing on the ground are eligible at any NPIAS airport.	A fully functional piece of aircraft deicing equipment that meets FAA design standards.	ST EQ DI
b. Acquire Interactive Training System	**(1)** The systems and software must be for federally required safety and security requirements, or training related to the Americans with Disabilities Act and the Clean Air Act (42 USC § 7401). **(2)** The initial acquisition of the server, software, and dedicated hardware are eligible. **(3)** Replacement of the systems and software is only eligible after the useful life has been met. **(4)** New training modules to add new eligible material are eligible.	A fully functional interactive training system that meets FAA design standards.	OT EQ MS
c. Emergency Generator (Acquire, Install or Rehabilitate)	**(1)** Fixed standby generators necessary to support the following lighting on Cat II/III runways are eligible (not limited to entitlement funding):	A fully functional emergency generator that meets FAA design standards.	ST EQ LI

Table M-1 Other Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(a) Runway touch down zone, centerline, and edge lights. **(b)** Land and hold short lights. **(c)** Taxiway edge lights for taxiways serving the runway. **(d)** Surface movement guidance and control system (SMGCS) lights. **(2)** Specific airports have been designated as continuous power airports and are eligible for fixed generators (not limited to entitlement funding). They provide continuous operations in the event of an area wide power failure. The current versions of FAA Order 6030.20, Electrical Power Policy, and FAA Order 6950.2, Electrical Power Policy Implementation at National Airspace System Facilities, list these airports and the designated runways. These orders outline the fixed generator requirements. **(3)** Per FAA policy, for airports that do not meet one of the two criteria listed above, one fixed generator is eligible to support AIP eligible airside infrastructure. Only entitlement funds can be used in this case. **(4)** Per FAA policy, fixed emergency generators are only eligible for terminal use for the specific purpose of meeting life safety code requirements for building evacuation of the public use areas (not to allow the terminal to continue operations). **(5)** The generator must be a fixed generator, not a mobile generator.		

Table M-1 Other Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
d. Acquire Snow Removal Equipment	**(1)** For 14 CFR part 139 certificated airports: **(a)** Equipment required for clearing snow and ice from the runways, principal taxiways, aprons, and emergency access roads is eligible. **(b)** The equipment must be justified based on the current version of Advisory Circular 150/5200-30, Airport Winter Safety and Operations and Advisory Circular 150/5220-20, Airport Snow and Ice Control Equipment. **(c)** The number of eligible pieces must be determined using the above two advisory circulars and the airport's approved Snow and Ice Control Plan, and there must be existing FAA specifications for the equipment. **(d)** Eligibility is limited to the minimum requirements recommended by the advisory circulars unless the ADO approves the airport's assertion that the volume of traffic requires additional equipment. Sponsors must have submitted detailed information supporting additional equipment and the ADO must have agreed with the justification. **(2)** For airports that are not 14 CFR part 139 certificated airports: **(a)** Per FAA policy, only one snow removal carrier vehicle is eligible unless the ADO concurs that the airport is large enough, busy enough, and/or has significant snowfall to warrant an additional vehicle.	A fully functional piece of snow removal equipment that meets FAA standards.	ST EQ SN

Table M-1 Other Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(b) The equipment must be designed and justified based on the current version of Advisory Circular 150/5200-30, Airport Winter Safety and Operations and Advisory Circular 150/5220-20, Airport Snow and Ice Control Equipment. **(c)** Per FAA policy, incidental use is permitted at nonprimary airports without an active 14 CFR part 139 certificate only if: **(i)** The activity does not significantly degrade the SRE useful life. **(ii)** The SRE is used only for airport purposes and will not be used off airport. **(iii)** The SRE is only used by airport employees. **(iv)** The SRE is generally used for activities on AIP eligible surfaces. **(v)** The incidental use is not used as part of the SRE justification. **(3)** The sponsor provides the ADO with a current Snow Removal Equipment Inventory (see Appendix V for a sample format). **(4)** Fixed and portable snow melters are eligible in very limited circumstances and must have been coordinated and approved by APP-500. The airport must be able to document that there is no other safe and efficient way to remove snow without adversely impacting aircraft operations.		

Table M-1 Other Equipment Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
e. Acquire Friction Measuring Equipment	**(1)** Only a self-contained device or a towed device is eligible. Airports must provide their own towing vehicles for towed devices. **(2)** The airport must be a commercial service airport, hold a 14 CFR part 139 certificate, and have scheduled turbojet operations. **(3)** This equipment can be acquired for use at multiple neighboring airports. State aviation agencies may sponsor such projects.	A fully functional piece of friction measuring equipment (if towed, truck to be paid for with local funds) that meets FAA design standards.	ST EQ SR

*The official list of work codes can be obtained from the automated AIP system.

Appendix N. Terminal Building Projects

N-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

N-2. Public-Use and Movement of Passengers/Baggage Requirements.

Terminal development is defined under 49 USC § 47102(28). 49 USC § 47119 further defines the eligible space within terminal development projects as public-use areas that are directly related to the movement of passengers and baggage in terminal facilities within the boundaries of the airport.

In order to determine if a particular area within a terminal is eligible, it must be a public-use area per Table N-1 and it must be for the movement of passengers and baggage per Table N-2.

Table N-1 Public-Use Requirements for Terminal Buildings

The space must be public use as follows…
a. Public use spaces are those areas that passengers may need to occupy as part of their air travel. Areas such as airport administration offices or conference rooms (even if occasionally accessed by the public) are not considered public-use.
b. Public use spaces include the utility support space needed to make the public space operational, including the mechanical and electrical rooms.
c. Public use spaces do not include areas such as airport operations areas, police areas, administrative space, janitor's closets, and meetings and conference rooms, even though the public may occasionally go to some of these areas.
d. General aviation terminals can be stand-alone buildings, collocated within a commercial service terminal, or collocated within a fixed base operator (FBO) facility. What makes general aviation terminal areas eligible is that they are public use. In the case of general aviation terminal area that is collocated within an FBO, the areas behind the counter, office space, and conference room space (even if occasionally used by the public for meetings) are not considered public-use and are not eligible as terminal development. Although this space is ineligible as terminal development, it may be eligible under the revenue producing aeronautical support facility eligibility rules and requirements in Table O-3.
e. Areas that are past passenger screening (meaning that only ticketed passengers may access the public-use area) may still be considered public-use.

Table N-2 Movement of Passengers and Baggage Requirements

The space must be directly related to the movement of passengers or baggage as follows…
a. The prime function of a terminal building is to allow passengers and baggage to move from the curb of the terminal building to an airplane. Other uses that may be constructed in a terminal building may be public-use, but may not be directly related to moving passengers and baggage.
b. If the area does not need to be at an airport, but could be located somewhere else, it is not directly related to the movement of passengers and baggage and is not eligible. For example, a satellite office for a county's Department of Motor Vehicles may be public-use, but it is not directly related to the movement of passengers and baggage and is therefore not eligible.
c. Stores and restaurants for the convenience of the general traveling public are considered related to the movement of passengers. However, these facilities are subject to the revenue producing limitations outlined in Paragraph N-3, and the eligible area is limited to the space that the general public can access.

N-3. Revenue Producing Eligibility and Conditions for Terminal Buildings.

Revenue producing areas are eligible as outlined in Table N-3.

Table N-3 Revenue Producing Eligibility and Conditions for Terminal Buildings

For the following size airports…	Revenue producing areas are…	And the following conditions apply…
a. Large, medium, or small hub primary	Ineligible	N/A
b. All other commercial service airports	Eligible	**(1)** The area must be public-use per 49 USC § 47119(a)(1). The ability to fund revenue producing terminal areas at these airports under 49 USC § 47119(a)(2) does not remove this requirement. **(2)** The sponsor must certify any needed airport development project affecting safety, security or capacity will not be deferred due to the revenue producing project. These certifications are required per 49 USC § 47119(a)(2)(B) and the sponsor must provide this certification in writing to the ADO. Per FAA policy, deferring a needed capacity project includes allowing airfield pavement to deteriorate to a poor to failed condition.

N-4. Safety, Security, and Access Needs Met.

Per 49 USC § 47119(a)(1)(A), the sponsor must certify that it has, on the date of submittal of the project application, all the applicable 14 CFR part 139 safety and 49 CFR part 1542 security equipment required by rule or regulation. In addition, the sponsor must certify that they have provided access and equipment for passengers boarding or exiting non-air carrier aircraft. The sponsor must provide this certification in letter format to the ADO.

N-5. Prorated Areas and High Cost Eligible/Ineligible Items.

AIP cannot be used to pay for items or costs that are not eligible or allowable. The way this is addressed in terminals, which contain a mix of both eligible and ineligible areas, is by prorating the total cost.

The easiest method of proration is to use the ratio of the square footage of the eligible areas to the total area. High cost eligible and ineligible items of equipment must not be included in the proration calculations, but added (or deducted) separately to avoid skewing the result. An example of a high cost eligible item is a passenger loading bridge or an escalator/elevator. An example of a high cost ineligible item is a large commissioned sculpture. The formula for determining the eligible cost of a terminal building is in Table N-4.

In addition, the requirements for including ineligible or non-AIP funded work in the contract in Paragraph 3-42 must be met.

Table N-4 Terminal Eligibility Proration Calculation

Step	Action
1	Determine the square footage for each of the following categories: A: Eligible Areas B: Ineligible Areas C: Prorated Areas (areas that needed for utilities such as mechanical, electrical, or water) D: High Cost 100% Eligible Items (Examples: Passenger loading bridges, escalators, elevators) E: High Cost 100% Ineligible Items (Example: Large commissioned sculpture, ineligible build out costs)
2	Determine the eligible proration % as follows: Eligible Proration % = A / (A+B)
3	Determine the eligible cost as follows: Eligible Cost = [(Cost of A+B+C) * (Eligible Proration %)] + (Cost of D)

N-6. Terminal Area Impacted by an AIP Eligible Terminal Project.

If the area being impacted would normally be AIP eligible, then this area can be replaced with AIP funding under the project. If the area being impacted is not AIP eligible (such as a revenue

producing restaurant in a small, medium, or large hub airport), then only the demolition of the impacted area would be eligible. This impacted area is considered an ineligible sponsor facility and cannot be replaced with AIP funding (see Paragraph 3-77).

N-7. Typical Eligible Areas/Equipment within a Terminal Building.

Table N-5 contains typical eligible areas within a terminal building. As further discussed in Paragraph 3-6, replacement of carpeting (or other flooring, such as tiles or terrazzo), painting, wall coverings, ceiling tiles, and fixed public use seating (including tables and counters) in a terminal are considered ineligible maintenance items if they are not directly required as a result of an eligible terminal project.

Table N-5 Typical Eligible Areas/Equipment within a Terminal Building

The following terminal areas/equipment…
a. Ticketing lobby from entrance to ticket counters (but not including the ticket counters or the areas behind the counters).
b. Other lobbies used by passengers and guests (commonly called *meeters and greeters*).
c. The public use-portion of the baggage claim delivery areas (including lost baggage retrieval areas). This includes the baggage carousel equipment (even though by function, a portion of the carousel is located in the non-public area).
d. A prorated amount of the space for equipment needed to make the public space operational, including the mechanical and electrical rooms.
e. Public-use corridors to boarding areas.
f. Central waiting rooms.
g. Passenger boarding bridges at commercial service terminals.
h. Public restrooms.
i. Gate holding areas, including fixed public-use seating (including fixed tables and counters) within the holding area.
j. Directional signs and non-exclusive use flight information display systems (FIDS) and baggage information display systems (BIDS).
k. The area for passenger screening is eligible for terminal eligibility proration purposes. This can include limited square footage for private screening rooms. Passenger screening is a Transportation Security Administration (TSA) function and the build out of these areas must be funded by TSA. *Note: Passenger screening is not a 49 CFR part 1542 requirement. It is governed by different requirements, including 49 CFR part 1540. The only part of 49 CFR part 1542 that touches passenger screening is the requirement for access controls (keypad doors) when passenger screening is closed.*

Table N-5 Typical Eligible Areas/Equipment within a Terminal Building

The following terminal areas/equipment…
l. Customs and Border Control (formerly Federal Inspection Service) areas that are used directly for the inspection and detention of individuals and goods are eligible areas. Areas that are restricted from the public, including offices for screeners and supervisors, break rooms, training rooms, secure rooms where a passenger must be escorted (such as hold or search rooms), and similar uses are not eligible areas. Eligibility is limited to the construction of bare space with appropriate utilities and baggage carousels. Note that these can be separate buildings, but still are considered terminal development. Customs and Border Control must verify that the building is sized to the staffing levels that will be provided (note that the funding source of the staffing does not affect eligibility).
m. The FAA has determined that public use areas for general aviation operations are eligible areas (even within commercial service terminals). Note that these can be separate buildings, but still are considered terminal development.
n. Terminal modifications to accommodate in-line baggage screening as required by 49 CFR part 1542. In-line explosive detection system (EDS) equipment is eligible for AIP funding. However, from FY 2004 to the publication date of this Handbook, the FAA appropriations bill has prohibited using AIP grant funds on EDS systems or any building modifications that are necessary to support or install an EDS system. Because PFC eligibility is based on AIP eligibility, leaving the project eligible but prohibiting use of AIP still allows these projects to be funded with PFCs.
o. Acquiring and installing facilities and equipment to provide air conditioning, heating, or electric power from terminal-based (not mobile), non-exclusive use facilities to aircraft per 49 USC § 47102(3)(O). This type of work used to only be eligible if approved under the Voluntary Airport Low Emissions (VALE) program, but is now also eligible as terminal development outside of the VALE program and does not require the airport to be in a nonattainment or maintenance area. 49 USC § 47102(3)(O) limits eligibility to those facilities that will reduce energy use or harmful emissions as compared to aircraft based systems. There is ample scientific evidence that using power from the terminal rather than from the aircraft will reduce emissions, therefore, per FAA policy, the airport does not have to provide any documentation supporting this assertion. Terminal-based aircraft air conditioning, heating or electric power will be eligible following all of the funding, usage, and hub size requirements for other terminal projects.
p. Although a sponsor has the option to include a command and control center in the terminal, it is not required to be in a terminal. The ADO has the option of separating the command and control center out into a separate project (prorating the cost of the square footage) or including it as eligible terminal development (in which case the terminal funding rules would apply). Regardless of which method the ADO choses (as a separate project or as part of the terminal), the command and control center must meet all of the requirements in Appendix O.
q. If the terminal is a multimodal, only the area that is public use for the movement of passengers and baggage is eligible.
r. Incidental use of public space for display, advertising, or vending machines for public convenience will not make the space ineligible, although modifications to install these items are not eligible.
s. Service animal relief areas to comply with Title II of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.).

Table N-5 Typical Eligible Areas/Equipment within a Terminal Building

The following terminal areas/equipment…	
t.	Elevators to normally ineligible areas of the terminal (such as the airport offices to accommodate public meetings) if the elevators are necessary for the *sponsor* to comply with Title II of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.). The elevators are 100% eligible (do not have to be prorated to reflect the ineligible areas being served).
u.	Other accommodations to normally ineligible areas of the terminal (such as the airport offices to accommodate public meetings) if the accommodations are necessary for the sponsor to comply with Title II of the Americans with Disabilities Act of 1990 (ADA) (42 USC § 12101 et seq.). The ADO must contact the FAA Office of Civil Rights (ACR) to determine if the accommodations are required under ADA.
v.	If the terminal access control system (see Table L-2 for requirements) is being installed as part of larger terminal project, the ADO has the option of coding the project as a separate security project or as part of the terminal project. In addition, the space required to house the associated computer equipment is eligible. If the area to house the equipment is also an office or other ineligible use, that portion of the area remains ineligible.

N-8. Additional Eligible Terminal Areas/Equipment at Nonhub Primary and Nonprimary Airports.

In addition to the eligible areas listed in Paragraph N-7, nonhub primary and nonprimary airports may be eligible for the areas listed in Table N-6.

Table N-6 Additional Eligible Terminal Areas/Equipment at Nonhub Primary and Nonprimary Airports

Additional eligible terminal areas/equipment at nonhub primary and nonprimary airports includes the public-use space associated with...	
a.	Ticket counters at commercial service airports (but not the areas behind the counters).
b.	Rental car counters (but not the area behind the counter).
c.	The public portion of concession areas (the part that the general public can actually access) that is commonly found in airports such as restaurants, lounges, business centers, snack bars, snack vending areas, seating areas for snack areas/restaurants, newsstands, rental car areas, ground transportation and bookstores. Although not considered directly related to the movement of passengers or baggage per 49 USC § 47119(a)(1)(B), these areas are eligible under 49 USC § 47119(a)(2) as terminal development. However, the eligibility is limited to the construction of bare space with appropriate utilities and fixed public-use seating (including fixed tables and counters).
d.	Nonrevenue parking lots for the parking of vehicles of passengers and persons meeting or delivering passengers.

Table N-6 Additional Eligible Terminal Areas/Equipment at Nonhub Primary and Nonprimary Airports

Additional eligible terminal areas/equipment at nonhub primary and nonprimary airports includes the public-use space associated with...
e. A pilot briefing area or pilot lounge at general aviation terminals if the area is open to the public.
f. Incidental use of public space for display, advertising, or vending machines for public convenience.

N-9. Terminal Building Funding Rules by Airport Type.

The funding rules for terminal buildings are listed in Table N-7.

Table N-7 Terminal Building Funding Rules by Airport Type

For the following airport type…	The following funding rules apply…
a. Large, Medium and Small Hub Airports	**(1) Passenger Entitlements (Allowed).** The ADO is only allowed to apply passenger entitlement funds at large, medium and small hub airports. 49 USC § 47119(c)(1) authorizes funds from amounts apportioned under 49 USC § 47114(c)(1), which is the statutory reference for passenger entitlement. **(2) Discretionary (Potentially allowed at a small hub primary that has changed from a nonhub primary).** Per 49 USC § 47108(e)(3), if a nonhub primary airport changes to a small hub primary when a phased terminal development project that has received discretionary is underway, the project remains eligible for discretionary for three fiscal years after the start of the construction project (or longer if the ADO approves an extension). On February 14, 2012, the FAA Modernization and Reform Act of 2012 (Public Law 112-95) added 49 USC § 47119(f) which limits the amount of C/S/S/N and pure discretionary to $20 million for the cumulative total of all terminal development project costs as of February 14, 2012 at that airport. See the definition for terminal development in Appendix A for an explanation of what needs to be included in the $20 million dollar calculation (including what portion of the access road must be included). Per FAA policy, the small airport fund and discretionary from converted entitlements/apportionments is included in this limit. **(3) Discretionary (Allowed at a small hub airport with exactly .05% of the annual passenger boardings).** 49 USC § 47119(c)(3) authorizes funds from the discretionary fund and the Small Airport Fund at a small hub airport with exactly .05% of the annual passenger boardings. **(4) All Other Funding (Not allowed).** The Act does not authorize other funding at large, medium or small hub airports except as listed above.

Table N-7 Terminal Building Funding Rules by Airport Type

For the following airport type…	The following funding rules apply…
b. Nonhub Primary Airports	**(1) Passenger Entitlements (Allowed).** The ADO can apply passenger entitlement funds at nonhub primary airports. 49 USC § 47119(c)(1) authorizes funds from amounts apportioned under 49 USC § 47114(c)(1), which is the formula for passenger entitlements. **(2) Discretionary (Allowed, but only from the Small Airport Fund, C/S/S/N, pure discretionary, and discretionary from converted entitlements/ apportionments).** 49 USC § 47119(c)(3) authorizes funds from the discretionary fund and the Small Airport Fund at nonhub primary airports. On February 14, 2012, the FAA Modernization and Reform Act of 2012 (Public Law 112-95) added 49 USC § 47119(f) which limits the amount of C/S/S/N and pure discretionary to $20 million for the cumulative total of all terminal development project costs as of February 14, 2012 at that airport. See the definition for terminal development in Appendix A for an explanation of what needs to be included in the $20 million dollar calculation (including what portion of the access road must be included). Per FAA policy, the small airport fund and discretionary from converted entitlements/apportionments is included in this limit. **(3) All Other Funding (Not allowed).** The Act does not authorize other funding at these airports except as listed above.
c. Nonprimary Commercial Service	**(1) Nonprimary Entitlement (Allowed).** The ADO can apply nonprimary entitlement funds at nonprimary commercial service airports. 49 USC § 47119(c)(5) authorizes funds from amounts apportioned under 49 USC § 47114(d)(3)(A), which is the reference for nonprimary entitlements. **(2) Discretionary (Allowed up to $200,000 per fiscal year, but only from the C/S/S/N, pure discretionary, and discretionary from converted entitlements/apportionments).** 49 USC § 47119(c)(2) authorizes funds from the discretionary fund under 49 USC § 47115 at nonprimary commercial service airports. The Small Airport Fund is under 49 USC § 47116, therefore funds cannot be used from the Small Airport Fund at nonprimary commercial service airports. **(3) All Other Funding (Not allowed).** The Act does not authorize other funding at these airports except those listed above.
d. Reliever Airports	**(1) Discretionary (Allowed up to $200,000 per fiscal year, but only from C/S/S/N, pure discretionary, and discretionary from converted entitlements/apportionments).** 49 USC § 47119(c)(2) authorizes funds from the discretionary fund under 49 USC § 47115 at these airports. After review of the legislative history, the FAA has that 49 USC § 47119(c)(2) allows reliever airports to use discretionary on a terminal building, regardless if the airport has commercial service. **(2) Discretionary (Potentially allowed for a reliever airport that has dropped from commercial service).** Per 49 USC § 47108(e)(2), if a commercial service airport (either a nonprimary commercial service or a hub airport) changes to a noncommercial service airport (either a reliever or general aviation airport) when a phased terminal development project is underway, the project remains eligible for discretionary under the original funding rules for the previous airport type.

Table N-7 Terminal Building Funding Rules by Airport Type

For the following airport type…	The following funding rules apply…
	(3) Nonprimary Entitlement (Allowed). The ADO can apply nonprimary entitlements at reliever airports. 49 USC § 47119(c)(5) authorizes funds from amounts apportioned under 49 USC § 47114(d)(3)(A), which is the reference for nonprimary entitlements. After review of the legislative history, the FAA has determined that 49 USC § 47119(c)(5) allows reliever airports to use nonprimary entitlements on a terminal building, regardless of whether the airport has commercial service. **(4) All Other Funding (Not allowed).** The Act does not authorize other funding at reliever airports except those listed above.
e. General Aviation Airports (Excluding Reliever Airports)	**(1) Discretionary (Potentially allowed for a general aviation airport that has dropped from commercial service).** Per 49 USC § 47108(e)(2), if a commercial service airport (either a nonprimary commercial service or a primary airport) changes to a noncommercial service airport (either a reliever or general aviation airport) when a phased terminal development project is underway, the project remains eligible for discretionary under the original funding rules for the previous airport type. **(2) Nonprimary Entitlement (Allowed**). The ADO can apply nonprimary entitlements at general aviation airports. 49 USC § 47119(c)(5) authorizes funds from amounts apportioned under 49 USC § 47114(d)(3)(A), which is the reference for nonprimary entitlements. After review of the legislative history, the FAA has determined that 49 USC § 47119(c)(5) allows general aviation airports to use nonprimary entitlements on a terminal building, regardless if the airport has commercial service. **(3) All Other Funding (Not Allowed).** The Act does not authorize other funding at these airports except those listed above.

N-10. Project Requirements Tables.

In addition to the information provided in the above paragraphs and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table N-8 Terminal Work Codes

If the project is justified as follows……	Use the following work codes…
a. The project meets the definition of a capacity project (see Appendix A).	CA TE XX
b. The project meets the definition of a standards project (see Appendix A).	ST TE XX

Table N-9 Terminal Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Construct Terminal Building	**(1)** The ADO must have concurred with the sponsor's terminal sizing methodology. APP-400 maintains current guidance on terminal design and justification. **(2)** Sponsor must comply with the seismic requirements set forth in 49 CFR part 41, Seismic Safety, in the design and construction of the building. **(3)** To the extent practicable, the development should be aimed at meeting the needs for the 10 years after development with provision for expansion to meet projected needs subsequent to 10 years. **(4)** Modification/rehabilitation of existing facilities must be considered before the ADO can consider new terminal development. The ADO can consider funding new terminal development if costs are comparable to modification/rehabilitation of existing facilities and the new construction will provide better flexibility, ability to expand, or a longer useful life. **(5)** Because of the requirement for public use, by FAA policy, gates cannot be leased for more than 10 years and must not be subject to a majority in interest clause. **(6)** The project must be supported by an FAA-accepted planning study. **(7)** A project for walkways that lead directly to or from a terminal is eligible terminal development per § 47102(28)(iii). Per FAA policy, walkways include surface sidewalks, moving sidewalks, tunnel walkways, stairs, and overhead walkways. Covers or	A complete terminal building to allow the movement of passengers and baggage.	CA TE CO ST TE CO See Table N-8 for the correct work code.

Table N-9 Terminal Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	canopies over surface sidewalks may be included in a walkway project when necessary to protect concentrations of persons from the weather such as at passenger loading or unloading areas. In addition, only the portion of the walkway that is on airport is eligible. **(8)** Per 49 USC § 47119(a)(1)(A), the airport has all safety equipment required for the airport per 49 USC § 44706 (Airport Operating Certificates), has all security equipment required by rule or regulation, and has provided for access by passenger to the area of the airport for boarding or exiting aircraft that are not air carrier aircraft. **(9)** Per 49 USC § 47119(a)(1), only public-use areas of the terminal are allowable (regardless of the revenue producing status of the area). **(10)** ADOs may use the current versions of Advisory Circular 150/5360-13, Planning and Design Guidelines for Airport Terminal Facilities and Advisory Circular 150/5360-9, Planning and Design of Airport Terminal Facilities at Non-Hub Locations for additional guidance. However, the eligibility and justification rules within this Handbook must be followed for AIP funded terminals. **(11)** The ADO must coordinate all multimodal terminal projects with APP-520 prior to programming the associated grant.		

Table N-9 Terminal Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
b. Expand Terminal Building	**(1)** The requirements for Construct Terminal Building apply. **(2)** This work code is used for physical expansion to increase the number of gates, ticket counters, or baggage carousels. **(3)** The ADO must coordinate all multimodal terminal projects with APP-520 prior to programming the associated grant.	A completed terminal expansion with an increase in the number of gates, ticket counters, or baggage carousels.	CA TE EX ST TE EX` See Table N-8 for the correct work code.
c. Modify Terminal Building	**(1)** The requirements for Construct Terminal Building apply. **(2)** This may include modification needed for security screening, modifications to meet federal mandates, or modifications needed to accommodate a new class of aircraft at the terminal. **(3)** The ADO must coordinate all multimodal terminal projects with APP-520 prior to programming the associated grant.	A completed modification of the building that allows for a specific additional function.	CA TE IM ST TE IM See Table N-8 for the correct work code.
d. Rehabilitate Terminal Building	**(1)** The requirements for Construct Terminal Building apply. **(2)** This may include the replacement of eligible major capital equipment systems that will extend the useful life of the terminal building or replacement of a fixed building component. **(3)** Rehabilitate Terminal Building projects are: **(a)** Major renovation of public restrooms. **(b)** Replacement or major overhaul of public elevators, escalators, and moving sidewalks. **(c)** Major replacement of a significant percentage of a terminal roof.	A complete renovation that extends the useful life by the minimums in Paragraph 3-12 (note that equipment may have a shorter minimum useful life than the building).	CA TE IM ST TE IM See Table N-8 for the correct work code.

Table N-9 Terminal Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(d) Replacement of a significant portion of the terminal windows in the public-use areas. **(4)** The ADO must coordinate all multimodal terminal projects with APP-520 prior to programming the associated grant.		
e. Improve Terminal Building	**(1)** The requirements for Construct Terminal Building apply. **(2)** Justification for improvement of a terminal building will rely on a terminal study that justifies improvements based on improved passenger or baggage handling. It will involve adding new capabilities that do not currently exist at the terminal, generally through the installation of new capital equipment. **(3)** Improve terminal building projects may include installations of: **(a)** New baggage carousels. **(b)** Loading bridges. **(c)** Pedestrian walkways. **(d)** Elevators or escalators. **(e)** Preconditioned air/power for aircraft parked at a gate per 49 USC § 47102(3)(O). **(4)** The ADO must coordinate all multimodal terminal projects with APP-520 prior to programming the associated grant.	A completed improvement of the building that adds new capabilities.	CA TE IM ST TE IM See Table N-8 for the correct work code.

Table N-9 Terminal Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
f. Acquire Passenger Lift Device	**(1)** This is eligible under 49 USC § 47102(3)(F). **(2)** The equipment must be required for compliance with the Americans with Disabilities Act of 1990 (42 USC 12101 et seq) **(3)** The equipment must be used to board passengers on an aircraft, not to transport passengers between gates in airport terminals (these are considered people mover projects and are covered under Appendix P). **(4)** The sponsor must include specific information describing the vehicle or equipment that is being acquired in the project description of the application.	A new lift device that meets FAA design standards.	ST TE MS

*The official list of work codes can be obtained from the automated AIP system.

Appendix O. Other Building Projects

O-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

O-2. Aircraft Rescue & Fire Fighting Building Costs at 14 CFR part 139 Airports.

The main purpose of an ARFF building is to protect the grant-funded ARFF vehicle. For airports without a 14 CFR part 139 certificate a minimal structure to house and protect the grant funded ARFF vehicle is usually all that is justified.

More areas and items are eligible at an airport with a 14 CFR part 139 certificate. However, the current version of Advisory Circular 150/5210-15, Aircraft Rescue and Firefighting Station Building Design, contains facilities that are not required and will not be considered justified for project funding. Table O-1 narrows these FAA design standards to the allowable costs for AIP funding. Although the advisory circular allows for a 20% increase in the size of the areas without receiving FAA approval, this does not apply to AIP eligibility. Only the minimum space required for the eligible function is allowable under AIP unless the ADO provides written approval. In order to provide such approval, the ADO must have determined that there is justification for the increase and must document this justification and determination in the project file.

Table O-1 Allowable Costs for Areas in an ARFF Building at 14 CFR part 139 Certificated Airports

For the following area/items…	The following cost criteria apply…
a. Vehicle bays	The number of eligible bays is limited to that necessary for housing eligible ARFF equipment. Space for a structural fire truck is eligible if the structural fire truck is eligible.
b. Maintenance bay	A maintenance bay may be eligible within an ARFF building if all of the requirements for maintenance facilities in Table O-3 are met.
c. Administrative space	The number of personnel (as required by 14 CFR part 139 response times or local government staffing requirements) for the eligible ARFF vehicles determines the allowable administrative space requirements. The purpose is limited to that of a watch/alarm room used to receive emergency calls and dispatch ARFF vehicles. This does not include other administrative areas such as the Fire Chief office.
d. Support rooms	Space for necessary gear, medical equipment storage, and decontamination is eligible.

Table O-1 Allowable Costs for Areas in an ARFF Building at 14 CFR part 139 Certificated Airports

For the following area/items…	The following cost criteria apply…
e. Personnel facilities	The number of personnel (as required by 14 CFR part 139 response times or local government staffing requirements) for the eligible ARFF vehicles determines the allowable personnel space requirements. Eligible areas include a day room, dormitories, locker rooms, bathrooms, shower facilities, a kitchen, and a laundry room.
f. Training	The number of personnel (as required by 14 CFR part 139 response times or local government staffing requirements) for the eligible ARFF vehicles determines eligible training space requirements.
g. Furnishings, appliances, and support utilities	An emergency generator sized to meet the facility needs, utilities to serve the building, cabinets, a stove, a refrigerator, and a sink are eligible.

O-3. Project Requirements Tables.

In addition to the information provided in the above paragraphs and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table O-2 Distinctions between Construct, Expand, Modify, Improve, and Rehabilitate

Use the following description…	If the project will…
a. Construct	Build a brand new building.
b. Expand	Add on to an existing building.
c. Modify	Change a building.
d. Improve	Provide a distinct new feature to a building.
e. Rehabilitate	Extend the useful life of a building by completing major renovation or major replacement of parts of the building.

Table O-3 Other Building Project Requirements (Other than Terminals)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Aircraft Rescue & Fire Fighting Building (Construct, Expand, Modify, Improve, or Rehabilitate)	**(1)** The building must be sized according to the airport's ARFF index. **(2)** Allowable building costs are discussed in Paragraph O-2. **(3)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table O-2. **(4)** The ADO must determine that only the allowable areas listed in Table O-3 are included in the project.	A fully functional ARFF building.	SA BD EX
b. Aircraft Rescue & Fire Fighting Building (Rehabilitate) *(Replace Communication System)*	**(1)** Total replacement of the ARFF communication system is eligible for a stand-alone project every 10 years and is coded as rehabilitation.	A new, fully functional ARFF communication system.	SA BD EX
c. Snow Removal Equipment Building (Construct, Expand, Modify, Improve, or Rehabilitate)	**(1)** Snow removal equipment buildings are intended to protect the AIP funded snow removal equipment and materials. **(2)** Funding snow and ice control buildings is limited to space in the building necessary for eligible Snow Removal Equipment as well as storing abrasive or chemicals used in treatment of paved areas. All other areas and equipment recommended in the current version of Advisory Circular 150/5220-18, Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials, must be paid for by the sponsor. **(3)** The eligibility of a maintenance bay for safety and security equipment is provided elsewhere in this table and may be included in the SRE building	A fully functional snow removal equipment building.	ST BD SN

Table O-3 Other Building Project Requirements (Other than Terminals)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	if the requirements for the safety and security equipment maintenance bay are met. **(4)** At the time the building is programmed, the eligible equipment must be owned, on order, or budgeted by the airport within the next five years. **(5)** The SRE building is not intended to function as personnel quarters, snow desk, training space, or other functions. It is only intended for storage of eligible equipment. If non-eligible equipment storage is included in the building, the requirements for including ineligible or non-AIP funded work in the contract in Paragraph 3-42 must be met. **(6)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table O-2.		
d. Construct Sand and Chemical Storage Building (Construct, Expand, Modify, Improve, or Rehabilitate)	**(1)** Small stand-alone buildings for storage of airport surface deicing chemicals and sand may be constructed if the size and design is appropriate for the facility. **(2)** This function may also be incorporated as eligible area in a snow removal equipment building. **(3)** Snow and ice control abrasive or chemicals are to be used for airport pavement (not aircraft) because 49 USC § 47102(3)(G) does not permit the purchase or storage of deicing materials for aircraft. **(4)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table O-2.	A fully functional sand and chemical storage building.	ST BD SN

Table O-3 Other Building Project Requirements (Other than Terminals)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
e. Miscellaneous Building (Construct, Expand, Modify, Improve, or Rehabilitate) *(Maintenance or Service Facility)*	**(1)** One maintenance or service facility (also called a maintenance bay) for maintaining required safety and security equipment at airports with a 14 CFR part 139 certificate may be funded. **(2)** The facility must not exceed 1500 square feet in size and may be co-located within an existing or new building or in its own free standing building. **(3)** The eligible area is determined by adding 10 feet to the length and 10 feet to the width of the largest ARFF vehicle serving the airport, then multiplying these two dimensions for the bay size and adding a like amount for support space. **(4)** The ADO must confirm whether the airport already has an existing maintenance or service bay in the ARFF or SRE buildings. If so, an additional facility is not justified. **(5)** Construction of maintenance space does not include maintenance equipment, supplies, or tools because the costs of maintenance are not eligible. **(6)** The building/area must not be used for storage of any equipment or materials. The space must only be used for maintenance of eligible safety and security equipment. **(7)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table O-2.	A fully functional maintenance or service area or building.	ST BD MS
f. Miscellaneous Building (Construct, Expand, Modify, Improve, or Rehabilitate)	**(1)** For MAP funded hangars, see Appendix T, as many of the following requirements do not apply for MAP projects. **(2)** Per 49 USC § 47110(h), the airport must be a nonprimary airport.	A fully functional aircraft hangar, FBO building, or aircraft maintenance building.	ST BD MS

Table O-3 Other Building Project Requirements (Other than Terminals)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
(Aircraft Hangar, Fixed Based Operator (FBO) Building, or Aircraft Maintenance Building)	**(3)** Only nonprimary entitlements funding may be used for the building. **(4)** The sponsor must adequately demonstrate to the ADO that airside needs within the next three years will be accommodated through local funds or nonprimary entitlement funds. **(5)** The sponsor must not plan on using discretionary funds to meet the future three years of airside needs. It is APP-500 policy that the sponsor will be limited to non-primary entitlement funds during that time unless there is a specific safety issue that must be addressed and was not foreseeable under normal planning efforts of the sponsor. **(6)** Per 49 USC § 47102(24), the use of the building must only be for aeronautical purposes (storage of property other than aircraft or aircraft supplies is not allowed). Non-aeronautical uses are not allowed. **(7)** The use and lease of the building must meet the compliance requirements outlined in the current version of FAA Order 5190.6, FAA Airport Compliance Manual. **(8)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table O-2. **(9)** The apron in front of a building that cannot be used for public parking or taxiing of aircraft is considered part of the building (and the associated building funding rules apply). This includes the wingtip clearance from the building as defined in the current version of Advisory Circular 150/5300-13, Airport Design.		

Table O-3 Other Building Project Requirements (Other than Terminals)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(10) The taxilane/taxiway that exclusively serves a building is also considered part of the building (and the associated building funding rules apply). **(11)** A minimal size parking lot may be included as an allowable cost. **(12)** The acquisition of existing buildings involves further review of existing environmental issues, useful life issues, and reverter clause issues. Therefore the ADO must coordinate these requests with APP-520 and ACO-100. **(13)** If the FBO is collocated with the general aviation terminal, the public use area can be funded as terminal development as discussed in Appendix N. The areas behind the counter, office space, and conference room space (even if occasionally used by the public for meetings) are not considered public-use and are not eligible as terminal development.		
g. Miscellaneous Building (Construct, Expand, Modify, Improve, or Rehabilitate) *(Command and Control Center or Emergency Operations Center)*	**(1)** Only the portion of the building dedicated to airfield security is eligible. By FAA policy, this only includes the prorated building cost for a single position at the console and must not include the cost for equipment or furniture that is not fixed or mounted. In addition, the requirements for including ineligible or non-AIP funded work in the contract in Paragraph 3-42 must be met. **(2)** This is not specifically required under 49 CFR part 1542, therefore a letter from TSA is not mandatory for AIP funding.	A fully operational command and control center console for airfield security.	ST BD MS

Table O-3 Other Building Project Requirements (Other than Terminals)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(3) Although a sponsor has the option to include a command and control center in the terminal, it is not required to be in a terminal and is therefore not considered terminal development. **(4)** For ease of prorating the eligible costs of a Command and Control Center, the square footage allowed for the single position is limited to a maximum of 500 square feet (which includes consideration of common spaces in the center.) For example, in a 5,000 center, the maximum AIP participation is limited to 500 square feet/5,000 square feet, or 10% of the total project cost.		
h. Miscellaneous Building (Construct, Expand, Modify, Improve, or Rehabilitate) *(Contract Air Traffic Control Tower (ATCT))*	**(1)** Funding is limited per Paragraph 4-7. **(2)** If an airport proposes state apportionments for these projects, those funds may be used provided the ADO consults with the state aviation official and obtains the state's support for the project as part of its airport capital improvement plan. State apportionment funds may only be used on projects that are to be undertaken in the future rather than for retroactive funding. The project file must include the state's written support. **(3)** Only the equipment contained in the Federal Contract Tower Minimum Equipment List is eligible for AIP funding. **(4)** The FAA Air Traffic Organization (ATO) must provide a letter or comparable documentation stating that the airport was selected to be a participant in the FAA Contract Tower program under 49 USC § 47124 or that the construction of the ATCT would	Construction or equipment to support a contract control tower that meets FAA standards.	ST BD MS

Table O-3 Other Building Project Requirements (Other than Terminals)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	qualify the sponsor to be added to the program and it will seek appropriations for the airport to be in the contract tower program. The ADO must keep a copy of this documentation in the grant file. **(5)** The federal share of the cost of planning and construction is limited to a cumulative maximum of $2.0 million per airport per 49 USC § 47124(b)(4)(C). **(6)** Eligible costs include the ATCT structure and equipment inside it. **(7)** The FAA Air Traffic Organization (ATO) standards must be met for ATCT equipment in an AIP project. Modification of any equipment standard must have been approved by ATO. **(8)** For projects that were completed after October 1, 1996, retroactive funding of the ATCT and equipment is eligible, provided the airport demonstrates statutory requirements were met. For instance, the project must have been accomplished using DBE, minimum wage, veteran's preference, environmental approval, and other requirements under 49 CFR part 18 (2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards). **(9)** The sponsor must certify in the FAA operating agreement and the cost share agreement, if applicable, that it will pay its share of the cost to equip, maintain and operate the ATCT. **(10)** The ATCT must be located so that it does not conflict with the airport design requirements in the current version of Advisory Circular		

Table O-3 Other Building Project Requirements (Other than Terminals)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	150/5300-13, Airport Design. **(11)** The ATCT must be sited through the Airport Facilities Terminal Integration Laboratory (AFTIL) based on the current version of FAA Order 6480.4, Air Traffic Control Tower Siting Process. **(12)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table O-2.		
i. Law Enforcement Facilities	**(1)** The only eligible law enforcement facilities are airfield facilities to provide for a law enforcement presence required for air transportation security. The FAA has determined that the only facilities that meet these requirements are guard shacks at airfield access points. Guard shacks are coded under security fencing (see Table L-2).	N/A	N/A

*The official list of work codes can be obtained from the automated AIP system.

Appendix P. Roads and Surface Transportation Projects

P-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

P-2. Project Requirements Tables.

In addition to the information provided in the above paragraph and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table P-1 Distinctions between Construct, Expand, Modify, Improve, and Rehabilitate

Use the following description…	If the project will…
a. Construct	Build a brand new road or surface transportation facility.
b. Expand	Add on to an existing road or surface transportation facility.
c. Modify	Change a road or surface transportation facility.
d. Improve	Provide a distinct new feature to a road or surface transportation facility.
e. Rehabilitate	Extend the useful life of a road or surface transportation facility.

Table P-2 Road and Surface Transportation Work Codes

If the project is justified as follows……	Use the following work codes…
a. The project meets the definition of a capacity project (see Appendix A).	CA GT XX
b. The project meets the definition of a standards project (see Appendix A).	ST GT XX

Table P-3 Roads and Surface Transportation

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Access Road (Construct, Expand, Modify, Improve, or Rehabilitate)	**(1)** The terminal development definition in Appendix A defines which portion of the access road is treated as terminal development and therefore is subject to the funding restrictions for terminal development in Table N-7. **(2)** Generally only one connection from the airport to the public road is allowable. However, more than one connection is eligible if the airport surface traffic is of sufficient volume to require more than one connection (must be supported by traffic counts and a recent traffic study) or there is no landside access to reach aeronautical facilities from any portion of the access road. **(3)** The connection from the airport to the public road may only extend to the nearest public highway of sufficient capacity to accommodate airport traffic. **(4)** Access roads directly to or from a terminal and an eligible or an ineligible area (such as a revenue producing parking lot or rental car facility) are eligible. This is because 49 USC § 47119(a)(1)(B) provides that access roads to and from a terminal is eligible because it is directly related to moving passengers and baggage in air commerce within the airport. **(5)** Access roads must be located on the airport or within a right-of-way acquired by the sponsor. **(6)** The access road must serve exclusively airport traffic. This means that an access road cannot be prorated. In mixed use situations of airport/nonairport use, only the portion of the road that is beyond the non-airport access	A complete roadway access system that ties the public highway to the airport.	CA GT AC OT GT AC See Table P-2 for the correct work code.

Table P-3 Roads and Surface Transportation

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	point is allowable. **(7)** Related facilities such as acceleration and deceleration lanes, exit and entrance ramps, street lighting, guidance and traffic signs, and bus stops may be included in the access road project when they are a necessary part of an eligible access road. **(8)** Guidance signs are not eligible unless they are required as part of an eligible road project, a major roadway reconfiguration, or a complete replacement of the signage system because the signs have met the end of their useful life. Airport entrance signs are not eligible. **(9)** Per FAA policy, bike lanes are eligible as access road development and must meet all of the other access road requirements. **(10)** The pavement must not have been reconstructed within the last 20 years; rehabilitated within the last 10 years, or resealed within the last 3 years without further justification acceptable to the ADO. **(11)** The application of asphalt seal coats or resealing of joints in concrete pavement is also eligible as a stand-alone project provided: **(a)** A major portion of the access road is being addressed; **(b)** The ADO concurs with the need for the project. **(12)** Recirculation roads and cell phone waiting lots are allowable if the ADO has determined that the additional costs are minimal, and can be included in the access road project, but not as a stand-alone project. Allowable cell phone waiting area costs are limited to		

Table P-3 Roads and Surface Transportation

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	those necessary to allow cars to remove themselves from the roadway circulation traffic and safely wait for arriving passengers. Areas for unattended car parking and amenities such as telephones, seating, flight information display boards are not considered necessary and are therefore are not eligible. **(13)** Like access roads, a project for walkways that lead directly to or from a terminal is eligible terminal development per 49 USC § 47102(28)(A)(iii); and the walkway can be included as part of the access road project. Per FAA policy, walkways include surface sidewalks, moving sidewalks, tunnel walkways, stairs, and overhead walkways. Covers or canopies over surface sidewalks may be included in a walkway project when they are necessary to protect concentrations of persons from the weather such as at passenger loading or unloading areas. In addition, only the portion of the walkway that is on airport is eligible. **(14)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table P-1.		
b. Service Road (Construct, Expand, Modify, Improve, or Rehabilitate)	**(1)** A service road located on the airfield side of the airport is eligible if necessary for: **(a)** ARFF access to a runway or runway safety area. **(b)** Airport operation and maintenance. This is because AIP cannot be used to support operations and maintenance functions at an airport beyond limited snow removal and ARFF.	A fully functional service road that provides access to the intended area.	OT GT SV

Table P-3 Roads and Surface Transportation

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(c) Separation of ground vehicles and aircraft justified on the basis of safety as determined by a 14 CFR part 139 inspector or a Runway Safety Action Team recommendation. **(2)** A gravel service road located along the outside of the perimeter fence is eligible if necessary for security and supported by a letter from TSA or justified on the basis of safety as determined by a 14 CFR part 139 inspector or a Runway Safety Action Team recommendation. The road must be on airport property and per FAA policy is limited to a 15 foot wide gravel road. **(3)** A service road that is otherwise eligible but provides incidental access to FAA or other non-aviation related areas or facilities is still considered eligible. **(4)** A temporary gravel service road on either side of a fence during construction of the fence is eligible. **(5)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table P-1.		
c. Terminal People Mover (Construct, Expand, Modify, Improve, or Rehabilitate)	**(1)** Per FAA policy, terminal people movers are treated the same as access roads. As such, per 49 USC § 47102(28), terminal people movers are included in the definition of terminal development and must follow the terminal building funding rules in Table N-7. Stand-alone grants can be issued for these projects. **(2)** Light rail, monorail, and automated people mover systems used to transport passengers and baggage between terminals are considered eligible terminal people movers. **(3)** In addition, vehicles for moving	A fully functional airport people mover.	CA GT PM OT GT PM See Table P-2 for the correct work code.

Table P-3 Roads and Surface Transportation

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	passengers between terminal facilities and between terminal facilities and aircraft is specifically eligible as terminal development under 49 USC § 47102(28)(B). **(4)** Stations or stops must be on airport property and only for passenger access to the airport. **(5)** If any ineligible areas (examples of ineligible costs are listed in Appendix C) are included in the system's or station's design, the cost for the system and station must be prorated. The requirements for including ineligible or non-AIP funded work in the contract in Paragraph 3-42 must be met. **(6)** Extensive justification for an on-airport passenger transportation system is required. This justification must include a discussion of other alternatives. Any such project must be coordinated with APP-500. **(7)** The sponsor must include specific information describing the vehicle or equipment that is being acquired in the project description. **(8)** Per 49 USC § 47119(a)(1)(A), the airport has all safety equipment required for the airport per 49 USC § 44706 (Airport Operating Certificate), has all security equipment required by rule or regulation, and has provided for access by passenger to the area of the airport for boarding or exiting aircraft that are not air carrier aircraft. **(9)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table P-1.		

Table P-3 Roads and Surface Transportation

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
d. Access Rail (Construct, Expand, Modify, Improve, or Rehabilitate)	**(1)** Per FAA policy, access rails are treated the same as access roads. As such, per 49 USC § 47102(28), access rails are considered to be terminal development. Therefore, all funding restrictions for terminal development apply. **(2)** Public train service to an airport must meet the same eligibility criteria as airport access roads. The rail line must be limited to only serve passengers and employees traveling to and from the airport. **(3)** If any ineligible areas (examples of ineligible costs are listed in Appendix C) are included in the system's or station's design, the cost for the system and station must be prorated. The requirements for including ineligible or non-AIP funded work in the contract in Paragraph 3-42 must be met. **(4)** The difference between construct, expand, modify, improve, and rehabilitate is listed in Table P-1.	A fully functional access rail system.	CA GT RL OT GT RL See Table P-2 for the correct work code.

*The official list of work codes can be obtained from the automated AIP system.

Appendix Q. Land Projects

Q-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

Q-2. General Eligibility Requirements.

The acquisition of any interest in land is eligible when it is needed for *airport purposes*. Even though many infrastructure and construction elements are not eligible for AIP, the land they occupy is eligible for AIP funding if they meet this definition (see Appendix A).

The sponsor is responsible for maintaining adequate documentation to support costs as eligible for federal reimbursement. A documentation checklist and quality control guidelines are provided in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects, and the current version of FAA Order 5100.37, Land Acquisition and Relocation Assistance for Airport Projects.

Q-3. Applicable Land Orders, Regulations, and Advisory Circulars.

When acquiring land for an AIP assisted project (AIP in any portion of the project) the airport owner must comply with 49 CFR part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs. 49 CFR part 24 requirements are described in the current version of FAA Order 5100.37, Land Acquisition and Relocation Assistance for Airport Projects, and guidance for sponsor documentation and compliance is provided in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects. The airport owner must certify to the FAA its compliance to 49 CFR part 24 for any land acquired for an AIP funded airport project.

Q-4. Appraisal Requirement.

The cost of all AIP funded real property must be supported by a real estate appraisal, accepted settlement justification and evidence of good title to the acquired property. The FAA appraisal requirements are based on 49 CFR § 24.103. These requirements are described in the current version of FAA Order 5100.37, Land Acquisition and Relocation Assistance for Airport Projects, and in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects.

The fair market value of the land at the time of purchase must be used, not the current fair market value. The exception is for privately-owned airports, where 49 USC § 47109(d) requires that the current fair market value of the land at the time of the project be used.

Q-5. Good Title Requirements for Land and Easement Acquisition.

All AIP funded land and easement acquisition must meet the requirements for good title found in Table Q-1.

Table Q-1 Good Title Requirements for Land and Easement Acquisition

The following criteria apply…
a. The sponsor must acquire sufficient right, title and interest in the property to meet project requirements (e.g., construct, operate and maintain). Property interests required in off-airport areas must be sufficient to assure that the sponsor will not be deprived of its right to occupy and use such lands for the purposes intended.
b. The sponsor must ensure marketable title to property is conveyed to the airport free and clear of any interest or encumbrance that may conflict with the project need and use of the property.
c. Airport property title and airport interests in property must be recorded in the local public land records.
d. The property title conveyed must be as appraised and agreed for the purchase.
e. The sponsor's attorney must certify to ADO that good to title has been acquired.
f. The attorney may rely on title insurance (title company commitment of insurance of marketable title), or title abstract or an attorney's certificate of title.

Q-6. Acceptable Land Interests.

The acceptable types of land interests that may be funded with AIP are listed in Table Q-2.

Table Q-2 Types of Land Interests

For the following type of land interest…	The following applies…
a. Fee Simple.	The sponsor should normally acquire the fee simple interest in land needed to construct or protect airport use or development.

Table Q-2 Types of Land Interests

For the following type of land interest…	The following applies…
b. Easements and Lesser Interests.	Some lesser property interest may be acquired if that interest is legally sufficient for the purpose of the project or the acquisition is to a lesser property interest by a court order. For instance, it may be preferable to acquire an adequate easement for the transitional surface instead of the fee interest in the land. However, if the cost of a lesser interest such as an easement is nearly the cost of fee simple interest, fee simple title to the land should be acquired. Additional guidance on easement terms and requirements is provided in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects.

Q-7. Logical Boundaries.

Where feasible, land may be acquired to a logical boundary, such as existing property lines and/or boundaries created by nature such as rivers and manmade development (highways, railroads, etc.).

Q-8. Uneconomic Remnants.

When a partial acquisition would leave the owner with an uneconomic remnant, as defined in 49 CFR part 24, the airport owner must offer to purchase the remnant.

Q-9. Disposal of Excess Land.

Occasionally, the sponsor may negotiate the purchase of more of a property than is required for the airport project (such as agreeing to a whole taking versus the needed partial take from the owner's property). In this case, AIP can be used to acquire the excess land. However, the airport sponsor must agree that it will promptly dispose of the excess land (per the requirements of Paragraph 5-67).

Q-10. Purchasing Land from a State/Local Public Agency.

The FAA must determine that land acquired from another public agency is, in fact, a bona fide sale to the sponsor, and that such land was not transferred merely for the purpose of making the land eligible for federal funding.

Q-11. Project Requirements Tables.

In addition to the information provided in the above paragraphs and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table Q-3 Land Work Codes

If the project is for…	Use the following work codes…
a. Land or easement acquisition for a specific AIP eligible project.	The work code for the associated project
b. Land or easement acquisition for multiple AIP eligible projects.	ST LA DV (Acquire Land for Development) ST LA DV (Acquire Easement for Development)
c. Land acquisition for *airport purposes* (as defined in Appendix A) that are not AIP eligible.	ST LA MS (Acquire Miscellaneous Land)

Table Q-4 Land Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Acquire Land or Easements	**(1)** The acquisition must meet the requirements of 49 CFR part 24, the current version of FAA Order 5100.37, Land Acquisition and Relocation Assistance for Airport Projects, and in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects. **(2)** The land or easement must be needed for airport purposes (as defined in Appendix A) within the next 20 years. **(3)** For reimbursement of previously acquired land or easements, the land or easement can be currently used for existing airport purposes or be needed for airport purposes (as defined in Appendix A) within the next 20 years. **(4)** The associated development must be shown on the FAA approved airport layout plan. **(5)** The sponsor must certify that the requirements of 49 CFR part 24 are being met. **(6)** The Exhibit A must be updated when the purchase is complete.	Sponsor owned land or easement with good title.	See Table Q-3 for the correct work code.

Table Q-4 Land Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
b. Lease Publically Owned Land	**(1)** These are rare, so the ADO must contact APP-400 for guidance to ensure that all of the necessary requirements are being met. **(2)** The federal government is not considered a public agency in this instance. **(3)** The lease must meet the requirements of 49 CFR part 24, the current version of FAA Order 5100.37, Land Acquisition and Relocation Assistance for Airport Projects, and in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects. **(4)** The lease must be between the sponsor and public agency (a state, a political subdivision of a state (such as a city, municipality, or state agency), a tax-supported organization, or an Indian tribe or pueblo). **(5)** The acquisition, easement, or other interest in the land is not available. **(6)** The lease negotiations must meet applicable requirements of 49 CFR part 24. If the sponsor cannot condemn the land, then the lease negotiations may be exempt from the provisions of 49 CFR part 24 as a voluntary transaction (as described at 49 CFR § 24.101(b)(2)). **(7)** Prepaid rent, which is payment in full in advance for the full term of the lease, is eligible. The pre-paid rent must reflect the present value of the rent payments, not to exceed the current fair market value of the real property leased. **(8)** The lease term must exceed 20 years. This is because the lease term must be longer than the	A long term lease that helps ensure adequate rights needed to operate the airport.	See Table Q-3 for the correct work code.

Table Q-4 Land Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	grant assurances for AIP construction projects. **(9)** Justification must include reason why the land is not to be acquired instead of leased. **(10)** Periodic rental or lease payments are not allowable. **(11)** The land must be needed for airport purposes (as defined in Appendix A) within the next 20 years. **(12)** The associated development must be shown on the FAA approved airport layout plan. **(13)** The sponsor must certify that the requirements of 49 CFR part 24 are being met. **(14)** The Exhibit A must be updated when the purchase is complete.		
c. Exchange Land or Easement	**(1)** These are rare, so the ADO must contact APP-400 for guidance to ensure that all of the necessary requirements are being met. **(2)** Appraisals must be completed for the sponsor owned land and the property to be acquired. **(3)** Both properties must be appraised. If one piece of property has a higher value, the owner of that property must be offered the difference. **(4)** The ADO must issue a land release before the sponsor owned land can be exchanged. **(5)** The land or easement must be needed for airport purposes (as defined in Appendix A) within the next 20 years. **(6)** For reimbursement of previously acquired land or easements, the land or easement can be currently used for existing airport purposes	Sponsor owned land or easement with good title.	See Table Q-3 for the correct work code.

Table Q-4 Land Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	or be needed for airport purposes (as defined in Appendix A) within the next 20 years. **(7)** The associated development must be shown on the FAA approved airport layout plan. **(8)** The sponsor must certify that the requirements of 49 CFR part 24 are being met. **(9)** The Exhibit A must be updated when the purchase is complete.		
d. Acquire Land or Easement for Approaches	**(1)** Land acquisition and easements for approaches are eligible for the following: **(a) Airport Design Advisory Circular.** Approach surfaces in the current version of Advisory Circular 150/5300-13, Airport Design. There are many approach surfaces including, but are not limited to, obstacle free zones, threshold obstacle clearance surfaces, 14 CFR part 77 surfaces, approach and departure surfaces, and the runway protection zone. The ADO must consult the current version of the advisory circular to determine the current requirements (including sponsor requirements for obtaining RPZ land). **(b) 14 CFR part 77 Surfaces.** Per FAA policy, obstructions to the 14 CFR part 77 primary approach and 7:1 transitional surfaces. **(c) TERPS.** Any of the United States Standard for Terminal Instrument Procedures (TERPS) requirements. **(2)** Land acquisition and easement are limited to that necessary for the	Sponsor owned land or easement with good title.	ST LA SZ

Table Q-4 Land Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	approach surfaces to obtain vertical clearance 100 feet above the elevation of the runway ends, but no more than 5,000 feet beyond the end of the runway. Beyond 5,000 feet from the runway end, it is expected that the airport sponsor should rely on available local zoning and land use controls to protect approaches. **(3)** The Exhibit A must be updated when the purchase is complete. **(4)** The land or easement must be needed for approaches within the next 20 years. **(5)** For reimbursement of previously acquired land or easements, the land or easement can be currently used for existing approaches or be needed for approaches (as defined in Appendix A) within the next 20 years. **(6)** If the sponsor is purchasing an easement, it is preferable that the easement allows the sponsor to clear rather than top. This is because AIP can only be used to top the trees once and any future clearing on the property cannot be grant funded. The actual clearing or topping is funded under an obstruction removal projects. If the easement and obstruction removal is done at the same time, the entire project is coded as obstruction removal. **(7)** Rebuilding a facility in a new location is only eligible if the facility meets the requirements in Paragraph 3-77. **(8)** Obstruction removal within runway safety areas must meet the requirements and use the work codes in Appendix G. **(9)** Obstruction removal to support		

Table Q-4 Land Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	RNAV approaches is covered elsewhere in Appendix D and has a different work code.		
e. Acquire Land for Noise Compatibility	**(1)** The requirements for this type of land are contained in Appendix R.	N/A	N/A

*The official list of work codes can be obtained from the automated AIP system.

Appendix R. Noise Compatibility Planning/Projects

R-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

R-2. General Eligibility Requirements (The Four Types of Justification).

To be eligible, a noise compatibility project (also referred to as a noise mitigation project) must meet one of the following justification requirements in Table R-1.

Table R-1 General Eligibility Requirements for Noise Compatibility Projects

The noise compatibility project must be…
a. Included in an FAA approved 14 CFR part 150 Program. A noise compatibility project in an FAA approved 14 CFR part 150 Noise Compatibility Program (NCP). The Aviation Safety and Noise Abatement Act of 1979 (ASNA) directed the FAA to identify land uses that are normally compatible with various noise exposure levels. In response, the FAA adopted the 14 CFR part 150, Airport Noise Compatibility Planning. The adoption of the regulation was published in the 46 Federal Register 8316 (January 26, 1981). 14 CFR part 150 serves as the guidance for many of the AIP funded noise compatibility projects. 14 CFR part 150, Appendix A includes Table 1 - Land Use Compatibility with Yearly Day-Night Average Sound Levels that defines compatible and noncompatible land uses and related structures.
b. A Facility Used Primarily For Medical or Educational Purposes. A noise compatibility project for an adversely affected facility used primarily medical or educational purposes (per 49 USC § 47504(c)(2)(D), regardless if the airport has a 14 CFR part 150 program or not). Schools and hospitals are the most typical facilities that fall under this justification.
c. In a Land Use Compatibility Plan. A noise compatibility project that is included in a land use compatibility plan prepared by a local jurisdiction surrounding a medium or large hub airport that either has not prepared a 14 CFR part 150 program or has not updated 14 CFR part 150 program in the preceeding 10 years. Per 49 USC § 47141(f), grants for projects approved under an FAA accepted compatible land use plan are only allowable until September 30, 2015. After this date, the ADO must check the current legislation to see if the sunset date was extended.
d. In a Record of Decision. A noise mitigation project approved in an environmental record of decision for an airport development project.

R-3. Noncompatible Land Uses.

Table 1 of Appendix A in 14 CFR part 150 contains the requirements for determining when various land uses are noncompatible with aircraft noise, and therefore potentially eligible for AIP funding.

R-4. Not all 14 CFR part 150 Measures are Eligible.

Not all of the projects included in an approved 14 CFR part 150 program are eligible for AIP funding. Examples of ineligible 14 CFR part 150 NCP measures are listed in Appendix C.

R-5. Reduction Due to Aircraft Noise Associated with the Airport.

Noise insulation projects are designed to reduce interior noise in habitable rooms or classroom areas due to *aircraft* noise associated with the airport (as further discussed in the current version of Advisory Circular 150/500-9, Announcement of Availability Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations).

R-6. Eligible Noise Contour Threshold (or the Use of a Lower Local Standards).

The primary measurement of noise impact is the exterior noise measurement of cumulative yearly day-night average sound level (DNL), normally depicted as noise contours on a map. The noise contour is a graphical representation of the level of 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 that is experienced by land uses surrounding the airport due to aircraft operations.

a. DNL 65 dB Noise Contour. The DNL 65 dB noise contour is the noise level at or above which certain land uses are not considered to be compatible (49 USC § 47502, as implemented by Table 1 of Appendix A in 14 CFR part 150). The converse is also true – because DNL 65 dB is the federal threshold for considering certain land uses as compatible, noise-sensitive land uses located outside of the DNL 65 dB noise contour are not considered to be impacted by airport related noise. They are not eligible for mitigation funding unless a lower local standard is formally adopted.

b. Community Noise Exposure Level (CNEL). The FAA recognizes CNEL (community noise exposure level) as an alternative noise metric for California. For purposes of this Handbook the metric DNL and CNEL can be used interchangeably for projects in California.

c. Lower Local Standard. The FAA can consider a lower level of noise than the DNL 65 dB noise contour only if both the jurisdictions with land use authority surrounding the airport and the sponsor have each formally adopted a lower local standard (per a footnote to Table 1 of Appendix A in 14 CFR part 150, which reads in part, “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.”). The ADO can contact APP-400 for further information on determining whether locally adopted noise contours may be considered a local standard in the 14 CFR part 150 study.

R-7. Required Validation of the Noise Exposure Maps.

Per 49 USC § 47503, the noise exposure maps that the sponsor submits to the FAA must reflect current or reasonably projected conditions. 49 USC § 47503(b) requires that sponsors update their noise exposure maps if there is a substantial increase or significant decrease in the noise contour over noncompatible land uses. 14 CFR part 150 defines a DNL 1.5 dB change or more

as substantial. The exception is for noise mitigation projects in an environmental record of decision for an airport development project.

In addition, the FAA requires by policy that if the FAA-accepted Noise Exposure Maps used to document project eligibility are more than five years old, sponsors must confirm in writing to the ADO that the noise exposure maps upon which noise compatibility projects are based continue to be a reasonable representation of current and/or forecast conditions at the airport. The ADO must verify whether or not the noise exposure map reflects the current or projected operational conditions at the airport and associated noncompatible land uses. The ADO must also place a copy of the sponsor confirmation and ADO verification in the project files. The ADO must not program noise compatibility projects using noise exposure maps that are more than five years old unless this process has been completed.

R-8. Interior Noise Level Requirements.

The 45 dB standard has been adopted by the FAA for interior noise. This is based on 46 Federal Register 8316 (January 26, 1981), which established the interim rule for 14 CFR part 150 and included specific requirements regarding interior noise level. This was further clarified in 1992 by the Federal Interagency Committee on Noise (FICON) findings of 45 dB to be the interior noise level that will accommodate indoor conversations or sleep.

A noise-impacted noncompatible structure must be experiencing existing interior noise levels that are 45 dB or greater with the windows closed to be considered eligible. (For schools, the 45 dB measurement is based on the number of hours of the school day.)

The calculation of interior noise level must be based on the average noise level of only the habitable rooms or parts of school that are used for educational instruction. Habitable areas of residences are living, sleeping, eating or cooking areas (single family and multifamily) per the current version of Advisory Circular 150/5000-9, Announcement of Availability Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations. Bathrooms, closets, halls, vestibules, foyers, stairways, unfinished basements storage or utility spaces are not considered to be habitable. For schools, noise insulation is limited to classrooms, libraries, fixed seat auditoriums, and educators' offices.

Areas that are not allowed under local building codes are not considered habitable. For example, a resident has converted part of a basement to a bedroom and the bedroom conversion does not meet the building code requirements to be categorized as a bedroom. The converted bedroom is not considered habitable space. For schools, areas that are used for incidental instruction, such as hallways, gymnasiums and cafeterias, are not eligible.

By policy, the FAA does not recognize a lower local standard below 45 dB for interior noise levels.

R-9. Block Rounding.

Per FAA policy, if sponsor proposes to expand noise mitigation just beyond the DNL 65 dB contour to include parcels contiguous to the project area (referred to as block rounding), the ADO has the option to approve this request if the requirements in Table R-2 are met.

Table R-2 Block Rounding Requirements

Requirements include…
a. DNL 65 dB Contour does not have a Reasonable End Point. The block rounding must be necessary to reach a reasonable end point for noise insulation projects.
b. Sponsor Provides a Detailed List of Residences. The sponsor must provide the ADO the proposed end point information, including a complete list of the specific residences (by address) that are proposed for block rounding.
c. Called Out on All Lists. On all other lists of residences, these residences must be noted as *included due to block rounding*.
d. ADO Determination. The ADO must review and either approve or disapprove including the proposed block rounding residences at part of the associated noise mitigation program or environmental study. The ADO must document the determination and place a copy of the determination in the project file.
e. Logical Breakpoint. In determining the reasonable end point for noise insulation projects, the ADO must ensure that the end point is a logical breakpoint (such as a neighborhood boundary, significant arterial surface street, highway, river, other physical or natural barrier or feature) or whether the end point extends unreasonably beyond a natural break. Neighborhood or street boundary lines may help determine what is a reasonable additional number of properties.
f. Interior Noise Levels Qualify. Once a residence is approved for block rounding, its interior noise levels must meet the requirements in Paragraph R-8 in order for that particular residence to be eligible.
g. Not Applicable for Lower Local Standards. Residences that lie outside of an eligible lower local standard below DNL 65 dB (per Paragraph R-6) are not eligible for block rounding.

R-10. Neighborhood Equity.

A sponsor may consider the use of neighborhood equity when a few residences in the eligible noise contour threshold (per Paragraph R-6) that do not meet the interior noise level requirements are scattered among residences that do meet the interior noise level criteria. If sponsor proposes to use neighborhood equity provisions, the ADO has the option to approve this request if the requirements in Table R-3 are met.

Table R-3 Requirements for Neighborhood Equity

Requirements include…
a. In the Eligible Noise Contour Threshold. The residence must be in the eligible noise contour threshold (per Paragraph R-6).
b. Separate Package. The sponsor must develop a separate neighborhood equity package limited to improvements such as caulking, weather stripping, installation of storm doors or ventilation packages. The ADO must not approve the use of the standard noise insulation package for neighborhood equity residences.
c. Percent Participation Limit. Per FAA policy, the ADO must not approve neighborhood equity for more than10% of the residences in the neighborhood, (as logically bounded by either streets or other geographic delineation) or 20 residences in a phase of the noise insulation program, whichever is less. Note that the FAA has determined that PFC and airport revenue cannot be used to fund any residences beyond this limit, because homes beyond this limit are not adversely affected by airport noise.
d. APP-1 Approval for Exceeding Percent Participation Limit. In extremely rare cases, ADO may determine that the program will benefit by providing noise equity packages to more than the 10%/no more than 20 residence limit. In this instance, the ADO must have received written APP-1 approval to exceed this limit.
e. Sponsor Provides a Detailed List of Residences. The sponsor must provide the ADO with a complete list of the specific residences (by address) that are proposed for neighborhood equity.
f. Sponsor Provides a Cost Comparison. The sponsor must provide the ADO with detailed information comparing the cost of the proposed neighborhood equity package with the cost of a standard noise insulation package.
g. ADO Determination. The ADO must review and approve or disapprove the sponsor's proposed neighborhood equity package. In their determination, the ADO must ensure that the use of the minimal neighborhood equity packages on non-eligible residences is required to allow successful completion of the overall noise insulation program in the neighborhood, thus allowing these residences to be noise insulated within the guidelines of AIP eligibility. The ADO must document the determination and place a copy of the determination in the project file.

R-11. Pre- and Post-Testing Criteria for Noise Insulation Projects.

In order for a structure to be funded with AIP grant funding, the sponsor must follow the sampling and testing criteria listed in Table R-4.

Table R-4 Pre- and Post-Testing Criteria for Noise Insulation Projects

For the following…	The requirement is…
a. Published Guidance	**(1)** In 1992, the FAA adopted guidance on test sampling frequency and other statistical measures that can be applied to a neighborhood to estimate the interior noise levels in the residences that are in the 65 dB DNL contour. This information is compiled into the Acoustical Testing Plan. Long standing agency policy is that an airport sponsor must use the 1992 guidance to establish the existing interior noise levels to determine whether or not the building qualifies for sound insulation using AIP. The 1992 guidance is found in current version of Advisory Circular 150/5000-9, Announcement of Availability Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations. **(2)** The 1992 guidance was written to cover a broad range of sound insulation topics. There are recommendations in the guidance that exceed what is justified under AIP. However, just because an item is discussed in the guidance, this does not make it eligible or justified. This Handbook, not the guidance, provides the guidance for determining eligibility and justification for any project that is AIP funded.
b. Sponsor Requirements for submitting Testing Protocol to the ADO	**(1)** The sponsor must submit the proposed testing protocol to the ADO. **(2)** The ADO has the option to review the testing protocol. **(3)** After ADO review or after the ADO has indicated that the testing protocol will not be reviewed, the sponsor will then noise insulate the residences in the testing phase.
c. First Step – Initial Testing	**(1)** The first step of a noise insulation program is generally the initial testing phase. In this phase, the sponsor characterizes the neighborhood by characterizing the housing types, level of noise exposure (i.e., Location within the noise contour) and address. The sponsor must also describe the acoustical issues, number of residences to be tested and describe the acoustical criteria and testing methodology. **(2)** A sponsor starting a sound insulation program in a community near the airport will typically first conduct a windshield survey of the types of residences that are in the current phase. The windshield survey catalogs the types of residences in the neighborhood, notes similarities and differences in the age, construction type, size, number of levels, and types of housing (single family or multi-family). **(3)** Once the sponsor has characterized the diversity of the residences in the noise contour, it will select a representative sample of each type of similarly-constructed residences for testing, which based on industry review is typically 10% to 30%. Testing in this case means that the sponsor develops and installs a sound insulation package that the sponsor believes will reduce the interior noise level in the residence for each type of construction. **(4)** In a neighborhood where the residences are made of either brick or wood siding, the sponsor will develop two different packages – one for the brick residences and one for the siding residences. **(5)** The sponsor will then measure the interior noise levels and prepare a summary report detailing the effectiveness of the design package, make

Table R-4 Pre- and Post-Testing Criteria for Noise Insulation Projects

For the following…	The requirement is…
	recommendations for any changes to the package, lists the before and after interior noise level data, and submits the package to the ADO. **(6)** Reimbursement for initial and subsequent phase testing is limited to 10% of the residences of a particular type unless the sponsor has provided the justification for the request to the ADO and the ADO has approved the request. **(7)** The ADO must approve or disapprove a sponsor request for reimbursement for testing more than 10%, but not more than 30%, of the residences of a particular construction type. The ADO may request APP-400 assistance in evaluating sponsor requests. A copy of the sponsor's written request and the ADO approval or disapproval must be kept in the project file. **(8)** For requests for reimbursement for more than 30% of the residences of a particular type, the ADO must have received APP-400 approval. The request to APP-400 from the ADO must contain unless the sponsor's justification for the request, and the ADO's recommendation for approval or disapproval.
d. Second Step - ADO and Sponsor Review of Initial Testing Results	**(1)** The sponsor must review the results to determine if additional residences should be tested. **(2)** The ADO has the option to review and approve or disapprove all sponsor revisions to the sampling program.
e. Special Circumstance – Resident Requests Specific Testing	**(1)** A resident may request that their residence be tested specifically. This may be because of the condition of the home, or because the resident believes that their residence will test differently than others. These additional tests are generally allowable. However if an additional residence is tested, it must be tested both before and after any noise insulation work to ensure the 5 dB NLR is achieved.
f. Final Step – Completing the Testing Phase	**(1)** After the completion of the testing phase, the sound insulation program will begin for the neighborhood. In these later phases, the sponsor is still expected to test from 10% to 30% of each different category of residences in the phase to revalidate the design assumptions. The results of the revalidation testing must be submitted by the sponsor to the ADO. The ADO has the option to review these test reports.

R-12. Conditions for Posting Planning Documents on the Internet.

If the sponsor, or a sponsor's agent such as a consultant, posts an AIP funded planning document on the internet, it is FAA policy that the public must not be required to register to view or download the document (even if the document is posted elsewhere without registration requirements). This is because the collection of personal data may be construed by the public as a surveillance tool for the airport, which may intimidate members of the public, dissuading them from reviewing the document. In addition 5 USC § 552a(e), The Privacy Act of 1974, prohibits

the unnecessary collection of private data by federal agencies by restricting the agency to maintain only such information about an individual as is relevant and necessary to accomplish the purpose.

R-13. Disposal of Excess/Unneeded AIP Funded Noise Land (and ADO/Sponsor Tracking).

The requirements for the disposal of excess or unneeded AIP funded noise land are contained in Paragraph 5-67.

R-14. Project Requirements Tables.

In addition to the information provided in the above paragraphs and tables, and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table R-5 Noise Compatibility Planning/Project Work Codes

If the noise mitigation planning and implementation project is defined by where it is in the DNL, and is…	Use the following work codes…
Outside the 65 DNL.	XX XX 60
Within the 65 – 69 DNL.	XX XX 65
Within the 70 – 74 DNL.	XX XX 70
Within the 75 DNL.	XX XX 75

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Conduct Noise Compatibility Program Study *(14 CFR part 150 Study)*	**(1)** The study and noise exposure maps must comply with the requirements of 14 CFR part 150.	An FAA approved noise compatibility program study and FAA accepted noise exposure maps.	EN PL NO
b. Conduct Noise Compatibility Plan Study *(Stand-Alone Noise Exposure Map Update)*	**(1)** The noise exposure map (NEM) update must comply with the requirements of 14 CFR § 150.21(d). **(2)** Per 14 CFR § 150.21(a)(1), the noise exposure levels must be based on forecast aircraft operations at the airport for a	New FAA accepted noise exposure maps.	EN PL NO

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	forecast period that is at least five years in the future beginning at the date of sponsor submission. **(3)** The sponsor must submit the updated noise exposure map to the ADO for FAA review. **(4)** The FAA must complete the required notice and comment in the Federal Register (this is a requirement in 14 CFR § 150.21(c)) **(5)** The sponsor must evaluate the impact of the updated NEMs against the existing noise compatibility program (NCP). *Note: This is not a complete update of the Record of Approval and NCP – rather this is an evaluation of whether the work items in the NCP are still valid.* **(6)** The sponsor must submit the results of the evaluation to the ADO. The ADO must include the sponsor's evaluation in the grant file. **(7)** If, in the opinion of the FAA, the changes in the NCP impact are extensive, the FAA has the option to require an update to the NCP.		
c. Conduct Noise Compatibility Plan Study (Compatible Land Use Plan by State and Local Governments per 49 USC § 47141)	**(1)** The compatible land use planning is for an area around a large or medium hub airport. **(2)** The airport has not submitted an airport noise compatibility program to the FAA under 14 CFR part 150, or has not updated its approved noise compatibility program within the preceding 10 years. **(3)** The state or local government sponsor and airport have entered into a written agreement to prepare the compatible land use plan cooperatively (prior to the grant being issued).	An FAA accepted (and airport approved) compatible land use plan with a capital improvement plan containing the plan measures.	EN PL NO

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(4) The state or local government sponsor must maintain compatible land use measures listed in the completed plan. **(5)** The land use plan will be reasonably consistent with the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses per 14 CFR part 150. **(6)** The land use plan will only include measures that are within the authority of the state or local government sponsor to implement. Measures such as studying or implementing aircraft operational procedures, airport layout changes, and airport noise and access restrictions must not be included because the state or local government sponsor has no authority to carry out these measures. **(7)** The airport must provide the state or local government sponsor with valid airport noise exposure maps and all noise abatement measures adopted by the airport. The airport must certify to the state or local government sponsor and the FAA that the noise exposure maps are representative of the current conditions at the airport. The state or local government sponsor must use this information when developing the land use plan. **(8)** The land use plan must not duplicate and must be consistent with all of the airport's noise compatibility measures for the same area. **(9)** The state or local government sponsor must include evidence of public involvement in the land use plan.		

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(10) The state or local government sponsor must make provisions to implement those elements of the plan that are ineligible for federal financial assistance. **(11)** Per 49 USC § 47141(f), these types of grants are only allowable until September 30, 2015. After this date, the ADO must check the current legislation to see if the sunset date was extended.		
d. Noise Mitigation *(Required by an Environmental Record of Decision)*	**(1)** Noise mitigation projects approved in an environmental record of decision for an AIP eligible project is an allowable cost (or phase) of the AIP eligible project per Paragraph R-2.	A noise mitigation measure that meets the requirements of the record of decision.	The work code of the associated AIP eligible project must be used
e. Acquire Land for Noise Compatibility *(To Change Land Use)*	**(1)** The project must be included in an FAA approved 14 CFR part 150 program or an FAA accepted compatible land use plan. **(2)** The land must be included on Noise Land Inventory Map and the Noise Land Reuse Plan. APP-400 maintains current guidance on noise land inventory and reuse plans. **(3)** Per 49 USC § 47141(f), grants for projects approved under an FAA accepted compatible land use plan are only allowable until September 30, 2015. After this date, the ADO must check the current legislation to see if the sunset date was extended. **(4)** The project must be within the DNL 65 dB noise contour unless a lower local standard has been formally adopted. **(5)** The requirements for interior noise do not apply to acquisition projects. **(6)** The project may include residential	Sponsor owned land with good title that will allow the sponsor to clear the noncompatible land use.	EN LA 60 EN LA 65 EN LA 70 EN LA 75 See Table R-5 for correct work code

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	relocation. **(7)** The sponsor must provide the ADO with the number of people that have benefited. **(8)** The acquisition must meet the requirements of 49 CFR part 24, the current version of FAA Order 5100.37, Land Acquisition and Relocation Assistance for Airport Projects, and the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects. **(9)** The sponsor must certify that the requirements of 49 CFR part 24 are being met. **(10)** The acquisition must meet all other applicable requirements in Appendix Q. **(11)** The project must meet the general eligibility requirements in Paragraph R-2.		
f. Acquire Easement for Noise Compatibility *(No Change in Land Use)*	(1) The project must be included in an FAA approved 14 CFR part 150 program or an FAA accepted compatible land use plan. (2) Per 49 USC § 47141(f), grants for projects approved under an FAA accepted compatible land use plan are only allowable until September 30, 2015. After this date, the ADO must check the current legislation to see if the sunset date was extended. (3) The project must be within the DNL 65 dB noise contour unless a lower local standard has been formally adopted. (4) An easement may be conveyed by the property owner in exchange for the sound insulation improvements provided. However, an AIP grant	A sponsor owned easement with good title.	EN LA 60 EN LA 65 EN LA 70 EN LA 75 See Table R-5 for correct work code

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	may not include a requirement that a property owner convey an easement (or other interest in the property) to the sponsor in exchange for sound insulation. The FAA encourages sponsors to work out such voluntary property agreements locally. (5) The acquisition must meet the requirements of 49 CFR part 24, the current version of FAA Order 5100.37, Land Acquisition and Relocation Assistance for Airport Projects, and the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects. (6) The sponsor must certify that the requirements of 49 CFR part 24 are being met. (7) The acquisition must meet all other applicable requirements in Appendix Q. (8) The project must meet the general eligibility requirements in Paragraph R-2.		
g. Noise Mitigation Measures for Residences *(Full Sound Insulation Package)*	**(1)** The project must be included in an FAA approved 14 CFR part 150 program or an FAA accepted compatible land use plan. **(2)** Per 49 USC § 47141(f), grants for projects approved under an FAA accepted compatible land use plan are only allowable until September 30, 2015. After this date, the ADO must check the current legislation to see if the sunset date was extended. **(3)** The project must meet the two-stage eligibility test. First the property must be in an eligible noise contour threshold (per Paragraph R-6) and second, the property must meet the interior	A residence that has been mitigated to 14 CFR part 150 requirements.	EN HO 60 EN HO 65 EN HO 70 EN HO 75 See Table R-5 for correct work code.

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	noise level requirement (per Paragraph R-8). **(4)** The sound insulation package must provide a reduction in indoor noise level of at least 5 dB and bring the average interior noise level below 45 dB. If for any reason the sponsor believes that the 5 dB reduction cannot be achieved, the sponsor must provide a written request to the ADO. The ADO must receive APP-1 concurrence to proceed with the work. APP-1 concurrence will generally be limited to ventilation packages, cases of neighborhood equity or for older or poorly maintained residences where the 5 dB reduction may be difficult to achieve. **(5)** The sponsor must follow the sampling and testing criteria listed in Paragraph R-11. **(6)** The following measures are allowable: window and door replacement, caulking, weather-stripping, and installing central air ventilation so that the windows can be kept closed only if the structure does not already have a central air ventilation system. The use of other measures is not allowable unless the ADO has approved the use of the measures in advance. In this case, the ADO must keep a copy of the sponsor's request for use of other measures and a copy of the ADO approval of the request in the project files. Eligibility is limited to the measures listed above unless the ADO has received approval from APP-400 and APP-500 to use other measures. **(7)** The structure must have been built prior to October 1, 1998 unless the sponsor has demonstrated to the		

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	ADO that no published noise contours existed at that time. New noncompatible land uses created by subsequent airport development may also be eligible for funding consideration. The October 1, 1998 date is based on the FAA Final Policy on Part 150 Approval of Noise Mitigation Measures: Effect on the Use of Federal Grants for Noise Mitigation Projects, 63 Federal Register 16409 (April 3, 1998). **(8)** An easement may be conveyed by the property owner in exchange for the sound insulation improvements provided. However, an AIP grant may not include a requirement that a property owner convey an easement (or other interest in the property) to the sponsor in exchange for sound insulation. The FAA encourages sponsors to work out such voluntary property agreements locally, exclusive of FAA grant stipulations. **(9)** Both single and multi-family residences, including apartment buildings, are eligible. **(10)** The sponsor must provide the ADO with the number and address of homes mitigated and the number of people that have benefited. **(11)** Additional guidance is provided in the current version of Advisory Circular 150/5000-9, Announcement of Availability Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations. **(12)** Permanent Modular Buildings. Some modular structures may be classified as permanent if they meet construction guidelines applied to permanent structures.		

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(13) The project must meet the general eligibility requirements in Paragraph R-2.		
h. Noise Mitigation Measures for Residences *(Positive Ventilation Package Only)*	**(1)** The residence must not have continuous positive ventilation and when tested, must demonstrate interior noise levels less than 45 dB. **(2)** Because the interior noise measurements are conducted with "windows closed", there may be situations where a residence does not have an existing ventilation system, but relies on keeping the windows open for air circulation. **(3)** A Continuous Positive Ventilation System is the allowable package for these residences. The sponsor must also provide detailed information about the ventilation package including costs of the package compared to the cost of a standard noise insulation package. The sponsor may recommend an air conditioning system in lieu of ventilation- only. **(4)** Because a ventilation system is likely to increase utility and maintenance costs for the residence, the sponsor should provide information about utility and maintenance costs for the installed equipment to the residence owners. **(5)** This package is limited to those structures that do not have an existing continuous positive ventilation system. It is not available to structures that have an existing continuous positive ventilation system in place even if the system is inoperable, older, or does not meet the current building code standards for air exchanges. **(6)** The project must meet the general	A residence that has been mitigated to 14 CFR part 150 requirements.	EN HO 60 EN HO 65 EN HO 70 EN HO 75 See Table R-5 for correct work code.

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	eligibility requirements in Paragraph R-2.		
i. Noise Mitigation Measures for Public Buildings *(Full Sound Insulation Package)*	**(1)** The project must meet the two-stage eligibility test. First the property must be in an eligible noise contour threshold (per Paragraph R-6) and second, the property must meet the interior noise level requirement (per Paragraph R-8). **(2)** The sound insulation package must provide a reduction of at least 5 dB and bring the average interior noise level below 45 dB. Depending on the pre-insulation noise measurements, the 5 dB reduction may result in an interior noise level that is less than 45 dB. If for any reason the sponsor believes that the 5 dB reduction cannot be achieved, the sponsor must provide a written request to the ADO. The ADO must receive APP-1 concurrence to proceed with the work. APP-1 concurrence will generally be limited to ventilation packages and cases of neighborhood equity or for older or poorly maintained residences where the 5 dB reduction may be difficult to achieve. **(3)** The sponsor must follow the sampling and testing criteria listed in Paragraph R-11. **(4)** The following measures are allowable: window and door replacement, caulking, weather-stripping, and installing central air ventilation so that the windows can be kept closed only if the structure does not already have a central air ventilation system. The use of other measures is not allowable unless the ADO has approved the use of the measures in advance. In this case, the ADO must keep a	A public building that has been mitigated to 14 CFR part 150 requirements.	EN PB 60 EN PB 65 EN PB 70 EN PB 75 See Table R-5 for correct work code

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	copy of the sponsor's request for use of other measures and a copy of the ADO approval of the request in the project files. Eligibility is limited to the measures listed above unless the ADO has received approval from APP-400 and APP-500 to use other measures. **(5)** For schools, only the actual educational areas are eligible. This normally only includes classrooms, libraries, fixed seat auditoriums, and school educator's offices. The ADO must contact APP-400 for guidance on eligibility for facilities or areas beyond those specifically listed here. Appendix C includes some areas that have previously been determined to be ineligible. **(6)** The structure must have been built prior to October 1, 1998 unless the sponsor has demonstrated to the ADO that no published noise contours existed at that time. New noncompatible land uses created by subsequent airport development may also be eligible for funding consideration. The October 1, 1998 date is based on the FAA Final Policy on Part 150 Approval of Noise Mitigation Measures: Effect on the Use of Federal Grants for Noise Mitigation Projects, 63 Federal Register 16409 (April 3, 1998). **(7)** Permanent Modular Buildings. Some modular structures may be classified as permanent if they meet construction guidelines applied to permanent structures. **(8)** The sponsor must certify to the ADO that the engineering plans and specifications for the noise insulation project conform to the local building code.		

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(9) Only the costs related to the noise insulation improvements are included in the project. If it is determined in the course of designing a noise insulation project that a building needs improvements in order to conform to local building codes, only the costs of the noise insulation are allowable. **(10)** An easement may be conveyed by the property owner in exchange for the sound insulation improvements provided. However, an AIP grant may not include a requirement that a property owner convey an easement (or other interest in the property) to the sponsor in exchange for sound insulation. The FAA encourages sponsors to work out such voluntary property agreements locally, exclusive of FAA grant stipulations. **(11)** The sponsor must provide the ADO with the number of students benefitting. **(12)** The project must meet the general eligibility requirements in Paragraph R-2.		
j. Noise Mitigation Measures for Public Buildings *(Positive Ventilation Package Only)*	**(1)** The building must not have continuous positive ventilation and when tested, must demonstrate interior noise levels less than 45 dB. **(2)** Because the interior noise measurements are conducted with "windows closed," there may be situations where a public building does not have an existing ventilation system, but relies on keeping the windows open for air circulation. **(3)** A Continuous Positive Ventilation System is the allowable package for these building. The sponsor must also provide detailed	A public building that has been mitigated to 14 CFR part 150 requirements.	EN PB 60 EN PB 65 EN PB 70 EN PB 75 See Table R-5 for correct work code

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	information about the ventilation package including costs of the package compared to the cost of a standard noise insulation package. The sponsor may recommend an air conditioning system in lieu of ventilation- only. **(4)** This package is limited to those structures that do not have an existing continuous positive ventilation system. It is not available to structures that have an existing continuous positive ventilation system in place even if the system is inoperable, older, or does not meet the current building code standards for air exchanges. **(5)** This package is limited to only those areas that are being noise insulated in the public building. **(6)** The project must meet the general eligibility requirements in Paragraph R-2.		
k. Install Outdoor Noise Monitoring System/Equipment *(Portable Noise Monitoring System and Equipment*	**(1)** The project must be included in an FAA approved 14 CFR part 150 Noise Compatibility Program or an FAA accepted compatible land use plan. **(2)** Per 49 USC § 47141(f), grants for projects approved under an FAA accepted compatible land use plan are only allowable until September 30, 2015. After this date, the ADO must check the current legislation to see if the sunset date was extended. **(3)** Non-airport sponsors are only eligible for portable noise monitoring equipment when used in connection with noise insulation projects managed by the non-airport sponsors. **(4)** In cases where more than one sponsor is expected to engage in noise insulation programs, the	A completely operational portable outdoor noise monitoring system that meets the requirements of 14 CFR part 150.	EN OT NO

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	airport sponsor is encouraged to acquire the equipment and make it available to other local agencies as needed. **(5)** The system can be replaced every 10 years (the useful life). **(6)** Portable outdoor noise monitors must be used for carrying out/certifying approved noise mitigation measures. This typically includes periodic short-term noise monitoring of aircraft operations at the airport for the purposes of reporting the results as described in an approved 14 CFR part 150 program management measure. This also means that purpose for the outdoor noise monitors cannot be for enforcement of noise rules. **(7)** The sponsor must provide the ADO copies of noise monitoring data on request. **(8)** Monitoring Systems are limited to outdoor monitoring systems. **(9)** The sponsor is responsible for ongoing vendor service costs that may be needed to access FAA surveillance tracking data. **(10)** The project must meet the general eligibility requirements in Paragraph R-2.		
l. Install Noise Monitoring System/Equipment *(Fixed Noise Monitoring System and Equipment)*	**(1)** The project must be included in an FAA approved 14 CFR part 150 program or an FAA accepted compatible land use plan. **(2)** Per 49 USC § 47141(f), grants for projects approved under an FAA accepted compatible land use plan are only allowable until September 30, 2015. After this date, the ADO must check the current legislation to see if the sunset date was extended.	A completely operational fixed noise monitoring system that provides regular reporting of noise events.	EN OT NO

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(3) Systems are limited to circumstances where sponsors can clearly show that portable monitors are not feasible. **(4)** Placement of fixed noise monitoring equipment is eligible only within the DNL 65 dB noise contour at the time of installation. **(5)** Only the federal share of the least costly system that will satisfy the purposes used to justify the project is eligible. **(6)** The sponsor is responsible for ongoing vendor service costs that may be needed to access real-time FAA surveillance tracking data. **(7)** The system can be replaced every 10 years (the useful life). **(8)** Monitoring results must be in accordance with the approved 14 CFR part 150 program or compatible land use program measure. **(9)** The sponsor must provide the ADO copies of noise monitoring data on request. **(10)** The project must meet the general eligibility requirements in Paragraph R-2.		
m. Noise Mitigation Measures *(On-Airport Noise Barriers)*	**(1)** The project must be approved in a 14 CFR part 150 program. **(2)** Noise barriers, earth berms, wall structures, hush houses, ground run-up enclosures and other devices designed to shield land uses that are noncompatible with aircraft noise are eligible. **(3)** The on-airport noise barrier must be public-use (not exclusive use by any specific aircraft operator). **(4)** The project must reduce noise to a land use noncompatible with	A fully functional noise reduction structure that meets the requirements of 14 CFR part 150.	EN OT MS

Table R-6 Noise Compatibility Planning/Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	aircraft noise by at least 5 dB. **(5)** The project must not impact wingtip clearances or air traffic control tower line of sight. **(6)** The project must meet the general eligibility requirements in Paragraph R-2.		
n. Noise Mitigation Measures *(Runway and Taxiway Construction)*	**(1)** These are rare, so the ADO must contact APP-400 for guidance to ensure that all of the necessary requirements are being met. **(2)** The project must be approved in a 14 CFR part 150 program. **(3)** A runway or taxiway project (including land acquisition, lighting, marking, and/or NAVAIDs) is eligible as a noise mitigation measure if it can be shown that the principal purpose and benefit of the project is for noise relief. If the noise relief is a secondary benefit, the FAA will not approve the project as a noise mitigation measure, and the project must meet the normal eligibility requirements for a runway or taxiway project. **(4)** Lighting and NAVAIDs for noise must be used for the purpose of directing pilots to follow noise abatement flight paths and must be associated with a noise abatement runway. **(5)** The project must meet the general eligibility requirements in Paragraph R-2.	An airfield or NAVAID installation that meets FAA design standards.	EN OT MS
o. Conduct Environmental Study for Flight Procedures Approved in a 14 CFR part 150 Study	**(1)** The requirements for environmental studies for flight procedure approvals are provided in Appendix S.	N/A	N/A

*The official list of work codes can be obtained from the automated AIP system.

Appendix S. Environmental Planning/Mitigation Projects

S-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

S-2. Conditions for Posting Planning Documents on the Internet.

If the sponsor, or a sponsor's agent such as a consultant, posts an AIP funded planning document on the internet, it is FAA policy that the public must not be required to register to view or download the document (even if the document is posted elsewhere without registration requirements). This is because the collection of personal data may be construed by the public as a surveillance tool for the airport, which may intimidate members of the public, dissuading them from reviewing the document. In addition 5 USC § 552a, The Privacy Act of 1974, prohibits the unnecessary collection of private data by federal agencies by restricting the agency to maintain only such information about an individual as is relevant and necessary to accomplish the purpose.

S-3. Project Requirements Tables.

In addition to the information provided in the above paragraphs and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table S-1 Environmental Planning/Mitigation Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. Conduct Environmental Study	**(1)** The project must follow the requirements of the current version of FAA Order 5050.4, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects. **(2)** For environmental studies or assessments that are associated with a specific AIP project, the work code for the AIP project must be used. **(3)** This work code is used for a study that analyzes a specific environmental condition at an airport. An example is an emissions analysis necessary to	A completed environmental study that has been approved by the FAA.	EN PL MA

Table S-1 Environmental Planning/Mitigation Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	comply with the Clean Air Act (42 USC § 7401). **(4)** This work code is also used for an environmental assessment for the development that is in the airport's capital improvement plan in the next five-years. **(5)** Per FAA policy, environmental assessments and environmental impact statements are considered to be planning. This allows the ADO to issue a stand-alone grant for an environmental study.		
b. Conduct Environmental Study for Flight Procedures Approved in a 14 CFR part 150 Study	**(1)** Per 49 USC § 47504(e)(1), the project must be for the FAA to complete an environmental review for flight procedures that have been approved by the FAA in a noise compatibility plan study (14 CFR part 150 study). **(2)** Until specific guidance is published by APP-400, ADOs must contact APP-400 to determine the correct procedures for conducting these studies.	A completed environmental study that has been approved by the FAA.	EN PL NO
c. Conduct/Update Miscellaneous Study *(Environmental Management System)*	**(1)** 49 USC § 47102(5)(B), makes development of an environmental management system (EMS) eligible as airport planning. **(2)** The airport must be a medium or large hub airport. **(3)** Only the initial development of the environmental management program (not keeping the document current) is eligible. **(4)** Per FAA policy, the sponsor must provide a written certification to the ADO at the end of the project that the EMS is compliant with the current version of Advisory Circular 150/5050-8, Environmental Management Systems for Airport	A completed environmental management system document that meets FAA advisory circular requirements.	PL PL MS

Table S-1 Environmental Planning/Mitigation Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	Sponsors. **(5)** There is a limit of one assessment per five year period, unless the APP-400 concurs with an ADO determination that extraordinary circumstances exist that warrant an additional assessment.		
d. Conduct/Update Miscellaneous Study *(Conduct Drainage Study)*	**(1)** 49 USC § 47102, makes construction, reconstruction, repair or purchasing capital equipment for meeting the requirements of 33 USC § 1251, Federal Water Pollution Control Act eligible. A drainage study may be required to determine the means of complying with this Act.	A completed drainage study that is acceptable to the ADO.	PL PL MS
e. Conduct Airport Energy Efficiency Assessment	**(1)** Per 49 USC § 47140a(a), the project must assess the airport's energy requirements, including heating and cooling, base load, back-up power, and power for on-road airport vehicles and ground support equipment, for the purpose of identifying opportunities to increase energy efficiency at the airport. **(2)** As of the publication date of this Handbook, APP-400 was developing guidance for airport energy efficiency assessments. Until this new guidance is published, ADOs must contact APP-400 for guidance. **(3)** The ADO must coordinate all proposed projects with APP-400 and receive their approval for the project prior to programming the grant. **(4)** It is FAA policy that airport energy efficiency studies are airport planning and are eligible for stand-alone grants. **(5)** There is a limit of one assessment	A completed airport energy efficiency study that is acceptable to the ADO.	EN PL ES

Table S-1 Environmental Planning/Mitigation Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	per five year period, unless the APP-400 concurs with an ADO determination that extraordinary circumstances exist that warrant an additional assessment.		
f. Implement Energy Efficiency Project	**(1)** As of the publication date of this Handbook, APP-400 was developing guidance for projects to increase the energy efficiency of airport *power sources*. Until this new guidance is published, ADOs must contact APP-400 for project information prior to programming the grant. **(2)** Additional guidance and requirements for this program are contained in Chapter 6, Section 7. **(3)** These grants are only for airport power sources discussed in Chapter 6, Section 7. This differs from project costs to improve the energy efficiency of an AIP eligible project discussed in Paragraph 3-73.	To be issued in APP-400 guidance.	To be issued in APP-400 guidance.
g. Sustainability Master Plan *(Note that the project name, Identify the Airports Environmental Footprint was only for the pilot program and is no longer in use)*	**(1)** The FAA has determined that this is airport planning under 49 USC § 47102(5) and is no longer a pilot program as of fiscal year 2012. **(2)** Until told otherwise by APP, the ADO must obtain approval of the scope from APP-400 prior to programming these types of projects. **(3)** The project must follow all requirements provided by APP-400.	A completed study that the ADO has officially accepted.	EN PL ES

Table S-1 Environmental Planning/Mitigation Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
h. Construct Deicing Containment Facility	**(1)** 49 USC § 47102 makes construction, reconstruction, repair or purchasing capital equipment for meeting the requirements of 33 USC 1251, Federal Water Pollution Control Act eligible. **(2)** The facility must be for public-use, must be for aeronautical purposes, and must not serve revenue producing areas. **(3)** ACRP Report 14, Deicing Planning Guidelines and Practices for Stormwater Management Systems, is a useful reference.	A fully functional deicing containment facility that meets FAA standards.	EN OT DI
i. Environmental Mitigation (Purchase Glycol Recovery Truck)	**(1)** This is also referred to as a glycol vacuum. **(2)** 49 USC § 47102(3)(F) and (G) makes construction, reconstruction, repair or purchasing capital equipment for meeting the requirements of 33 USC § 1251, Federal Water Pollution Control Act eligible. **(3)** The airport must own and operate the truck.	A fully functional glycol recovery truck that meets FAA standards.	EN OT MT
j. Environmental Mitigation *(Required by an Environmental Record of Decision)*	**(1)** Environmental mitigation projects (such as wetland mitigation) approved in an environmental record of decision for an AIP eligible project is and allowable cost (or phase) of the AIP eligible project. **(2)** The costs of wetland monitoring for the required period of monitoring that is included in the record of decision, up to a maximum of five years is an allowable cost.	An environmental mitigation measure that meets the requirements of the record of decision.	The work code of the associated AIP eligible project must be used

Table S-1 Environmental Planning/Mitigation Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
k. Voluntary Airport Low Emissions (VALE) Infrastructure	**(1)** The ADO must coordinate all proposed projects with APP-400 and receive their approval for the project prior to programming the grant. **(2)** A large volume of guidance on this subject is available at the Airports Organization website. **(3)** Terminal gate air conditioning, heating and electric power is eligible as terminal development outside of the VALE program and does not require the airport to be in a nonattainment or maintenance area per 49 USC § 47102(3)(O). If the work is not approved under VALE, the ADO must code this work as terminal development and follow the terminal development requirements in Appendix N.	A fully functional VALE infrastructure.	EN EQ MS
l. VALE Vehicle	**(1)** The ADO must coordinate all proposed projects with APP-400 and receive their approval for the project prior to programming the grant. **(2)** A large volume of guidance on this subject is available at the Airports Organization website.	A fully functional VALE vehicle.	EN EQ MS
m. Zero Emissions Infrastructure (Pilot Program FY 2012-2015 ONLY)	**(1)** The ADO must coordinate all proposed projects with APP-400 and receive their approval for the project prior to programming the grant. **(2)** As of the publication date of this Handbook, APP-400 was developing guidance for zero emissions infrastructure. Until this new guidance is published, ADOs must contact APP-400 for project information.	Fully functional zero emissions infrastructure.	EN EQ ZE

Table S-1 Environmental Planning/Mitigation Project Requirements

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
n. Zero Emissions Vehicle (Pilot Program FY 2012-2015 ONLY)	**(1)** The ADO must coordinate all proposed projects with APP-400 and receive their approval for the project prior to programming the grant. **(2)** As of the publication date of this Handbook, APP-400 was developing guidance for zero emission airport vehicles. Until this new guidance is published, ADOs must contact APP-400 for project information.	A fully functional zero emissions vehicle.	EN EQ ZE

*The official list of work codes can be obtained from the automated AIP system.

Appendix T. Military Airport Program Projects

T-1. How to Use This Appendix.

This appendix is not a valid stand-alone document for making eligibility and justification determinations. The information in this appendix must be used in conjunction with the Handbook, especially the project cost requirements in Chapter 3.

T-2. Project Requirements Tables.

In addition to the information provided in the above paragraph and the following tables, Appendix C contains examples of prohibited projects and costs and is very useful to use alongside this appendix.

Table T-1 Distinctions between Construct, Expand, Modify, Improve, and Rehabilitate

Use the following description…	If the project will…
a. Construct	Build a brand new building.
b. Expand	Add on to an existing building.
c. Modify	Change a building.
d. Improve	Provide a distinct new feature to a building.
e. Rehabilitate	Extend the useful life of a building by completing major renovation or major replacement of parts of the building.

Table T-2 Military Airport Program Project Requirements (for typical projects)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
a. All regularly eligible AIP projects	**(1)** Unless otherwise specified in this table, all of the justification and eligibility factors that would normally be associated with the project, airport, and sponsor apply. **(2)** The FAA must have officially approved the airport and project for MAP funding before the grant is programmed. **(3)** The project must aid in the conversion of a military or former military facility to civilian use.	Same as for the regularly eligible AIP project.	Same as for the regularly eligible AIP project.

Table T-2 Military Airport Program Project Requirements (for typical projects)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(4) Per 49 USC § 47118(e), total MAP funding may not exceed $7 million per year per airport for terminal projects. Per 49 USC § 47118(f), total MAP funding may not exceed $7 million per year per airport for construction, improvement, or repair of airport surface parking lots, fuel farms, utilities, hangars and air cargo terminal building facilities that are 50,000 square feet or less. Hangars and air cargo terminal building facilities that are larger than 50,000 square feet are not eligible for funding. **(5)** Per 49 USC § 47118(e), terminal gate projects must not be leased for more than 10 years and must not be subject to a majority in interest clause. **(6)** Per APP-500 policy, the project justification must only be based on civilian operations. **(7)** The sponsor must have good title to the land on which the project sits as discussed in Table 6-13.		
b. Miscellaneous Building (Construct, Expand, Modify, Improve, or Rehabilitate) *(Hangar)*	**(1)** The normal AIP restrictions for hangars do not apply (such as the requirement to meet airside needs, the restriction on discretionary, the restriction by funding type, and the restriction by airport type). **(2)** Except as noted above, all of the justification and eligibility factors that would normally be associated with the project, airport, and sponsor apply. **(3)** The FAA must have officially approved the airport and project for MAP funding before the grant is programmed. **(4)** The project must aid in the conversion of a military or former military facility to civilian use.	A fully functional aircraft hangar.	ST BD MS

Table T-2 Military Airport Program Project Requirements (for typical projects)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	(5) Per 49 USC § 47118(f), total MAP funding may not exceed $7 million per year per airport for construction, improvement, or repair of airport surface parking lots, fuel farms, utilities, hangars and air cargo terminal building facilities that are 50,000 square feet or less. **(6)** Per APP-500 policy, the project justification must only be based on civilian operations. **(7)** The sponsor must have good title to the land on which the project sits as discussed in Table 6-13.		
c. Miscellaneous Building (Construct, Expand, Modify, Improve, or Rehabilitate) *(Cargo Building)*	**(1)** The cargo building must not be exclusive use (see Appendix A for a definition and references on exclusive use). **(2)** The facility must be 50,000 square feet or less. **(3)** Except as noted above, all of the justification and eligibility factors that would normally be associated with the project, airport, and sponsor apply. **(4)** The FAA must have officially approved the airport and project for MAP funding before the grant is programmed. **(5)** The project must aid in the conversion of a military or former military facility to civilian use. **(6)** Per 49 USC § 47118(f), total MAP funding may not exceed $7 million per year per airport for construction, improvement, or repair of airport surface parking lots, fuel farms, utilities, hangars and air cargo terminal building facilities that are 50,000 square feet or less. **(7)** Per APP-500 policy, the project	A fully functional cargo building.	ST BD MS

Table T-2 Military Airport Program Project Requirements (for typical projects)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	justification must only be based on civilian operations. **(8)** The sponsor must have good title to the land on which the project sits as discussed in Table 6-13.		
d. Construct Utilities	**(1)** Eligible costs include utility upgrades necessary to meet code requirements, to support the civilian function of a MAP airport, or to allow utilities serving the civilian portion of the base to be separated from the military portion. **(2)** Except as noted above, all of the justification and eligibility factors that would normally be associated with the project, airport, and sponsor apply. **(3)** The FAA must have officially approved the airport and project for MAP funding before the grant is programmed. **(4)** The project must aid in the conversion of a military or former military facility to civilian use. **(5)** Per 49 USC § 47118(e), total MAP funding may not exceed $7 million per year per airport for terminal projects. Per 49 USC § 47118(f), total MAP funding may not exceed $7 million per year per airport for construction, improvement, or repair of airport surface parking lots, fuel farms, utilities, hangars and air cargo terminal building facilities that are 50,000 square feet or less. These limits include the costs of utility projects. **(6)** Per APP-500 policy, the project justification must only be based on civilian operations. **(7)** The sponsor must have good title to the land on which the project sits as discussed in Table 6-13.	A fully functional utility system.	OT OT FF

Table T-2 Military Airport Program Project Requirements (for typical projects)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
e. Parking Lot (Construct or Rehabilitate)	**(1)** The parking lot must be a surface parking lot. **(2)** The other normal AIP restrictions for parking lots do not apply (such as the restriction by airport type and the restriction against revenue production). **(3)** Except as noted above, all of the justification and eligibility factors that would normally be associated with the project, airport, and sponsor apply. **(4)** The FAA must have officially approved the airport and project for MAP funding before the grant is programmed. **(5)** The project must aid in the conversion of a military or former military facility to civilian use. **(6)** Per 49 USC § 47118(f), total MAP funding may not exceed $7 million per year per airport for construction, improvement, or repair of airport surface parking lots, fuel farms, utilities, hangars and air cargo terminal building facilities that are 50,000 square feet or less. **(7)** Per APP-500 policy, the project justification must only be based on civilian operations. **(8)** The sponsor must have good title to the land on which the project sits as discussed in Table 6-13.	A fully functional parking lot.	OT OT PA
f. Fuel Farms (Construct, Repair, or Improve)	**(1)** The normal AIP restrictions for fuel farms do not apply (such as the restriction by airport type and the restriction against revenue production). **(2)** Except as noted above, all of the justification and eligibility factors that would normally be associated with the project, airport, and	A fully functional fuel farm.	OT OT FF

Table T-2 Military Airport Program Project Requirements (for typical projects)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	sponsor apply. **(3)** The FAA must have officially approved the airport and project for MAP funding before the grant is programmed. **(4)** The project must aid in the conversion of a military or former military facility to civilian use. **(5)** Per 49 USC § 47118(f), total MAP funding may not exceed $7 million per year per airport for construction, improvement, or repair of airport surface parking lots, fuel farms, utilities, hangars and air cargo terminal building facilities that are 50,000 square feet or less. **(6)** Per APP-500 policy, the project justification must only be based on civilian operations. **(7)** The sponsor must have good title to the land on which the project sits as discussed in Table 6-13. **(8)** The facility must meet the requirements of 40 CFR § 112.8, Spill Prevention, Control, and Countermeasure Plan Requirements for On-Shore Facilities (excluding production facilities).		
g. Operational and Maintenance Expenses (per 49 USC § 47117(e)(1)(B))	**(1)** The airport cannot be a commercial service airport. **(2)** The ADO must restrict the grant amount for this type of work to $30,000 in any fiscal year. **(3)** The FAA must have determined that the airport is adversely affected by the base closure or realignment. **(4)** The sponsor of the airport must certify to the ADO that the airport would otherwise close if the airport	An airport that remains open.	The ADO must contact APP-520 for the correct work code.

Table T-2 Military Airport Program Project Requirements (for typical projects)

What Can Be Done If Justified	Factors to Consider For Justification and Eligibility	Required Usable Unit of Work and Required Outcome	Work Code*
	does not receive the grant. **(5)** The FAA must have officially approved the airport and project for MAP funding before the grant is programmed.		
h. A project to preserve or enhance minimum airfield infrastructure under 49 USC § 47118(h) *(Safety Critical Airports)*	**(1)** APP-1 must have designated the airport as a safety critical airport. **(2)** The APP-500 must have officially approved the project for MAP funding before the grant is programmed. **(3)** The normal AIP restrictions for these projects do not apply. **(4)** The airport is federally owned. **(5)** The project is necessary to meet the minimum safety and emergency operational requirements established under 14 CFR part 139. **(6)** The project is necessary to support emergency diversionary operations for transoceanic flights in locations that meet the following criteria: **(a)** Locations within United States jurisdiction or control. **(b)** Locations where there is a demonstrable lack of diversionary airports within the distance or flight-time required by regulations governing transoceanic flights.	A completed project that meets 49 USC § 47118(h).	Same as for the regularly eligible AIP project.

*The official list of work codes can be obtained from the automated AIP system.

Appendix U. Sponsor Procurement Requirements (Including 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards))

U-1. Appendix Layout.

Paragraph U-6 contains the entire 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) with clarifications.

The remaining paragraphs in this Appendix contain additional sponsor contracting and miscellaneous procurement issues not directly addressed in 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards).

Section 10 of Chapter 3 contains ADO procurement responsibilities.

U-2. Sponsor Force Account Costs.

Procurement is obtaining services from commercial sources, therefore, sponsor force account work does not fall under the procurement rules of 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards). The rules for sponsor force account work are contained in Paragraph 3-55.

U-3. Sponsor Furnished Material or Supplies.

If a sponsor wishes to provide materials or supplies within an AIP funded project, the sponsor must obtain prior written approval from the ADO. The sponsor must provide a written statement to the ADO indicating whether the material or supplies have been procured per 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) and/or meet all applicable federal contract provisions, which can be found on the FAA Office of Airports website (see Appendix B for link). The ADO also has the option to request that the sponsor submit additional documentation to support this statement.

The requirements for the ADO to concur with the use of sponsor furnished materials or supplies are contained in Paragraph 3-59.

U-4. Buy American Requirements.

The Buy American Preferences under 49 USC § 50101 require that all steel and manufactured goods used in AIP funded projects are produced in the United States. Detailed sponsor and ADO requirements are included in Appendix Y.

U-5. Suspension or Debarment of Persons or Companies.

Table U-1contains the requirements sponsors must follow regarding persons or companies that have been excluded from working on AIP funded projects.

Additional information on suspension and debarment is available on the FHWA Construction Program Guide/Suspension and Debarment and the current version of DOT Order 4200.5, DOT Suspension and Debarment Procedures and Ineligibility.

Table U-1 Sponsor Requirements Regarding Suspension or Debarment

For the following…	The sponsor requirements include…
a. The sponsor is awarding a contract.	2 CFR part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) prohibits a sponsor from entering into a new contract with a person or company that is suspended or debarred. A sponsor must check the System for Award Management (SAM) website (see Appendix B for link) for every procurement to ensure that no suspended or debarred firms or individuals bid on, or are part of an AIP contract.
b. A person or company currently working on an AIP project is suspended or debarred.	If the federal government suspends or debars a person or company while the person or company is working on an AIP funded project, the sponsor must follow the procedures in 2 CFR part 180 (Subpart C) OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), and 2 CFR part 1200, Nonprocurement Suspension and Debarment.
c. It appears that a person or company might need to be suspended or debarred.	If the sponsor becomes aware of this situation, the sponsor must pursue their own contractual remedies and has the option to contact the ADO with this information.
d. The sponsor has suspended or debarred a person or company.	Per DOT Order 4200.5, Suspension and Debarment Procedures and Ineligibility, the sponsor must notify the ADO.

U-6. Why the Entire Regulation 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) is Included in This Appendix.

49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) is a critical companion document to the Handbook, and sponsors and ADOs should refer to its contents frequently. Therefore, this regulation has been included below in its entirety. In addition, clarifications have been added under the sections as appropriate.

U-7. 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) – Introduction.

Table U-2 AIP Handbook Clarification of 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Introduction

Clarifications include…
(1) Terminology Used in Industry. Sponsors should note that industry terminology is evolving and may differ from the terminology contained here in 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards). This is especially true in 49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) Procurement by competitive proposals.) on competitive proposals. Sponsors are cautioned that the many project delivery methods, regardless of the terminology, must still conform to the basic requirements within this regulation.

DOT Common Rule-States
49 CFR - PART 18 - UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS
[Revised as of October 1, 1999] (2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards)

Sec. 18.36 Procurement **(2 CFR 200 Subpart D, Procurement Standards)**.

U-8. 49 CFR § 18.36(a) – States (2 CFR § 200.317, Procurements by states).

Table U-3 AIP Handbook Clarification of 49 CFR § 18.36(a) (2 CFR § 200.317, Procurements by states)

Clarifications include…
(1) Difference Between State Procurement Standards and State Design, Planning, or Construction Standards. State procurement standards are not the same thing as the state planning, design, or construction standards discussed in Paragraph 3-26.
(2) Buying off a State Schedule. A sponsor is *not* allowed to purchase off a state schedule unless the state procurement includes *all* of the required causes in 49 CFR § 18.36(a) (2 CFR § 200.317, Procurements by states).

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

U-9. 49 CFR § 18.36(b) – Procurement Standards (2 CFR § 200.318, General Procurement Standards).

Table U-4 AIP Handbook Clarification of 49 CFR § 18.36(b) (2 CFR § 200.318, General Procurement Standards)

Clarifications include…
(1) Required Notification to ADO. Sponsors are responsible for complying with 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards). If the sponsor's procurement procedures or operations fail to comply with 49 CFR § 18.36 procurement standards (2 CFR 200 Subpart D, Procurement Standards), the sponsor must notify the ADO in writing.
(2) Intergovernmental Agreement. An example where an intergovernmental agreement may be appropriate is where several small airports would like to purchase an AWOS-A for each of the airports. Another example is where a state aviation department enters into a task order contract for eligible pavement maintenance at multiple airports within the state.
(3) Suitable Contract. The sponsor is the entity that determines contract suitability under 49 CFR § 18.36(b)(10)(i) (2 CFR § 200.318(j)(1)).

Table U-4 AIP Handbook Clarification of 49 CFR § 18.36(b) (2 CFR § 200.318, General Procurement Standards)

Clarifications include…
(4) Value Engineering. Per FAA policy, sponsors are required to use value engineering for new primary airports. In addition, ADOs have the option to require sponsors to use value engineering for unusually complex projects of greater than average costs (or require cost-benefit studies, present worth analysis, the study of alternatives, tactical planning, or other forms of technical evaluation). Value engineering must follow the requirements of the current version of Advisory Circular 150/5300-15, Use of Value Engineering for Engineering and Design of Airport Grant Projects. In addition, the ADO must have concurred in writing on the scope of the value engineering contract prior to the work commencing. Sponsors are cautioned that significant advance preparation may be needed for value engineering.
(5) Sponsor Written Protest Procedures. 49 CFR § 18.36(b)(12) (2 CFR § 200.318(k)) requires that a sponsor have protest procedures in place. Per FAA policy, the sponsor must have *written* protest procedures in place before initiating any procurement actions that will be funded with AIP.
(6) Submittal of All Protests and Appeals to ADO. Per FAA policy, the sponsor must send a copy of the protest and the sponsor's written protest procedures to the ADO without delay. The sponsor must also send a copy of the resolution to the ADO. Per 49 CFR § 18.36(b)(12) (2 CFR § 200.318(k)), the ADO will not formally act on bid protests until the protester has exhausted all administrative remedies with the sponsor and the protester submits a formal appeal to the ADO. The ADO's role is limited to a review of 1) violations of federal law and rules, and 2) violations of the sponsor's protest procedures.
(7) Defects in Bid Solicitation. Per FAA policy, if a protester formally disputes the procurement because the bid solicitation is allegedly defective, it is the responsibility of the protester to notify the sponsor in writing before the bid opening (or before a reasonable deadline set by the sponsor). This will allow the sponsor to correct the deficiency by amending the solicitation. Per FAA policy, if a protester disputes a defective solicitation after bid opening, the sponsor has the choice of rejecting the protest without action if state and/or local procurement rules allow. This is because a protester normally has enough time to protest before bid opening. If the sponsor uses a shortened bidding time (such as 10 days), the FAA recommends that the sponsor accept protests up to contract award. If the protester is not satisfied with the way that the sponsor has resolved the protest, the protester has the option to appeal to the ADO. The ADO acceptance of a Sponsor Certification or the ADO approval of the plans and specifications does not relieve the sponsor of their responsibility for the accuracy, completeness, or technical content of the plans and specifications.
(8) Improper Evaluation of Bids. While protests pertaining to defective solicitations are made prior to bid opening, protests regarding improper bid evaluations occur after bid opening. If the protester believes the sponsor has improperly awarded the project, it is the responsibility of the protester to notify the sponsor in writing of their protest. If the protester is not satisfied with the way that the sponsor has resolved the dispute, the protester has the option to appeal to the ADO.
(9) Switching Suppliers or Subcontractors. A *contractor* may switch suppliers or subcontractors as long as there is no change in the bid and the requirements of 49 CFR part 26 are met. There is no federal requirement preventing a *contractor* from switching suppliers or subcontractors as long as there is no change in the bid. However, the *sponsor* must not influence the contractor's selection of subcontractors or suppliers. If the sponsor directs or influences a change in supplier or subcontractor, this would be a 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) violation since the sponsor is interfering with the open and competitive market.

Table U-4 AIP Handbook Clarification of 49 CFR § 18.36(b) (2 CFR § 200.318, General Procurement Standards)

Clarifications include…
(10) Potential Funding Impacts. Failure of the sponsor to properly resolve a bid protest or an ADO identified violation may result in a loss of AIP funding.
(11) Submittal of Resolutions to the ADO. The sponsor must notify the ADO in writing how all bid protest and appeals were resolved.
(12) Restrictions on Payment Requests for Disputed Costs. If the project is already under grant, the sponsor must not request payments for the disputed costs.

b) Procurement standards.

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only--

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

U-10. 49 CFR § 18.36(c) – Competition (2 CFR § 200.319, Competition).

Table U-5 AIP Handbook Clarification of 49 CFR § 18.36(c) (2 CFR § 200.319, Competition)

Clarifications include…
(1) Brand Name or Equal. If an existing FAA technical specification establishes all necessary performance requirements, the FAA considers the use of a brand name or equal to be a restriction on competition. A sponsor must not disqualify a material, product, or service for not having a characteristic that the brand name material, product, or service possesses if the characteristic was not explicitly identified in the technical requirements.
(2) Matching Existing Equipment. Sponsors often want to specify a specific company or brand of equipment so that the acquired equipment matches what is currently at the airport. While this may make sense from an operational standpoint, this limits completion and requires the sponsor to use the procedures for noncompetitive proposals in 49 CFR § 18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals). By FAA policy, a sponsor may provide certain airfield lighting equipment (at its own cost) and AIP may be used for the installation of the equipment provided the sponsor procures the equipment as discussed in Paragraph 3-35 are met.
(3) Required Notification to ADO. If the specification requires a *brand name or equal* product, the sponsor must notify the ADO in writing prior to the award. A sponsor requiring that contractors obtain sponsor approval for a product *prior* to the award if the product is not a specified brand name or equal. This could unduly limit competition by placing additional burdens on the non-brand name product.
(4) Examples of situations that do *not* unduly limit competition. Some examples include: **(a)** A sponsor limiting the height of an ARFF vehicle based on the existing height of the ARFF building door. **(b)** A sponsor specifying sign face dimensions to fit in the existing sign units because the taxiways have been renamed as a result of an AIP funded project.
(5) Examples of situations that could unduly limit competition. Some examples include: **(a)** A sponsor specifying Company X or equal for an L-858R, Mandatory Instruction Sign. Since an existing FAA technical specification establishes all necessary performance requirements, it is unnecessary for the sponsor to specify an actual company and implies a sponsor preference. **(b)** A sponsor specifying that an ARFF truck windshield wiper must be mounted on the top center of the windshield. However, this is not a required feature for performance of the ARFF vehicle and is not a standard feature for ARFF trucks for all manufacturers. This places an unreasonable requirement that could unduly limit competition. **(c)** A sponsor including a requirement for personal attendance at a pre-bid meeting for a project. Contractors and suppliers may not need to attend a pre-bid meeting if they are already very familiar with the project site, or have another member of the bidding team attending the meeting. This places an unreasonable requirement that could unduly limit competition.

Table U-5 AIP Handbook Clarification of 49 CFR § 18.36(c) (2 CFR § 200.319, Competition)

Clarifications include…
(6) Geographical Preference. Some examples of geographical preference that unduly limit competition are: **(a)** A sponsor requiring a vendor to have local maintenance support within 50 miles or 40 minutes away from the airport. **(b)** A sponsor requiring that a percentage of employees reside in the city, county, or state boundaries. **(c)** A sponsor requiring that a percentage of the required materials be purchased from companies located in the city, county, or state boundaries.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 18.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the

material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

U-11. 49 CFR § 18.36(d) – Methods of Procurement (General) (2 CFR § 200.320, Methods of procurement to be followed).

Table U-6 AIP Handbook Clarification of 49 CFR § 18.36(d) (2 CFR § 200.320, Methods of procurement to be followed)

Clarifications include...
(1) Difference from Procurement of Professional Services. Sponsors must not confuse the small purchase procurement procedures with the requirements for procurement of professional services discussed in the current version of Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects. The procurement of professional services is not tied to the small purchase procedure threshold ($100,000) noted above.
(2) Sponsor Documentation. Sponsors must adequately document all quotations in writing and make this available to the ADO upon request. It is FAA policy that adequate documentation for projects over $10,000 includes a letter request from the sponsor and a written estimate from each qualified source. For projects $10,000 or below, it is FAA policy that the sponsor has the option of obtaining the quotes verbally as long as the sponsor documents the results in writing.
(3) Submittal of Technical Specifications to ADO. Per 49 CFR § 18.36(g)(1) (2 CFR § 200.324(a)), sponsors must submit all technical specifications to the ADO upon the ADO's request. This may include the plans, the specifications, the engineer's report, and any other items that make up the procurement package.
(4) Calculation of $100,000 and $10,000. It is FAA policy that the *accepted* quote must come below $100,000 for the sponsor to use the small procurement process. It is FAA policy that the *accepted* quote must come below $10,000 for the sponsor to obtain quotes verbally.
(5) Indefinite Quantity/Delivery (Task Orders for Construction and Equipment). This contracting method defines a minimum and maximum quantity that may be obtained at any time during the contract period through individual task orders. This contracting method is rarely used for AIP projects. In order to be used for an AIP project, the contract must include any clauses required by federal statutes and executive orders and their implementing regulations and must not exceed 12 months unless the contract contains provisions for updating Davis-Bacon requirements. In addition, it is FAA policy that the contract must not exceed five years.

Table U-6 AIP Handbook Clarification of 49 CFR § 18.36(d) (2 CFR § 200.320, Methods of procurement to be followed)

Clarifications include...
(6) Proposals Containing Ineligible and/or non-AIP Funded Work. Per FAA policy, sponsors must obtain written ADO concurrence before including ineligible and/or non-AIP funded work within the same contract (see Paragraph 3-42). Per FAA policy, the sponsor must award to the lowest responsive and responsible bidder *on the AIP-funded portion of the contract* when the bid is separated by line items or bid schedules. The sponsor must award to the lowest responsive and responsible bidder *on the entire contract* when the bid will be prorated for federal participation.
(7) Proposals Containing Ineligible and/or non-AIP Funded Work. Per FAA policy, sponsors must obtain written ADO concurrence before designing or bidding a project that will exceed FAA design standards (see Paragraph 3-24).
(8) Proposals Containing Improper Bid Alternates. Sponsors must not use the procurement process, such as including bid alternates, as a means of determining project costs. For example, a sponsor has justified the acquisition of a 1,500 gallon ARFF vehicle but plans to acquire a 3,000 gallon ARFF vehicle, paying the additional costs with local sources of funding. The sponsor is not allowed to bid both vehicles because the procurement process is based on an expectation that the sponsor intends to complete the procurement. In this case, the sponsor has no plan to acquire a 1,500 gallon ARFF vehicle and is simply using the procurement process as a cost estimating tool, which is not allowed.

U-12. 49 CFR § 18.36(d)(1) – Small Purchase (2 CFR § 200.320(b) Procurement by small purchase procedures).

Table U-7 AIP Handbook Clarification of 49 CFR § 18.36(d)(1) (2 CFR § 200.320(b) Procurement by small purchase procedures)

Clarifications include…
(1) Clarifications for all Procurement Methods. Additional clarifications that apply to all procurement methods, including small purchase procurement, are contained in Paragraph U-11.
(2) Adequate Number of Qualified Sources. The FAA considers an adequate number of qualified sources to be two or more for small purchase procedures (the same as for competitive bids under 49 CFR § 18.36(d)(2)(i)(B)) (2 CFR § 200.320(c)(1)(ii)). If the sponsor is only able to obtain a quotation from one qualified source, then the sponsor must then follow sole source requirements.

(d) Methods of procurement to be followed—

(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

U-13. 49 CFR § 18.36(d)(2) – Sealed Bids (2 CFR § 200.320(c) Procurement by sealed bids (formal advertising)).

Table U-8 AIP Handbook Clarification of 49 CFR § 18.36(d)(2) (2 CFR § 200.320(c) Procurement by sealed bids (formal advertising))

Clarifications include…
(1) Clarifications for all Procurement Methods. Additional clarifications that apply to all procurement methods are contained in Paragraph U-11. These clarifications must be used in addition to the ones listed below.
(2) Required Notification to ADO. The sponsor must notify the ADO in writing prior to the award if the procurement is expected to exceed the simplified acquisition threshold and any of the following situations apply: **(a)** The award will be made without competition. **(b)** Only one bid is received. **(c)** The award will be made to other than the apparent low bidder.
(3) Submittal of Technical Specifications to ADO. Per 49 CFR § 18.36(g)(1) (2 CFR § 200.324(a)), sponsors must submit all technical specifications to the ADO upon the ADO's request. This may include the plans, the specifications, the engineer's report, and any other items that make up the procurement package.
(4) Items Need for Bidder to Properly Respond. Bid documents must specify the method by which the successful bid will be determined, which may include factors such as life cycle costs, bid alternates, and availability of federal funding.
(5) Responsive vs. Responsible. The terms responsive and responsible are often misunderstood. *Responsive* applies to the bid documents filed by a bidder and *responsible* applies to qualifications of the bidder. **(a)** *Responsive*. A responsive bid conforms to all significant terms and conditions contained in the sponsor's invitation for bid. It is the sponsor's responsibility to decide if the exceptions taken by a bidder to the solicitation are material or not and the extent of deviation it is willing to accept. **(i)** Material Deviations. It is FAA policy that sponsors may not waive material deviations. Material deviations include those that affect material terms and conditions of the invitation for bids such as delivery time, quantity, technical specifications, price, or failure to send required bond and insurance information. **(ii)** Minor Deviations. It is FAA policy that sponsors may waive minor deviations. These might include a simple failure to enter an extended price on an item, when such extended price can be ascertained simply by multiplying the unit price by the number of units. **(b)** *Responsible.* A responsible bidder has the ability to perform successfully under the terms and conditions of a proposed procurement, as defined in 49 CFR § 18.36(b)(8) (2 CFR § 200.318(h)). This includes such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
(6) Apparent Low Bidder. The apparent low bidder is the bidder with the lowest dollar proposal, and does not reflect whether the sponsor has determined the bidder to be responsive or responsible.

Table U-8 AIP Handbook Clarification of 49 CFR § 18.36(d)(2) (2 CFR § 200.320(c) Procurement by sealed bids (formal advertising))

Clarifications include…
(7) Bid Alternates and Additive. A sponsor must not bid a project with alternates or additives without establishing how an award will be made within the bid package (commonly referred to as the basis for award). Otherwise, federal participation may be adversely affected because the bid documents are defective. Sponsors have the option of consulting with the ADO to validate that their use of bid alternates will meet grant requirements. Life cycle cost analyses is often used for as part of establishing the basis for award for bid alternatives.
(8) Life Cycle Costs. The life cycle cost concept recognizes that although an item may have the lowest initial cost, it may be more expensive than another item when costs such as operation and maintenance are considered. Under the life cycle cost concept, any costs expected to be incurred for the item over its useful life (that is acquisition, installation, operation, and maintenance) are considered. Cost data must be verifiable independently of a claim by the manufacturer or contractor. OMB Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, requires elements of a life cycle cost analysis include the following: **(a)** The life cycle analysis must explicitly state assumptions, benefit factors, and costs. **(b)** Sponsors must identify key data for independent analysis and review. **(c)** Sponsor must use *Real* or *Constant Dollars* in their LCCA (omit the effects of inflation). **(d)** Although OMB Circular A-94 indicates that sponsors must use the *Real* discount (omits inflation effect) as published annually in appendix C to OMB Circular A-94, it is FAA policy that sponsors of AIP grant use a discount rate of 7% for all life cycle cost analyses.
(9) Guidance for Conducting Life Cycle Cost Analyses. The following three documents provide useful guidance to sponsors. The first document is especially useful for sponsors who have never completed a life cycle cost analysis and would like a simplified primer. **(a)** Life-Cycle Cost Analysis Primer. **(b)** The current version of Advisory Circular 150/5320-6, Airport Pavement Design and Evaluation. **(c)** AAPTP 06-06, Life Cycle Cost Analysis for Airport Pavements.
(10) Limits on Using Life Cycle Cost Prior to Bidding. The practice of limiting what alternatives the sponsor will consider in their procurement action prior to bidding may unduly excludes an otherwise eligible alternative and is thus contrary to the fair and open requirements of 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards). Per FAA policy, the one exception to this limitation is the comparative analysis of pavement design alternatives. Due to additional design costs associated with multiple pavement design alternatives, sponsors have the option to select a pavement design alternative prior to the bid solicitation provided that sufficient competition exists for the selected alternative.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 18.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

U-14. 49 CFR § 18.36(d)(3) – Competitive Proposals (2 CFR § 200.320(d) Procurement by competitive proposals).

Table U-9 AIP Handbook Clarification of 49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) Procurement by competitive proposals)

Clarifications include…
(1) Clarifications for all Procurement Methods. Additional clarifications that apply to all procurement methods are contained in Paragraph U-11. These clarifications must be used in addition to the ones listed below.
(2) Difference between Sealed Bids and Competitive Proposals. The main difference between sealed bids and competitive proposals is that a sponsor awards sealed bids based principally on price, and awards competitive proposals based price *and/or* other factors (such as qualifications, contract time, proposed phasing, or method of construction).
(3) Types of Competitive Proposals. Design-build, construction manager-at-risk, qualification based, and any other alternative delivery methods are all considered to be competitive proposals. A competitive proposal may be a one step or a two-step process. A brief summary of the most common methods are discussed below: **(a) Qualification Based with Negotiated Price (Professional Services).** This method is a qualifications based method that is required for professional services. Per 49 USC § 47107(a)(17), AIP must use a qualification based selection method under the Brooks Act for "program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design engineering, surveying, mapping, and

Table U-9 AIP Handbook Clarification of 49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) Procurement by competitive proposals)

Clarifications include…
related services." Per the Brooks Act, the competitor cannot provide (and the sponsor cannot use) price information when the sponsor ranks the competitors. The FAA interprets this to mean competitors cannot provide any price information before the sponsor determines the most qualified competitor, even if the price information is in a sealed envelope. However, the sponsor must then negotiate a fair and reasonable price or go to the next qualified competitor. The current version of Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects, provides further guidance. **(b) Design-Build.** 49 USC § 47142 establishes design-build contracting as an approvable form of contracting under AIP and defines it as "an agreement that provides for both design and construction of a project by a contractor". This section of the Act also requires that "three or more bids must be submitted". Section 139 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) established a pilot program design-build contracting under AIP, however, this pilot program expired September 30, 2003 and was replaced by the statute in 49 USC § 47142 per Vision 100 – Century of Aviation Reauthorization Act which made this type of contracting eligible outside of the pilot program. **(c) Construction Manager-At-Risk (CM-A-R).** Under CM-A-R, the sponsor engages a design firm for the project design. The sponsor selects a construction manager-at-risk (CM-A-R) based on qualifications during the design process. The CM-A-R conducts document reviews, constructability reviews, cost estimating and scheduling. The CM-A-R then competitively procures the construction component of the project and is responsible for ensuring the project is completed within budget and schedule.
(4) Required Notification to ADO. If the procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition, or only one proposal is received in response to a solicitation, the sponsor must notify the ADO in writing prior to the award.
(5) Competitive Proposals Containing Ineligible Work. For competitive proposals the sponsor must select the proposal that is most advantageous to federal interest and the sponsor must be able to clearly show how the ineligible and eligible costs are divided.
(6) Adequate Number of Qualified Sources. The FAA considers an adequate number of qualified sources to be two or more for competitive proposals, except for when the sponsor uses the design-build method, in which case three or more are required. If the sponsor is only able to obtain a quotation from one qualified source, then the sponsor must then follow sole source requirements.
QUALIFICATION BASED WITH NEGOTIATED PRICE (CONSULTANT CONTRACTS) ONLY:
(7) When Price must not be used as a Factor. The only competitive proposal procedure where price cannot be used (only other factors) is for the qualifications based procurement of architectural/engineering professional services.
(8) Consultant Contract Requirements. The current version of Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects, provides sponsor requirements for consulting contracts, including the unique contract methods (retainers, cost-plus-a-fixed-fee, cost-plus-a-percentage-of-cost, indefinite delivery). Sponsor must not deviate from the requirements in this advisory circular unless the ADO has reviewed the contract and concurs with the deviations. Note that cost-plus-a-percentage-of-cost is specifically prohibited per 49 CFR § 18.36(f)(4) (2 CFR § 200.323(d)). In addition, if the sponsor uses cost-plus-a-fixed-fee, it is

Table U-9 AIP Handbook Clarification of 49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) Procurement by competitive proposals)

Clarifications include…
FAA policy that profit must be based on a value, not on a multiplier or percentage. For lump sum contracts, it is FAA policy that the negotiation process must clearly show the amount of profit and how it was derived.
DESIGN BUILD AND CONSTRUCTION MANAGER-AT-RISK (AND ANY OTHER COMPETITIVE PROPOSAL NOT QUALIFICATION BASED WITH NEGOTIATED PRICE):
(9) Clarifications for Sealed Bids. Since these proposals use price as a factor, the clarifications under sealed bids contained in Paragraph U-13 also apply.
(10) When the Use of Sealed Bids Alone is Not Appropriate. The sponsor must only use sealed bids instead of competitive proposals unless: **(a)** A complete, adequate, and realistic specification or purchase description is not available (for instance, a complex project contains too many unknowns) **(b)** The procurement does not lend itself to a firm fixed price contract and the selection of the successful bidder cannot be made principally on the basis of price.
(11) Example of Situations where Competitive Proposals may be Appropriate. Examples include complex terminal projects (where there are multiple methods of construction and phasing), large demolition projects (where there are multiple methods of demolition), and rehabilitation of runway crossings (where contract time, phasing, or method may have added benefits). In order for the sponsor to consider using competitive proposals, the sponsor must first determine that sealed bids *cannot* be used.
(12) Advantages of Competitive Proposals that are not Allowed under AIP. Because of the federal contract and procurement requirements, some of the advantages of competitive proposals are not eligible for AIP funding. Sponsors must still meet all applicable 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) and AIP requirements in order for the ADO to fund the costs with AIP. Examples of some costs that are not allowed include early completion bonuses, cost overruns greater than the allowable grant amendment percent, shared costs savings, contingency costs, price escalation, consultant and airport insurance costs, and state and local preferences.
(13) Obtaining ADO Concurrence Prior to Award. Per 49 USC § 47142, the sponsor must not award AIP funded design build proposals prior to obtaining ADO concurrence. Per FAA policy, this also applies to construction manager-at-risk proposals (and any other competitive proposals not qualifications based with negotiated price).
(14) Submittal of Technical Specifications to ADO. Per 49 CFR § 18.36(g)(1) (2 CFR § 200.324(a)), sponsors must submit all technical specifications to the ADO upon the ADO's request. This may include the plans, the specifications, the engineer's report, and any other items that make up the procurement package.
(15) Submittal of Additional Documentation. The sponsor must provide all additional documentation required by the ADO, which for these types of proposals includes, but is not limited to: **(a)** A description of the method to be used.

Table U-9 AIP Handbook Clarification of 49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) Procurement by competitive proposals)

Clarifications include…
(b) A full description of the project with general sketches of proposed work.
(c) Documentation that provides the reason and justification for using the competitive proposal method over sealed bids.
(d) A responsibility matrix showing the contractual relationships between all parties involved in the project. A flowchart is often useful for this purpose.
(e) Documentation that the selection process is allowed under state or local law.
(f) A statement describing what safeguards are in place to prevent conflicts of interest.
(g) Proof that the system will be as open, fair and objective as the traditional sealed bid method under 49 CFR § 18.36(d)(2) (2 CFR § 200.320(c) Procurement by sealed bids (formal advertising)).
(h) Documentation of the amount of experience the parties involved in the project have in the proposed method.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

U-15. 49 CFR § 18.36(d)(4) – Noncompetitive Proposals (2 CFR § 200.320(f) Procurement by noncompetitive proposals).

Table U-10 AIP Handbook Clarification of 49 CFR § 18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals)

Clarifications include…
(1) Clarifications for all Procurement Methods. Additional clarifications that apply to all procurement methods are contained in Paragraph U-11. These clarifications must be used in addition to the ones listed below.
(2) Single Source, Sole Source, and Proposals with an Inadequate Number of Qualified Sources. Single source, sole source, and proposals with an inadequate number of qualified sources are noncompetitive. The number of adequate qualified sources is found in Table U-7 for small purchase proposals and Table U-9 for competitive proposals.
(3) Contract Changes. Change orders, supplemental agreements, and contract modifications are noncompetitive. The sponsor and ADO requirements are included in Paragraph 5-34.
(4) Required Notification to ADO. If the sponsor procures using noncompetitive proposals, makes a contract modification that changes the scope of a contract, or increases the contract amount by more than the simplified acquisition threshold, the sponsor must notify the ADO in writing prior to executing the procurement action.
(5) Submittal of Technical Specifications to ADO. Per 49 CFR § 18.36(g)(1) (2 CFR § 200.324(a)), sponsors must submit all technical specifications to the ADO upon the ADO's request. This may include the plans, the specifications, the engineer's report, and any other items that make up the procurement package.
(6) Example where Noncompetitive Proposals may be Appropriate. **(a) Some Services for Less than $10,000.** Services for $10,000 or less for appraisals, grant audit services performed as a part of a project, and Independent project cost estimates. The $10,000 was set by FAA policy in Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects. **(b) Public utility company services.** Public utility companies generally do not allow work on their property or equipment by anyone other than their own employees. A sponsor often has no other choice than to use a noncompetitive proposal for this type of work. In addition, the FAA has determined that the federal contract provisions do not apply to this situation. **(c) Eligible replacement of a component of a piece of equipment.** This may be allowable if using a competitor's replacement part would make the equipment inoperable, such as during a rehabilitation of an ARFF vehicle. The sponsor must document their justification and make it available to the ADO upon request.
(7) Engineering Materials Arrestor System (EMAS). An EMAS project is considered either a completive proposal (if there are more than one approved manufacturers of EMAS), or non-competitive proposal (if there is only a single approved manufacturer of EMAS) due to the nature of the project, sponsors must award the proposal based on price *and* other factors.

Table U-10 AIP Handbook Clarification of 49 CFR § 18.36(d)(4) (2 CFR § 200.320(f) Procurement by noncompetitive proposals)

Clarifications include…
(8) Example where Noncompetitive Proposals may not be Appropriate. **(a) Sponsor convenience**. Sponsors must not use a noncompetitive proposal to ensure consistency of equipment, to improve spare parts management, or to work with companies they have experience with. **(b) Compatibility with nonstandard features.** If a sponsor purchased equipment with nonstandard features that were not required by the FAA, then the sponsor cannot use compatibility as justification for using noncompetitive procurement. An example is when a sponsor purchases an airfield lighting control panel that includes remote maintenance monitoring, which is not required by the FAA. The sponsor cannot limit the procurement of future regulators to only those regulators that support the nonstandard remote maintenance monitoring.
(9) Noncompetitive Proposals. If a sponsor is using a noncompetitive proposal, a modification to standards may be required. The requirements for a modification to standard are outlined in Paragraph 3-23.
(10) Separating Noncompetitive and Competitive Procurement. Sponsors must separate noncompetitive procurement if it unduly limits the free and open competition of the competitive procurement. For example, sponsors must procure modifications to existing Airfield Lighting Control and Monitoring Systems (ALCMS) or the purchase of airfield lighting equipment for which there is only a single certified manufacturer separately. This noncompetitive procurement must be completed before the procurement for the overall AIP project in which the noncompetitive equipment will be installed.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

U-16. 49 CFR § 18.36(e) – Contracting with small and minority firms, women's business enterprise and labor surplus area firms (2 CFR § 200.321, Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms).

Table U-11 AIP Handbook Clarification of 49 CFR § 18.36(e) (2 CFR § 200.321, Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms)

Clarifications include…
(1) Disadvantage Business Enterprise and Bid Responsiveness. Small and minority, women's business enterprise and labor surplus area are not necessarily the same as disadvantaged business enterprise (DBE). A sponsor is allowed to include aspirational goals in bid documents, as well as race-neutral small business set-asides per 49 CFR § 26.39. However, it is FAA policy, based on 49 CFR part 26, that the sponsor cannot use any goals other than DBE to determine bid responsiveness. Local MWBE goals may not be included on a federal project.
(2) Other **Civil Rights Requirements Outside of 49 CFR § 18.36 (**2 CFR 200 Subpart D, Procurement Standards). Sponsors are also required to follow the other civil rights requirements for AIP projects, such as those found in 49 CFR part 26.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

U-17. 49 CFR § 18.36(f) – Contract cost and price (2 CFR § 200.323, Contract cost and price).

Table U-12 AIP Handbook Clarification of 49 CFR § 18.36(f) (2 CFR § 200.323, Contract cost and price)

<table>
<tr><th>Clarifications include…</th></tr>
<tr><td>(1) Price or Cost Analysis is a Mandatory Sponsor Action. Sponsors are required to perform a cost or price analysis for every procurement action that uses AIP funds, including contract modifications.</td></tr>
<tr><td>(2) Contract Modifications. Contract modifications include such items as change orders to construction/equipment contracts and supplemental agreements to negotiated professional service contracts. Contract modifications that change the original scope of the project and do not have a line item in the original bid require a full cost analysis. Otherwise, the sponsor can simply document that the unit prices are consistent with those in the original contract and/or that the changes are necessary to complete the original scope of the work.</td></tr>
<tr><td>(3) Independent Estimate. The independent estimate methods by project type are included below. These estimates are the initial tool for the sponsor to use in price and cost analyses.
<table>
<tr><th>For the following project type…</th><th>The independent estimate method is…</th></tr>
<tr><td>Land and easement acquisition</td><td>Appraisals and review appraisals</td></tr>
<tr><td>Equipment acquisition and construction</td><td>Engineer’s estimate</td></tr>
<tr><td>Negotiated professional services (such as consultant costs)</td><td>Independent fee estimate</td></tr>
<tr><td>Non-negotiated services (such as newspaper advertisements and rental of facilities for a public hearing)</td><td>Advertised pricing</td></tr>
<tr><td>Non-negotiated service based on law or regulation (such as utility work by the utility company or a reimbursable agreement with the FAA Air Traffic Organization (ATO))</td><td>Not applicable</td></tr>
</table>
</td></tr>
<tr><td>(4) Cost Analysis Purpose. A cost analysis is the evaluation of separate elements such as labor or materials that make up the total price to determine if the separate elements are allowable, directly related to the project, and reasonable.</td></tr>
<tr><td>(5) Price Analysis Purpose. A price analysis is a process analyzing a proposed total price without evaluating separate cost elements (including profit). The purpose is solely to ensure that a total price is fair and reasonable.</td></tr>
<tr><td>(6) Cost Analysis vs. Price Analysis. Cost analysis is used in instances where a price analysis is not viable (instances listed 49 CFR § 18.36(f)(1) (2 CFR § 200.323(a))) and delves into the individual elements of cost that make up the total price. Price analysis is based solely on the total price.</td></tr>
</table>

Table U-12 AIP Handbook Clarification of 49 CFR § 18.36(f) (2 CFR § 200.323, Contract cost and price)

Clarifications include…
(7) How to do a Cost or Price Analysis. There are a number of publically-available documents on preparing a cost analysis. DOD's Contract Pricing Reference Guides is an excellent source. Another good source is the Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients, United States Department of Housing and Urban Development. Because HUD has similar grant requirements for their grantees as AIP does for sponsors, the requirements are very similar to those of AIP. References and links for these documents are included in Appendix B.
(8) File Retention. Sponsors must retain a copy of the price or cost analysis in the sponsor's project file.
(9) Documentation to the ADO. Sponsors must submit all cost and price analysis documentation to the ADO upon request as required in, Chapter 3, Section 14.
(10) Negotiation of Profit. Sponsor must remember to include this step as a separate action for all of the situations outlined in 49 CFR § 18.36(f)(2) (2 CFR § 200.323(b)) (including change orders).
(11) Contract Bonus for Expedited Construction Completion. Contracts sometimes provide for payment of a bonus to the contractor for completing construction early or a phase of the construction early. AIP funding cannot be used to pay for bonus payments for early completion (only sponsor funding).
(12) Escalator Clauses. Escalator clauses are provisions in a contract for increasing or decreasing the contracted price for labor, material, etc., in step with the market prices or an agreed upon benchmark. Sponsors must send their request to the ADO and obtain written APP-1 approval before awarding contracts containing an escalator clause.
(13) Required Notification to ADO. If the sponsor makes a contract modification that changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold, the sponsor must notify the ADO in writing prior to executing the procurement action.

(f) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 18.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

U-18. 49 CFR § 18.36(g) – Awarding Agency Review (2 CFR § 200.324, Federal awarding agency or pass-through entity review).

Table U-13 AIP Handbook Clarification of 49 CFR § 18.36(g) (2 CFR § 200.324, Federal awarding agency or pass-through entity review)

Clarifications include…
(1) ADO Responsibilities. The ADO procurement responsibilities are discussed in detail in Chapter 3, Section 10. The ADO always has the option of reviewing any sponsor procurement documents and systems at any time during the grant process.
(2) Required Sponsor Notifications to the ADO. It is FAA policy that the sponsor must notify the ADO when any of the situations listed in 49 CFR § 18.36(g)(2) (2 CFR § 200.324(b)) exist. The ADO then has the option to require the sponsor to provide further documentation or to conduct a pre-award review.

(g) Awarding agency review.

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; of

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ``brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

U-19. 49 CFR § 18.36(h) – Bonding Requirements (2 CFR § 200.325, Bonding requirements).

Table U-14 AIP Handbook Clarification of 49 CFR § 18.36(h) (2 CFR § 200.325, Bonding requirements)

Clarifications include…
(1) Simplified Acquisition Threshold. The simplified acquisition threshold is fixed by 41 USC § 403(11) and the current amount is listed above in 49 CFR § 18.36(d)(1) (2 CFR § 200.320(b) Procurement by small purchase procedures).
(2) Contracts at or below the Simplified Acquisition Threshold. Sponsors have the option to follow their own requirements relating to bid guarantees, performance bonds, and payment bonds for construction if the contract or subcontract is at or below the simplified acquisition threshold.
(3) Maintenance Bonds and Extended Warrantees. Maintenance bonds and extended warrantees are not required under 49 CFR § 18.36(d)(1) (2 CFR § 200.320(b) Procurement by small purchase procedures) and cannot be funded under AIP. If a sponsor chooses to require a maintenance bond or an extended warrantee, then the sponsor must clearly bid that item separately and not include the costs in the AIP project.
(4) Requirements for Nonstandard Bonding. If the sponsor deviates from the minimum bonding requirements, the sponsor must submit a written assurance to the ADO that the federal interests are adequately protected.
(5) Combined Payment and Performance Bonds. A combined payment and performance bond does *not* meet the minimum requirements and must not be used unless sponsor has submitted a written assurance to the ADO that the federal interests are adequately protected.
(6) Bonding for Equipment Procurement Projects (no construction included in project). For an AIP project that is solely to acquire equipment, with no associated construction of any kind, by FAA policy, the decision to require bonds (or not) is at the discretion of the sponsor.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ``bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ``performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ``payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

U-20. 49 CFR § 18.36(i) – Contract Provisions (2 CFR § 200.326, Contract provisions).

Table U-15 AIP Handbook Clarification of 49 CFR § 18.36(i) (2 CFR § 200.326, Contract provisions)

Clarifications include…
(1) Additional Clauses and Provisions for AIP Projects. 49 CFR § 18.36(i) (2 CFR § 200.326, Contract provisions) does not contain all of the required clauses and provision for AIP projects. There are other regulations and statutes beyond 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) that establish additional clauses and provisions. A summary of the required contract clauses for construction contracts are in Table U-16, for equipment contracts are in Table U-17, and for professional services (A/E) contracts are in Table U-18. The website Procurement and Contracting under AIP – Federal Contract Provisions page of the FAA Office of Airports website (see Appendix B for link) contains a complete listing (including text).
(2) Explanation of Apparent Conflict in Contract Levels between 40 USC § 3701, et seq. and 49 CFR § 18.36(i)(6) (2 CFR 200, Appendix II (E))**.** The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from… the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6) (2 CFR 200, Appendix II (E)). Although the original Act required its application in any construction contract over $2,000 or non-construction contract to which the Act applied over $2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6) (2 CFR 200, Appendix II (E))), the Act no longer applies to any "contract in an amount that is not greater than $100,000" 40 USC 3701(b)(3) (A)(iii).

Table U-15 AIP Handbook Clarification of 49 CFR § 18.36(i) (2 CFR § 200.326, Contract provisions)

Clarifications include…
(3) Requirement to Include these Contract Provisions into AIP Funded Project Contracts. The sponsor must physically incorporate these contract provisions in each contract funded under AIP. The sponsor must require the contractor (or subcontractor) to insert these contract provisions in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). **(a)** The sponsor must require the contractor to incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services. The prime contractor is responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. **(b)** Subject to the applicability criteria noted in the specific contractor provisions, these contract provisions apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate supervision and to all work performed on the contract by piecework, station work, or by subcontract. **(c)** A breach of any of the stipulations contained in these required contract provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension/debarment or any other action determined to be appropriate by the sponsor and AIP.

Table U-16 Contract Clauses – Construction Contracts

Contract Type	Required Clauses
a. Provisions for all Construction Contracts	Buy American Preference – 49 USC § 50101 Civil Rights Act of 1964, Title VI – Contractor Contractual Requirements – 49 CFR part 21 General Civil Rights Provisions - 49 USC § 47123, Airport and Airway Improvement Act of 1982, Section 520 Lobbying and Influencing Federal Employees – 49 CFR part 20 Access to Records and Reports – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Disadvantaged Business Enterprise – 49 CFR part 26 Energy Conservation – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Rights to Inventions – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Trade Restriction Clause – 49 CFR part 30 Veteran's Preference – 49 USC § 47112 Federal Fair Labor Standards Act of 1938 as amended – 29 USC § 201, et seq. Occupational Safety and Health Act of 1970 – 20 CFR part 1910

Table U-15 AIP Handbook Clarification of 49 CFR § 18.36(i) (2 CFR § 200.326, Contract provisions)

Clarifications include…	
b. Additional Provisions for Construction Contracts Exceeding $2,000	Davis Bacon Labor Provisions - 49 CFR § 18.36(i)(5) (2 CFR 200, Appendix II (D)) and 49 USC § 47112(b) Copeland "Anti-Kickback" Act - 49 CFR § 18.36(i)(4) (2 CFR 200, Appendix II (D))and 29 CFR parts 3 and 5
c. Additional Provisions for Construction Contracts Exceeding $10,000	Equal Opportunity Clause – 41 CFR § 60-1.4 Certification of Non-Segregated Facilities – 41 CFR § 60-1.8 Notice of Requirement for Affirmative Action – 41 CFR § 60-4.2 Equal Employment Opportunity Specification – 41 CFR § 60-4.3 Termination of Contract – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards)
d. Additional Provisions for Construction Contracts Exceeding $25,000	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – 2 CFR part 180 (adopted and supplemented by DOT at 2 CFR part 1200)
e. Additional Provisions for Construction Contracts Exceeding $100,000	Breach of Contract Terms – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Clean Air and Water Pollution Control – 49 CFR § 18.36(i)(12) (2 CFR 200, Appendix II (G)) Contract Work Hours and Safety Standards Act Requirements – 49 CFR § 18.36(i)(6) (2 CFR 200, Appendix II (E))

Table U-17 Contract Clauses – Equipment Contracts

Contract Type	Required Clauses
a. Provisions for all Equipment Contracts	Buy American Preference – 49 USC § 50101 Civil Rights Act of 1964, Title VI – Contractor Contractual Requirements – 49 CFR part 21 General Civil Rights Provisions - 49 USC § 47123, Airport and Airway Improvement Act of 1982, Section 520 Disadvantaged Business Enterprise – 49 CFR part 26 Lobbying and Influencing Federal Employees – 49 CFR part 20 Access to Records and Reports – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards)

Table U-17 Contract Clauses – Equipment Contracts

Contract Type	Required Clauses
	Energy Conservation – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Rights to Inventions – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Trade Restriction Clause – 49 CFR part 30 Federal Fair Labor Standards Act of 1938 as amended – 29 USC § 201, et seq. Occupational Safety and Health Act of 1970 – 20 CFR part 1910
b. Additional Provisions for Equipment Contracts Exceeding $10,000	Termination of Contract – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards)
c. Additional Provisions for Equipment Contracts Exceeding $25,000	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – 2 CFR part 180 (adopted and supplemented by DOT at 2 CFR part 1200)
d. Additional Provisions for Equipment Contracts Exceeding $100,000	Breach of Contract Terms – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Clean Air and Water Pollution Control – 49 CFR § 18.36(i)(12) (2 CFR 200, Appendix II (G)) (2 CFR 200, Appendix II (G)) Contract Work Hours and Safety Standards Act Requirements – 49 CFR § 18.36(i)(6) (2 CFR 200, Appendix II (E))

Table U-18 Contract Clauses – Professional Services (A/E) Contracts

Contract Type	Required Clauses
a. Provisions for all A/E Contracts	Buy American Preference – 49 USC § 50101 (If there is equipment acquired under the contract) Civil Rights Act of 1964, Title VI – Contractor Contractual Requirements – 49 CFR part 21 General Civil Rights Provisions - 49 USC § 47123, Airport and Airway Improvement Act of 1982, Section 520 Disadvantaged Business Enterprise – 49 CFR part 26 Lobbying and Influencing Federal Employees – 49 CFR part 20 Access to Records and Reports – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Breach of Contract Terms – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Rights to Inventions – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards) Trade Restriction Clause – 49 CFR part 30 Federal Fair Labor Standards Act of 1938 as amended – 29 USC § 201, et seq. Occupational Safety and Health Act of 1970 – 20 CFR part 1910
b. Additional Provisions for A/E Contracts Exceeding $10,000	Termination of Contract – 49 CFR § 18.36 (2 CFR 200 Subpart D, Procurement Standards)
c. Additional Provisions for A/E Contracts Exceeding $25,000	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – 2 CFR part 180 (adopted and supplemented by DOT at 2 CFR part 1200)
d. Additional Provisions for A/E Contracts Exceeding $100,000	Clean Air and Water Pollution Control – 49 CFR § 18.36(i)(12) (2 CFR 200, Appendix II (G)) Contract Work Hours and Safety Standards Act Requirements – 49 CFR § 18.36(i)(6) (2 CFR 200, Appendix II (E))

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ``Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ``Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163, 89 Stat. 871).

U-21. 49 CFR § 18.36(j)-(t) – Only (n) and (t) Apply to AIP.

Table U-19 AIP Handbook Clarification of 49 CFR § 18.36(j) – 49 CFR § 18.36(t)

Clarifications include…
(1) Many of the sections in 49 CFR § 18.36 between (j) and (t) apply to other Department of Transportation programs.
(2) Sections that are not Applicable to AIP. The following sections of 49 CFR § 18.36 do not apply to AIP.. **(a)** 49 CFR § 18.36(j) - 49 CFR § 18.36(m) **(b)** A portion of 49 CFR § 18.36(n) **(c)** 49 CFR § 18.36(0) - 49 CFR § 18.36(s) **(d)** A portion of 49 CFR § 18.36(t)
(3) 49 CFR § 18.36(m) – Buy America. Note that this section is Buy America for *other* modes of DOT, not the FAA.
(4) 49 CFR § 18.36(n) - Disadvantaged Business Enterprises. 49 CFR part 23 is included in the AIP grant assurances. The first half of 49 CFR § 18.36(n) does not apply to projects funded with AIP.
(5) 49 CFR § 18.36(t) - Brooks Act. Sponsor must include requirements for qualification-based procurement of professional services required by 49 USC § 47107(a)(17). This is commonly referred to as the Brooks Act. The last sentence of 49 CFR § 18.36(t) does not apply to projects funded with AIP.

(j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are ``effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR part 635, subpart A.

(k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurement utilizing exclusionary or discriminatory specifications.

(l) 46 U.S.C. 1241(b)(1) and 46 CFR part 381 impose cargo preference requirements on the shipment of foreign made goods.

(m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

(n) Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR part 23 impose requirements for the participation of disadvantaged business enterprises.

(o) Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1068(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

(p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.

(q) 23 U.S.C. 112 requires concurrence by the Secretary before highway construction contracts can be awarded, except for projects authorized under the provisions of 23 U.S.C. 17l.

(r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension or work, and material changes in the scope of the work for highway construction contracts.

(s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

(t) FHWA, UMTA, and Federal Aviation Administration (FAA) grantees and subgrantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and shall award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State (or airport sponsor for FAA) qualifications-based requirements. For FHWA and UMTA programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

Appendix V. Forms

V-1. Availability of Forms.

The current AIP related forms and any associated instructions can be obtained from the FAA Office of Airports website (see Appendix B for link). The forms in this appendix (listed below in Table V-1) were current when this Handbook was published.

Table V-1 AIP Related Forms

Form Name	Form Number
(1) Agreement for Transfer of Entitlements	FAA Form 5100-110
(2) Agreement on State Sponsorship and Sponsor Obligations	
(3) AIP Sponsor Certification – Construction Project Final Acceptance	
(4) AIP Sponsor Certification – Drug-Free Workplace	
(5) AIP Sponsor Certification – Equipment/Construction Contracts	
(6) AIP Sponsor Certification – Project Plans and Specifications	
(7) AIP Sponsor Certification – Real Property Acquisition	
(8) AIP Sponsor Certification – Selection of Consultants	
(9) AIP Sponsor Certification – Conflict of Interest	
(10)Airport Pavement Design	FAA Form 5100-1
(11)Application for Development Projects (Parts II through IV)	FAA Form 5100-100
(12)Application for Federal Assistance	Standard Form 424
(13)Application for Planning Projects (Parts II through IV)	FAA Form 5100-101
(14)Buy American Content Percentage Calculation Worksheet	
(15)Construction Progress and Inspection Report	FAA Form 5370-1
(16)Data Requirements for an Office of Airports AWOS BCA	
(17)Final Assembly Questionnaire (Buy American)	
(18)Federal Financial Report	Standard Form 425
(19)Grant Agreement	FAA Form 5100-37

Table V-1 AIP Related Forms

Form Name	Form Number
(20)Grant Agreement Cover Letter (Sample)	
(21)Grant Amendment (Formal)	FAA Form 5100-38
(22)Grant Amendment (Informal Letter)	
(23)Grant Amendment (Multi-Year)	
(24)Airport Improvement Program Form (also called AIP Grant Status Report)	FAA Form 5100-107
(25)Letter of Intent (LOI) Application Financial Template	
(26)Outlay Report and Request for Reimbursement for Construction Programs	Standard Form 271
(27)Quarterly Performance Report (Sample)	
(28)Request for Advance or Reimbursement	Standard Form 270
(29)Request for Change in Reservation/Obligation	FAA Form 1413-1
(30)Snow Removal Equipment Inventory (Sample)	
(31)Sponsor Request for FAA Acknowledgement for Cold Weather Early Start	
(32)State Block Grant Agreement	
(33)Project Evaluation Review and Development Analysis (PERADA)	FAA Form 5100-109

Appendix W. Revenue Sources for the Airport and Airway Trust Fund

W-1. General.

The Airport and Airway Trust Fund, which was established by the Airport and Airway Revenue Act of 1970, provides the revenues used to fund AIP projects. The Trust Fund receives revenues from a series of excise taxes paid by users of the national airspace system. The excise taxes are associated with purchases of airline tickets and aviation fuel, as well as the shipment of cargo. Table W-1 lists these tax sources and how they are computed. The current tax structure is established under the Taxpayer Relief Act of 1997 (Public Law 105-35). Information on the Trust Fund can be found from the FAA Office of Policy, International Affairs and Environment website.

Table W-1 lists these tax sources and how they are computed.

Table W-1 Revenue Sources for the Airport and Airway Trust Fund

Aviation Taxes	Comment	Tax Rate
a. Domestic Passenger Ticket Tax (including areas of Canada and Mexico not more than 225 miles from the continental United States)	Ad valorem tax.	7.5% of ticket price.
b. Domestic Passenger Flight Segment	A domestic segment is a flight leg consisting of one takeoff and one landing by a flight.	Rate is indexed by the Consumer Price Index starting January 1, 2002.
c. Passenger Ticket Tax at Rural Airports (having less than 100,000 boardings and more than 75 miles from an airport with 100,000 boardings)	Assessed on tickets on flights that begin/end at a rural airport. Rural airports are airports having less than 100,000 enplanements during second preceding calendar year, and either 1) not located within 75 miles of another airport with 100,000 enplanements, 2) is receiving essential air service subsides, or 3) is not connected by paved roads to another airport.	7.5% of ticket price (same as passenger ticket tax). Flight segment fee does not apply.
d. International Departure and Arrival Taxes	Head tax assessed on passengers arriving or departing for foreign destinations (and U.S. territories) that are not subject to the passenger ticket tax.	Rate is indexed by the Consumer Price Index starting January 1, 1999.

Table W-1 Revenue Sources for the Airport and Airway Trust Fund

Aviation Taxes	Comment	Tax Rate
e. Flights between the Continental United States and Alaska or Hawaii		Rate is indexed by the Consumer Price Index starting January 1, 1999.
f. Frequent Flyer Tax	Ad valorem tax assessed on mileage awards (for example, credit cards).	7.5% of value of miles.
g. Domestic Freight and Mail		6.25% of amount paid for the transportation of property by air.
h. General Aviation Fuel Tax		Aviation gasoline – 19.3¢ per gallon. Jet fuel – 21.8¢ per gallon. Effective after March 31, 2012, a 14.1¢ per gallon surcharge on fuel for aircraft used in a fractional ownership program.
i. Commercial Fuel Tax		4.3¢ per gallon.

Appendix X. Competition Plans

X-1. Legislative History.

AIR-21 (Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106-181), Section 155, required the submission of a Competition Plan by certain large and medium hub airports (covered airports) for an AIP grant to be issued beginning in fiscal year 2001. The most current Competition Plan requirements are found in 49 USC § 47106(f).

X-2. Purpose.

Per FAA policy, major airports must be available on a reasonable basis to all carriers wishing to serve the airport. The underlying purpose of the competition plan is for the airport to demonstrate how it will provide for new entrant access and expansion by incumbent carriers.

X-3. Covered Airports.

Per 49 USC § 47106(f)(4) Completion Plans are required for covered airports that meet the conditions outlined in Table X-1.

Table X-1 Airports Falling Under the Competition Plan Requirements

If the following two conditions exist at an airport, the airport is considered a covered airport…
a. The airport is a medium or large hub airport.
b. One or two air carriers control more than 50% of the passenger boardings.

X-4. Prohibition on Grant Execution.

49 USC § 47106(f) prohibits the FAA from issuing an AIP grant to a covered airport unless the airport has submitted a written Competition Plan. It is FAA policy that AIP grants cannot be issued unless a required Competition Plan or Competition Plan update has been *approved* by the FAA.

X-5. Requirements for Initial Plan Submittal and Updates.

Per FAA policy, covered airports must submit Competition Plans and updates as required in Table X-2. The FAA encourages covered airport to file their initial Competition Plan as close as possible to the start of the fiscal year. Covered airports must either provide two copies of their Competition Plan or Competition Plan update to APP-1 or file an electronic version as directed by the APP-510. In addition, covered airports must also submit one copy of their Competition Plan or update to the ADO and regional office.

Table X-2 Completion Plan and Update Requirements

For the following situation…	The sponsor must…
a. The sponsor is a covered airport and has not submitted an initial Competition Plan.	Submit an initial plan to the FAA. The FAA will send written notification letters to airports that will be required to file initial Competition Plans as close to the beginning of the fiscal year as possible. The FAA encourages covered airports to file their initial Competition Plan as close as possible to the start of the fiscal year to avoid undue delay in AIP grants.
b. The FAA has approved an initial plan, and the sponsor is on the first or second update.	Submit the update within 18 months of the latest FAA approval letter. The FAA will send written notification letters to airports that will be required to file Competition Plan updates as close to the beginning of the fiscal year as possible. The FAA encourages covered airports to file each update as close as possible to the start of the fiscal year to avoid undue delay in AIP grants.
c. The FAA has approved an initial plan and two updates.	Submit an update if either of the following special conditions arise. Per FAA policy, covered airports must file these updates within 60 days of these conditions arising to avoid undue delays in AIP grants. **(1) Denial of Access.** An airport files a competitive access report as required by 49 USC § 47107(s) stating it had denied access to an air carrier for gates or facilities within the last six months. 49 USC § 47107(s) requires any medium or large airport that has denied a carrier's request or requests for access to file a report with the Secretary of Transportation describing the carrier's requests, providing an explanation as to why the requests could not be accommodated, and providing a time frame within which, if any, the airport will be able to accommodate the requests. Reports are due each February and August. The FAA expects the airport's written Competition Plan to detail any changes since the previous submittal and any issues raised in the FAA's approval letter. **(2) New Lease and Use Agreement.** An airport executes a new master lease and use **agreement**, or significantly amends a lease and use agreement, including an amendment due to use of Passenger Facility Charge financing for gates. The FAA encourages airports to consult with the FAA about new lease provisions and to provide the FAA the opportunity to review the new or amended provisions prior to formal execution.

X-6. Initial Competition Plan Contents.

Per 49 USC § 47106(f), initial Competition Plans must include the information in Table X-3 in order for the FAA to accept a filing.

Table X-3 Required Initial Competition Plan Content

Per 49 USC § 47106(f), Competition Plans must include…	Per FAA policy, the following information must be provided to meet the requirements in 49 USC § 47106(f):
a. The availability of airport gates and related facilities.	**(1)** Number of gates available at the airport by lease arrangement, i.e., exclusive, preferential, or common-use, and current allocation of gates. **(2)** Whether any air carriers that have been serving the airport for more than three years are relying exclusively on common-use gates. **(3)** Diagram of the airport's concourses. **(4)** Description of gate use monitoring policies, including any differences in policy at gates subject to Passenger Facility Charge assurance # 7 and samples of gate use monitoring charts, along with a description of how the charts are derived and how they are used by the airport. **(5)** Description of the process for accommodating new service and for service by a new entrant. **(6)** Description of any instances in which the Passenger Facility Charge competitive assurance #7 operated to convert previously exclusive-use gates to preferential-use gates or it caused such gates to become available to other users. **(7)** Gate utilization (departures/gate) per week and month reported for each gate. **(8)** The circumstances of accommodating a new entrant or expansion during the 12 months preceding filing, including the length of time between initial carrier contact of airport and start of service, the identity of the carriers and how they were accommodated. **(9)** Resolution of any access complaints by a new entrant or an air carrier seeking to expand service during the 12 months preceding the filing, including a description of the process used to resolve the complaint. **(10)** Use/lose, or use/share policies and recapture policies for gates and other facilities. If no such policies exist, an explanation the role, if any under-utilized gates play in accommodating carrier requests for gates must be provided. **(11)** Plans to make gates and related facilities available to new entrants or to air carriers that want to expand service at the airport and methods of accommodating new gate demand by air carriers at the airport (common-use, preferential-use, or exclusive-use gates). **(12)** Availability of an airport competitive access liaison to assist requesting carriers, including new entrants. **(13)** Number of aircraft remain overnight (RON) positions available at the airport by lease arrangement, i.e., exclusive, preferential, common-use or unassigned, and distribution by carrier. This should include a description of the procedures for monitoring and assigning RON positions and for communicating availability of RON positions to users.

Table X-3 Required Initial Competition Plan Content

Per 49 USC § 47106(f), Competition Plans must include…	**Per FAA policy, the following information must be provided to meet the requirements in 49 USC § 47106(f):**
b. Leasing and subleasing arrangements.	**(1)** Whether a subleasing or handling arrangement with an incumbent carrier is necessary to obtain access. **(2)** How the airport assists requesting airlines to obtain a sublease or handling arrangement. **(3)** Airport polices for sublease fees levels (e.g., maximum 15% above lease rates), and for oversight of fees, ground/handling arrangements and incumbent schedule adjustments that could affect access to subtenants. **(4)** Process by which availability of facilities for sublease or sharing is communicated to other interested carriers and procedures by which sublease or sharing arrangements are processed. **(5)** Procedures for resolving disputes or complaints among carriers regarding use of airport facilities, including complaints by subtenants about excessive sublease fees or unnecessary bundling of services. **(6)** Resolution of any disputes over subleasing arrangements in the 12 months preceding filing. **(7)** Accommodation of independent ground service support contractors, including ground handling, maintenance, fueling, catering or other support services. **(8)** Copies of lease and use agreements in effect at the airport.
c. Gate use requirement.	**(1)** Gate use monitoring policy, including schedules for monitoring, basis for monitoring activity (i.e., airline schedules, flight information display systems, etc.), and the process for distributing the product to interested carriers. **(2)** Requirements for signatory status and identity of signatory carriers. **(3)** Where applicable, minimum use requirements for leases (i.e., frequency of operations, number of seats, etc.). **(4)** The priorities, if any, employed to determine carriers that will be accommodated through forced sharing or sub-leasing arrangements. This must include a description of how these priorities are communicated to interested carriers. **(5)** Justifications for any differences in gate use requirements among tenants. **(6)** Usage policies for common-use gates, including, where applicable, a description of priorities for use of common-use gates. This should include an explanation of how these priorities are communicated to interested carriers. **(7)** Methods for calculating rental rates or fees for leased and common-use space. This should include an explanation of the basis for disparities in rental fees for common-use versus leased gates.

Table X-3 Required Initial Competition Plan Content

Per 49 USC § 47106(f), Competition Plans must include…	Per FAA policy, the following information must be provided to meet the requirements in 49 USC § 47106(f):
d. Gate-assignment policy.	**(1)** Gate assignment policy and method of informing existing carriers and new entrants of this policy. This must include standards and guidelines for gate usage and leasing, such as security deposits, minimum usage, if any, fees, terms, master agreements, signatory and non-signatory requirements. **(2)** Methods for announcing to tenant carriers when gates become available. The description must discuss whether all tenant air carriers receive information on gate availability and terms and conditions by the same process at the same time. **(3)** Methods for announcing to non-tenant carriers, including both those operating at the airport and those that have expressed an interest in initiating service, when gates become available, and policies on assigning remain overnight (RON) positions and how RON position availability announcements are made.
e. Financial constraints.	**(1)** The major source of revenue at the airport for terminal projects. **(2)** Rates and charges methodology (residual, compensatory, or hybrid). **(3)** Past use, if any, of Passenger Facility Charges for gates and related terminal projects. **(4)** Availability of discretionary income for airport capital improvement projects.
f. Airport controls over air and ground-side capacity.	**(1)** Majority-in-interest (MII) or no further rates and charges clauses covering groundside and airside projects. **(2)** Any capital construction projects that have been delayed or prevented because an MII was invoked. **(3)** Plans, if any, to modify existing MII agreements.
g. Whether the airport intends to build or acquire gates that would be used as common facilities.	**(1)** The number of common-use gates that the airport intends to build or acquire and the timeline for completing the process of acquisition or construction. This must include a description of the intended financing arrangements for these common-use gates, and whether the gates will be constructed in conjunction with preferential or exclusive-use gates. **(2)** Whether common-use gates will be constructed in conjunction with gates leased through exclusive or preferential-use arrangements. **(3)** Whether gates being used for international service are available for domestic service. **(4)** Whether air carriers that only serve domestic markets now operate from international gates. This must include a description and explanation of any disparity in their terminal rentals versus domestic terminal rentals.

Table X-3 Required Initial Competition Plan Content

Per 49 USC § 47106(f), Competition Plans must include…	Per FAA policy, the following information must be provided to meet the requirements in 49 USC § 47106(f):
h. Per 49 USC § 47107(a)(15), the method for making the Competition Plan available to the public.	**(1)** 49 USC § 47107(a)(15) requires sponsors to make special airport financial reports available to the public. Therefore, the Competition Plan must include the covered airport's method of satisfying this requirement. If web posting is employed, the filing must identify the precise web address where the Competition Plan material may be found. Per FAA policy, if a web posting is not employed, the reasons for this decision must be discussed in the submission.

X-7. Competition Plan Update Contents.

Per FAA Policy, Competition Plan updates must include the information in Table X-4.

Table X-4 Required Competition Plan Update Content

Per FAA Policy, Competition Plan updates must include also include…
a. Changes from Last FAA Approval. Information regarding new relevant changes in competitive circumstances at the airport since the previous FAA approval. If there have been no changes in competitive filing information, the airport must state that there has been no change since the previous plan approval. For new master lease agreements or significantly amended lease agreements, this includes a copy of the agreement, a written description of the changes in lease terms, and leasing practices or policies included in the lease document.
b. Reasons for Not Instituting FAA Recommendations. In instances in which the FAA has recommended that an airport adopt a particular management or operating practice and the airport has declined the recommendation, per FAA policy, the airport must explain the activities and/or procedures it is performing that would achieve the same result as the FAA's recommended practice.
c. Responses to FAA Questions. Responses to questions raised or recommendations included in previous FAA approvals.
d. Public Availability. 49 USC § 47107(a)(15) requires sponsors to make special airport financial reports available to the public. Therefore, the Competition Plan update must include the covered airport's method of satisfying this requirement. If web posting is employed, the filing must identify the precise web address where the Competition Plan update material may be found. If a web posting is not employed, the reasons for this decision must be discussed in the submission.

X-8. Sponsor Guidance.

Additional guidance that sponsors can use to reduce barriers to entry and enhance competitive access is contained in the current version of the document titled Highlights of Reported Actions

to Reduce Barriers to Entry and Enhance Competitive Access. Additional useful information is contained in the U.S Department of Transportation report titled Airport Business Practices and Their Impact on Airline Competition. See Appendix B for references and links to these documents.

X-9. Plan Review Process.

Per FAA policy, a joint OST/FAA team will review each plan to determine that the Competition Plan or Competition Plan update satisfies statutory requirements. APP-1 will advise the covered airport and the applicable regional office and ADO of all acceptances, identified deficiencies, or rejections in writing. The OST/FAA team has the option to contact the airport informally during the course of the Competition Plan review. This contact will generally take the form of a telephone conference call and may include a site visit.

X-10. Additional FAA Actions.

Per FAA policy, the FAA has the option to periodically review the implementation of competition plans of all covered airports and may conduct site visits to meet our obligation to ensure that each covered airport successfully implements its approved plan.

X-11. Plan Development Eligibility.

Per FAA Policy, competition plans and updates are only eligible for AIP funding as part of an eligible master planning project (not as a stand-alone project). Additionally, the scope of work for full master planning studies and updates for the full study must include a Competition Plan development or update as part of the effort (if the studies or updates include a review of terminal development and the airport is a covered airport). However, this requirement would not apply to master planning efforts that are either minor in scope or that are occurring at times that would create a duplication of effort with recently completed plans or updates.

Appendix Y. Buy American Guidance

Y-1. General Sponsor Buy American Requirements.

The Buy American Preferences under 49 USC § 50101 require that all steel and manufactured goods used in AIP funded projects be produced in the United States. Under 49 USC § 50101(c), ground transportation demonstration projects in 49 USC § 47127 are excluded. Sponsors must complete one of the three requirements in Table Y-1 for the AIP projects (including ineligible or non-AIP funded work included in the same contract).

Table Y-1 General Sponsor Buy American Requirements

All sponsors must complete one of the following for AIP funded projects…
(1) Certify, in writing, all products are wholly produced in America and are of 100% U.S. materials.
(2) Certify that all equipment that is being used on the project is on the Nationwide Buy American conformance list.
(3) Request a waiver to use non- U.S. produced products.

Y-2. Other Buy American and Buy America Requirements.

There are other Buy American and Buy America preference rules and requirements imposed by other federal agencies that may differ from the AIP Buy American guidance. That is because there are difference statutory requirements for other federal agencies and grant programs that do not apply to AIP.

Y-3. Changes Orders and Buy American Requirements.

A change order to a project requires a separate Buy American review and may require an ADO determination.

Y-4. Buy American Waiver Process and Delegation.

Under 49 USC § 50101(b) and 49 CFR Subtitle A § 1.83(a)(11), the FAA is given the authority to waive these Buy American Preferences if certain market or product conditions exist. Many pieces of equipment are constructed with some non- U.S. produced components or subcomponents. Therefore, it is expected that the sponsor will have to request a waivers on a majority of projects (unless the project is constructed of materials that already have a nationwide waiver). The four types of Buy American waivers that the FAA may be issued are listed in Table Y-2.

The responsibility for Type I and II waivers, as well as any nationwide waivers remains with APP-500. The ADOs have been delegated the authority to issue Type III and Type IV waivers to a sponsor on a project level.

Table Y-2 Criteria by Buy American Waiver Type

For the following…	The following criteria apply…
Type I Waiver	Per 49 USC § 50101(b)(1), the FAA can issue this type of waiver if the FAA determines that applying the Buy American requirements would be inconsistent with the public interest. Due to the possible national implications of such a waiver, APP-500 is responsible for reviewing and issuing Type I Waivers.
Type II Waiver	Per 49 USC § 50101(b)(2), the FAA can issue this type of waiver for equipment or construction material if the FAA determines that the goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality. Type II Waivers can only be issued on the equipment/construction material level and cannot be issued for a system and/or facility that is comprised of various pieces of equipment/construction material. These waivers are issued by APP-500, after the FAA publishes a Federal Register Notice asking manufacturers to advise the FAA if they manufacture the equipment/material that is seeking a waiver and if their product meets the FAA specifications and Buy American requirements. After manufacturers respond to this notice, APP-500 will make a determination if there is insufficient quantity or quality.
Type III Waiver	Per 49 USC § 50101(b)(3), the FAA can issue this type of waiver if the FAA determines that 60% or more of the components and subcomponents in the equipment/facility are of U.S. origin and their final assembly is in the United States. A Type III Waiver cannot be issued at the system level and must be issued for each piece of equipment; however, in the case of facilities a Type III Waiver may be issued for the entire facility if all the construction materials when combined meet the 60% U.S. origin requirement. The ADO may issue these waivers. For block grant state projects, only the FAA (usually the ADO) may issue the waivers. Block grant states are not allowed to issue a waiver. To complete a Type III Waiver request the following supporting documentation must be submitted by the requester: (1) A completed Buy American Content Percentage Calculation Worksheet. Per 49 USC § 50101(c), labor costs at final assembly must be excluded from this worksheet. This is because the Buy American statute is based on the cost of materials and equipment, not labor. (2) A completed Final Assembly Questionnaire. Final assembly in the United States must meet the standard defined below under Final Assembly Location. (3) The manufacturer must certify in writing that any major structural steel used in their equipment is of 100% U.S. origin. Small amounts of steel that are used in components and subcomponents, that are not structural steel, may be of foreign origin. This would typically consist of nuts, bolts and clips. For these types of steel, the manufacturer must indicate the use of the steel (nuts, bolts, clips, etc.) and must count this steel as non-U.S. origin when completing the Content Percentage Calculation Form. Per FAA policy, after the ADO reviews the waiver request, the ADO must send a notification to the requester informing them of the approval or disapproval of the waiver. The ADO must use the following language in this notification for project specific waivers: *I have reviewed the request for Waiver of Buy American Requirement submitted by XXX for the use of XXXXX equipment on the subject project. The information submitted by XXXX satisfies the requirement for waiver of the requirements of 49 USC § 50101 based on XX% of the cost of components and*

Table Y-2 Criteria by Buy American Waiver Type

For the following…	The following criteria apply…
	subcomponents to be used in the project being produced in the United States with final assembly being performed in XXXXXXX. The waiver is hereby approved for use on this AIP grant project. The ADO must place a copy of the notifications in the grant file. Following this notification, no further action is required.
Type IV Waiver	Per 49 USC § 50101(b)(4), the FAA can issue this type of waiver if the FAA determines that applying Buy American requirements increases the cost of the overall project by more than 25%. The ADO may issue these waivers. For block grant state projects, only the FAA (usually the ADO) may issue the waivers. Block grant states are not allowed to issue a waiver. In order to issue this type of waiver, the FAA must determine that there is at least one bid from a Buy American compliant supplier to make the 25% cost increase determination. Per FAA policy, after the ADO reviews the waiver request, the ADO must send a notification to the requester informing them of the approval or disapproval of the waiver. The ADO must use the following language in this notification for project specific waivers: *I have reviewed the request for Waiver of Buy American Requirement submitted by XXX for the use of XXXXX equipment on the subject project. The information submitted by XXXX satisfies the requirement for waiver of the requirements of 49 USC § 50101 that including domestic material will increase the cost of the overall project by more than 25%. The waiver is hereby approved for use on this AIP grant project*. The ADO must place a copy of the notifications in the grant file. Following this notification no further action is required.

Y-5. National Buy American Waiver.

APP-500 may issue National Waivers for certain equipment/material that is used frequently in AIP funded projects. APP-500 will list these National Waivers on the FAA Office of Airports website under the Buy American Conformance List. Any equipment or materials on the Buy American Conformance List do not need additional waiver materials. All personnel not in APP-500 must direct any manufacturer seeking to be added to this Buy American Conformance List to APP-500.

Y-6. Definitions.

To assist in making Buy American Waiver determinations the following definitions apply:

Table Y-3 Buy American Specific Definitions

Buy American Waiver specific definitions include…
a. Project. The *Project* is generally the project that is being bid or procured. The *Project* does not extend over multiple grants or phases, even though the overall project may be phased or may be built in multiple bid packages.
b. Facility or Equipment. This will be defined differently depending on the project. For a building, the portion of the building that is being funded under the AIP grant is the *facility* listed in the waiver. For other projects, the bid items as described in the current version of Advisory Circular 150/5370-10, Standards for Specifying Construction of Airports, will generally be the *equipment* referred to in the waiver except for airfield electrical equipment. For airfield electrical equipment, the L- items listed in the Addendum to the current version of Advisory Circular 150/5345-53, Airport Lighting Equipment Certification Program, will generally be the *equipment* referred to in the waiver. For a vehicle or single piece of equipment like a snow plow or ARFF vehicle, the single vehicle itself is the *equipment*.
c. Final Assembly Location. Final assembly is a process whereby assembly is meaningful and complex utilizing a substantial amount of time and resources, a number of different assembly operations, and a high level of skilled labor. The Final Assembly Questionnaire must be completed in order to determine whether final assembly occurs at the recorded site.
d. Nonavailable Items. By FAA policy, the list of items that have been determined nonavailable per 48 CFR § 25.104 or FAA Procurement Guidance AMS 3.6.4d., Excepted Articles, Materials, and Supplies, are excluded from the Buy American preference requirements for AIP funded projects. This list includes petroleum products; therefore, asphalt is a nonavailable item per this list. In addition, the FAA has determined that cement and concrete are also nonavailable items excluded from the Buy American preference requirements (although the steel used for reinforcement, ties, stirrups, etc. must meet Buy American).

Appendix Z. Grant Assurances

Z-1. General.

There are three sets of grant assurances (Sponsor, Planning Agency, and Non-Sponsors Undertaking Noise Compatibility Program Projects).

The sets include only those assurances that apply to the project and/or sponsor type. For each sponsor type, Table 2-4 lists the entities that qualify for that sponsor type, the types of projects they may receive a grant for, and the set of grant assurances they must follow.

The current version of these three sets of assurances can be obtained from the FAA Office of Airports website (see Appendix B for link). This appendix is provided as a place to store printed versions of the assurances in hard copies of this Handbook.

Appendix AA. Federal Share at Public Land State Airports

AA-1. General Federal Share Definition.

The United States Government's share of project costs on an AIP grant (also known as federal share or federal match) is defined in 49 USC § 47109. The federal share varies by airport size and is generally 75% for large and medium hub airports and 90% for all other airports. The share applicable to a generic class of airports is called the *general federal share*.

AA-2. Public Land States Definition.

Since the early days of federal participation in airport infrastructure projects, Congress has provided a higher federal share at airports located in states with more than 5% of their geographic acreage comprised of unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal). Land fitting this definition is called federal land and states meeting the statutory criteria are called public land states.

There are currently 13 public land states whose federal lands account for between 6.6% (Washington) and 69.23% (Nevada) of the states' total acreage. The federal land percentages in each of the public land states are identified in Table AA-1. The FAA obtained these percentages from Federal Highway Administration (FHWA) data published pursuant to 23 USC § 120(b)(1), effective March 17, 1992, published in the Federal Register at 58 Federal Register 123 [page 158].

Table AA-1 Federally-Controlled Acreage in Public Land States

For the following state…	The percentage of unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) in the State is…
(1) Alaska	34.03%
(2) Arizona	43.37%
(3) California	15.74%
(4) Colorado	12.06%
(5) Idaho	22.69%
(6) Montana	12.42%
(7) Nevada	69.23%
(8) New Mexico	26.44%
(9) Oregon	22.23%
(10) South Dakota	9.72%

Table AA-1 Federally-Controlled Acreage in Public Land States

For the following state…	The percentage of unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) in the State is…
(11) Utah	41.83%
(12) Washington	6.6%
(13) Wyoming	27.58%

AA-3. History of the Public Land Share Formula.

Since 1970, airport projects in these public land states have been eligible for increased federal contributions calculated using a series of complex, legislatively-defined formulas. These grant federal share formulas for public land states have changed over time to keep pace with legislative changes in general federal shares. The federal participation rates at airports in public land states are calculated using the prevailing general federal share for each classification of airports in 49 USC § 47109.

Between 1970 and 1980, Congress adjusted the general federal shares significantly through a series of amendments to the Airport and Airway Development Act of 1970. ADAP was the predecessor grant program to AIP. The laws that changed the federal share during ADAP were Public Law 91-258 (May 21, 1970), Public Law 93-44 (June 18, 1973), Public Law 94-353 (July 12, 1976), Public Law 96-415 (November 15, 1979), Public Law 93-44 (July 18, 1973), and Public Law 94-353 (July 12, 1976). As the general federal shares for grants have increased, Congress changed the public land state formulas to ensure that smaller airports in public land states received some consideration for the large inventories of federal lands. The legislative formulas under 49 USC § 47109 part ‘b’ and ‘c’ reference the general federal shares on two specific dates: June 30, 1975 and August 3, 1979. Table AA-2 illustrates the changes in the general federal share from 1970 to 1980, highlighting the general federal shares on the two dates of interest.

AIP was established in 1982. The general federal share under AIP for large and medium hub primary airport grants stabilized at 75%, and the general federal share for other airport grants increased and then stabilized at 90%. The laws that changed the federal share during this period were Public Law 97-248, Section 513(b)(5); (September 3, 1982); Public Law 100-223, Section 111(a)(2) (December 30, 1987); and Public Law 102-581, Section 110(b) (October 31, 1992).

In 2003, Congress passed the FAA Century of Aviation Reauthorization Act (Vision 100), Public Law 108-176, Section 161 (December 12, 2003), which temporarily increased the general federal share of grants at small hub primary, nonhub primary, nonprimary commercial service airports, nonprimary general aviation, and reliever airports to 95%. This increase to 95% was greater than the maximum federal share (93.75%) that could be calculated under the public land state formulas. Therefore, there was no reason to calculate the public land state federal grant

share while Vision 100 was in effect, since the 95% general federal share would always be greater than the maximum public land state percentage. Therefore, between 2003 and 2011, the public land state airports – along with other small airports in the United States – generally received a federal share of 95% for AIP grants.

In 2012, Congress passed the FAA Modernization and Reform Act of 2012 (FMRA), Public Law 112-95 (February 14, 2012), which did not retain the increased general federal share provision of Vision 100. Most airports that had been receiving the higher Vision 100 share of 95% reverted to the prior general federal share of 90%. Smaller airports in public land states reverted to the shares calculated under the public land state formulas, which allowed a federal share of up to 93.75%.

Table AA-2 Federal Shares by Airport Classification in Public-Land States Between 1970 and 1980

Year	Large Hub Airports	Medium Hub Airports	Small Hub Primary, Nonhub Primary and Nonprimary Commercial Service Airports*	Non-primary General Aviation and Reliever Airports*
a. 1970 – 1973	50%	50%	50%	50%
b. 1974 – 1975 (part 'b' reference)	50%	75%	75%	75%
c. 1976 – 1978	75%	75%	90%	90%
d. 1979 (part 'c' reference) – 1980	75%	75%	80%	80%

AA-4. Calculating the Federal Share in Public Land States Using the Part 'b' and Part 'c' Formulas.

49 USC § 47109 includes two sets of instructions for calculating the federal share at airports in public land states. Part 'b' provides the general formula for all airports in public land states. Part 'c' provides an additional formula that only applies to small hub primary, nonhub primary and nonprimary commercial service airports.

AA-5. Part 'b' Formula.

The Part 'b' formula applies to airports of all sizes and involves a multi-part analysis. The calculation involves a yes/no test to determine whether a specific class of airports in a public land state is eligible for an adjusted federal share calculation. If yes, a three-part formula is used to calculate the appropriate share as shown in Table AA-3.

The numerical values and results of the Part 'b' calculation for all airport classes in public land states are contained in Table AA-4. In each row, the highlighted cell identifies the federal share percentage that governs in that instance, based on the statutory formulas. Note that the federal shares for small hub primary, nonhub primary and nonprimary commercial service airports in Table AA-4 may change as a result of the part 'c' calculation discussed in the *Grandfather Rule* section to follow.

Table AA-3 Yes/No Test for Part 'b' Calculation

Is the Current General Federal Share (Column C of Table AA-4) less than the 1975 Share (Column B of Table AA-4)?	**Then the Federal Share is…**
a. No	The Current Share (Column C of Table AA-4)
b. Yes	The lessor of: **(1)** The Current Share Increased by 25% (Column E of Table AA-4) **(2)** The Current Share + 1/2 the Public Land Percent (Column F of Table AA-4) **(3)** The 1975 Share (Column G of Table AA-4)

Table AA-4 Part 'b' Calculation Results (see Table AA-5 for columns marked *)

State/ Airport Type*	**A*** % Public Land	**B*** Federal Share, % in 1975	**C** Current Federal Share (FMRA)	**D (y/n)** Is Current Share < 1975?	**E* (calc 1)** Current Share Increased by 25%	**F (calc 2)** Current Share Increased by 1/2 Public Land %	**G (calc 3)** Increased to = 1975 Fed Share	**H** Part 'b' Results
Alaska	**34.03**							
LH		62.5	75	no				75.00
MH		93.75	75	yes	93.75	87.76	93.75	87.76
SH, NHP, & NPCS		93.75	90	yes	112.5	105.31	93.75	93.75
GA & RL		93.75	90	yes	112.5	105.31	93.75	93.75
Arizona	**43.37**							
LH		60.65	75	no				75

Table AA-4 Part 'b' Calculation Results (see Table AA-5 for columns marked *)

State/ Airport Type*	A* % Public Land	B* Federal Share, % in 1975	C Current Federal Share (FMRA)	D (y/n) Is Current Share < 1975?	E* (calc 1) Current Share Increased by 25%	F (calc 2) Current Share Increased by 1/2 Public Land %	G (calc 3) Increased to = 1975 Fed Share	H Part 'b' Results
MH		91.06	75	yes	93.75	91.26	91.06	91.06
SH, NHP, & NPCS		91.06	90	yes	112.5	109.52	91.06	91.06
GA & RL		91.06	90	yes	112.5	109.52	91.06	91.06
California	**15.74**							
LH		53.72	75	no				75
MH		80.59	75	yes	93.75	80.90	80.59	80.59
SH, NHP, & NPCS		80.59	90	no				90
GA & RL		80.59	90	no				90
Colorado	**12.06**							
LH		52.68	75	no				75
MH		79.02	75	yes	93.75	79.52	79.02	79.02
SH, NHP, & NPCS		79.02	90	no				90
GA & RL		79.02	90	no				90
Idaho	**22.69**							
LH		55.78	75	no				75
MH		83.64	75	yes	93.75	83.51	83.64	83.51
SH, NHP, & NPCS		83.64	90	no				90
GA & RL		83.64	90	no				90

Table AA-4 Part 'b' Calculation Results (see Table AA-5 for columns marked *)

State/ Airport Type*	A* % Public Land	B* Federal Share, % in 1975	C Current Federal Share (FMRA)	D (y/n) Is Current Share < 1975?	E* (calc 1) Current Share Increased by 25%	F (calc 2) Current Share Increased by 1/2 Public Land %	G (calc 3) Increased to = 1975 Fed Share	H Part 'b' Results
Montana	**12.42**							
LH		52.98	75	no				75
MH		79.47	75	yes	93.75	79.66	79.47	79.47
SH, NHP, & NPCS		79.47	90	no				90
GA & RL		79.47	90	no				90
Nevada	**69.23**							
LH		62.5	75	no				75
MH		93.75	75	yes	93.75	100.96	93.75	93.75
SH, NHP, & NPCS		93.75	90	yes	112.5	121.15	93.75	93.75
GA & RL		93.75	90	yes	112.5	121.15	93.75	93.75
New Mexico	**26.44**							
LH		56.16	75	no				75
MH		84.29	75	yes	93.75	84.92	84.29	84.29
SH, NHP, & NPCS		84.29	90	no				90
GA & RL		84.29	90	no				90
Oregon	**22.23**							
LH		55.66	75	no				75
MH		83.33	75	yes	93.75	83.34	83.33	83.33
SH, NHP, & NPCS		83.33	90	no				90

Table AA-4 Part 'b' Calculation Results (see Table AA-5 for columns marked *)

State/ Airport Type*	A* % Public Land	B* Federal Share, % in 1975	C Current Federal Share (FMRA)	D (y/n) Is Current Share < 1975?	E* (calc 1) Current Share Increased by 25%	F (calc 2) Current Share Increased by 1/2 Public Land %	G (calc 3) Increased to = 1975 Fed Share	H Part 'b' Results
GA & RL		83.33	90	no				90
South Dakota	**9.72**							
LH		52.57	75	no				75
MH		78.55	75	yes	93.75	78.65	78.55	78.55
SH, NHP, & NPCS		78.55	90	no				90
GA & RL		78.55	90	no				90
Utah	**41.83**							
LH		60.65	75	no				75
MH		90.63	75	yes	93.75	90.69	90.63	90.63
SH, NHP, & NPCS		90.63	90	yes	112.5	108.82	90.63	90.63
GA & RL		90.63	90	yes	112.5	108.82	90.63	90.63
Washington	**6.6**							
LH		51.52	75	no				75
MH		77.31	75	yes	93.75	77.48	77.31	77.31
SH, NHP, & NPCS		77.31	90	no				90
GA & RL		77.31	90	no				90
Wyoming	**27.58**							
LH		56.33	75	no				75
MH		84.58	75	yes	93.75	85.34	84.58	84.58

Table AA-4 Part 'b' Calculation Results (see Table AA-5 for columns marked *)

State/ Airport Type*	A* % Public Land	B* Federal Share, % in 1975	C Current Federal Share (FMRA)	D (y/n) Is Current Share < 1975?	E* (calc 1) Current Share Increased by 25%	F (calc 2) Current Share Increased by 1/2 Public Land %	G (calc 3) Increased to = 1975 Fed Share	H Part 'b' Results
SH, NHP, & NPCS		84.58	90	no				90
GA & RL		84.58	90	no				90

Table AA-5 Column Notes for Table AA-4

For Column…	The following applies…
(1) State/Airport Type	LH = Large Hub MH = Medium Hub SH = Small Hub NHP = Non Hub Primary NPCS = Nonprimary Commercial Service GA = General Aviation RL = Reliever
(2) A - % Public Land	The actual percentage of public land in a state was last calculated in 1992 by the Department of Interior (DOI). According to DOI, the agency stopped calculating this statistic because the source data comes from five separate federal agencies, none of which collect and report data consistently. Because the AIP statute directs FAA to use these statistics, and 1992 was the last year these statistics were produced, FAA continues to rely on the 1992 DOI public land inventories (published in 58 Federal Register 128, 158 (January 4, 1993)) to calculate current federal share.

Table AA-5 Column Notes for Table AA-4

For Column…	The following applies…
(3) B - Federal Share % in 1975	The adjusted federal shares for large hub airports were published in 37 Federal Register 11014, 11023 (June, 1972). In 1974, Congress increased the general federal share to 75% for all airports enplaning less than 1% of passengers in 1974. The Airport Development Acceleration Act, enacted on June 18, 1973, amended the Airport and Airway Development Act of 1970 (Pub. L. 91-258). The Act became effective for grants issued during Federal Fiscal Year 1974, which began July 1, 1973. While this change affected airports categorized as medium hubs and smaller, the FAA did not publish adjusted rates for the smaller airports until 1979. While the Part 'b' calculation requires a comparison to the rates in place for these smaller airports in 1975, the FAA is using the 1979 published shares as a proxy for the 1975 rates for smaller airports. These rates have been used by the FAA for at least 10 years to perform the Part 'b' calculations.
(4) E (calc 1) - Current share Increased by 25%	The statutory formula to increase the current federal share by 1/2 the public land percentage is calculated by multiplicatively, not additively. To be consistent with the Column D directive to increase current federal share by 25%, Column E is calculated by increasing the current federal share by the percentage equal to 1/2 the state's public land percentage. For example, in Alaska, where the federal land accounts for 34.03% of the state's acreage, Column E is calculated by increasing the current federal share (75) by 17.015%. [Federal Share = 75+(0.17 *75)].

AA-6. Part 'c' Calculation (the Grandfather Rule).

In Vision 100 (passed in 2003), Congress amended 49 USC § 47109 to include a provision that applies to only small hub primary, nonhub primary and nonprimary commercial service airports in public land states. This provision, which applies in addition to the Part 'b' calculation, is codified in 49 USC § 47109(c) and is called the Part 'c' formula or *Grandfather Rule*.

Table AA-6 identifies the calculated federal shares for small hub primary, nonhub primary and nonprimary commercial service airports in public land states. The Part 'c' formula calculates the ratio of the 1979 general federal share for small hub primary, nonhub primary and nonprimary commercial service airports (80%) to the 1979 public land state adjusted share (Col. A) and applies that ratio to the current federal share. The resulting adjusted federal share (Col. B) cannot exceed the maximum percentage calculated for small hub primary, nonhub primary and nonprimary commercial service airports under Part 'b' (Col. C) or 93.75% (Col. D). The shaded table cells represent the determined or calculated share resulting from the Part 'b' or Part 'c' formulas.

Formula: 80 / A = 90 / B where B is subject to the maximum of C and D

Table AA-6 Part ‘c’ Calculation

State	A Adjusted Fed Share in 1979	B Adjusted Federal Share (Current	C Max Part 'b' Calculation	D Maximum of 93.75%	Part ‘c’ Results
a. Non Public-Land States (all those not listed below)	80.00%	90.00%	NA	NA	90.00%
b. Alaska	93.75%	105.47%	93.75%	93.75%	93.75%
c. Arizona	91.06%	102.44%	91.06%	91.06%	91.06%
d. California	80.59%	90.66%	NA	90.66%	90.66%
e. Colorado	80.00%	90.00%	NA	90.00%	90.00%
f. Idaho	83.64%	94.10%	NA	93.75%	93.75%
g. Montana	80.00%	90.00%	NA	90.00%	90.00%
h. Nevada	93.75%	105.47%	93.75%	93.75%	93.75%
i. New Mexico	84.29%	94.83%	NA	93.75%	93.75%
j. Oregon	83.54%	93.98%	NA	93.75%	93.75%
k. South Dakota	80.00%	90.00%	NA	90	90.00%
l. Utah	90.94%	102.31%	90.63%	90.63	90.63%
m. Washington	80.00%	90.00%	NA	90.00	90.00%
n. Wyoming	84.58%	95.15%	NA	93.75%	93.75%

AA-7. Public Land State Federal Share Results.

Table 4-8 contains the final federal share calculation using the part ‘b’ and part ‘c’ calculations.

Appendix BB. Establishment and Category Upgrade Policy for Instrument Landing Systems

BB-1. Background.

In September 2000, the Office of Airports and the Air Traffic Organization issued a policy on the Establishment and Category Upgrade Policy for Instrument Landing Systems. In 2014, that policy was replaced by an updated policy. This updated policy cancels and replaces that policy.

The 2014 policy recognized that the Federal Aviation Administration (FAA) would be moving away from ground based instrument landing systems to GPS approaches using Area Navigation (RNAV) that would allow properly equipped aircraft to fly approaches to airports that previously required ground based equipment. The 2000 policy established that the Air Traffic Facilities and Equipment (F&E) would exclusively fund ILS projects at existing runways and that AIP funds would be the primary source for funding ILS project for new runways and significant runway extension project where an ILS was not previously installed.

Significant progress has been made since that time and as a result, this policy replaces the 2000 policy. Today, RNAV approaches provide equivalent instrument approach capability as ground based equipment can for Category (Cat) I approaches. Currently there are 12,740 published RNAV instrument flight procedures in the NAS, including 3,541 Wide Area Augmentation System (WAAS)-enabled RNAV approaches. This compares to 1,283 ILS procedures. FAA estimates that about 65% of general aviation aircraft that fly under instrument flight rules in the NAS have WAAS receivers installed. About 97% of the general aviation fleet that routinely flies under instrument flight rules have WAAS receivers installed.

About 50% of air carrier aircraft have Required Navigation Performance (RNP) navigation equipment installed that provides similar capabilities to WAAS. About 68% of air carrier aircraft can fly RNAV Vertical Navigation (VNAV) to somewhat higher minimums. With the majority of the aircraft fleet having the avionics installed to fly RNAV approaches, the addition of new Cat I precision approach capabilities to the NAS will be accomplished with more cost-effective RNAV rather than ILS.

BB-2. Use of RNAV Approaches Instead of Cat I ILS Systems.

Development of an RNAV Approach will be used instead of installation of a new Cat I ILS at all locations where technically feasible.

BB-3. Facilities and Equipment (F&E) Funding for Cat I ILSs.

On December 15, 2011, FAA announced in 76 FR 77939 that “In order to maximize operational benefits and take advantage of the cost savings associated with WAAS, the FAA no longer intends to establish new Category I ILSs using Facilities and Equipment (F&E) funding.” In the same notice, FAA announced consideration of “…programmatic changes under AIP that would favor WAAS for new precision approaches at airports, rather than ILS.” This policy is consistent with these announcements and is also consistent with current practice. FAA has not installed a new Cat I ILS using F&E in over 10 years.

BB-4. AIP Funding for Cat I ILSs.

At most airports, it is no longer cost effective or operationally justified to install a new Cat I ILS where an RNAV approach can provide nearly equivalent capabilities.

Therefore, instead of installing Cat I ILS for new runways or significant runway extension projects where an ILS was not presently installed, AIP funds will be the primary source of completing an RNAV survey.

The airport sponsor can then coordinate the development of an RNAV approach with the Airport District Office (ADOs) and Flight Procedures Office.

In the rare instances where the FAA has determined that an RNAV approach is not suitable for a given location, the airport sponsor can request a waiver of this policy from the Director of Airport Planning and Programming (APP-1) to enable AIP funding of a traditional ILS.

BB-5. AIP or F&E Funding of Cat II/III ILSs.

AIP or F&E Funding of Cat II/III ILS Systems will continue until GBAS technology allows use RNAV instead of ground based systems.

Later in the decade, Ground-Based Augmentation Systems (GBAS) are expected to enable similar RNAV approaches to Cat II/III minima. When the technology is certified, FAA anticipates further policy amendments to favor non-federal GBAS installations, rather than new ILS, to deliver Cat II/III access capabilities. Until that time, AIP funds will continue to be the primary source of funding for a justified Cat II/III ILS on a new runway or major new extension.

BB-6. AIP Transition from ILS to RNAV.

a. Airport Owned ILS that has reached the end of its useful life. For any existing airport-owned ILS equipment that has reached the end of its useful life, ARP can support the replacement of the equipment by supporting a project for the RNAV survey. Alternatively, if the airport wishes to replace the equipment with other ground based ILS equipment, ARP will consider supporting the replacement of the individual components up to the reasonable cost of the RNAV survey, but the equipment replacement will not qualify for the takeover provisions found in 49 USC § 44502(e), which requires the FAA to take over ownership of the ground based equipment.

b. FAA Owned ILS. Because of budget augmentation issues, AIP funds cannot be used to upgrade or replace ground based equipment that is owned by the FAA. (There is a limited exception where the FAA-owned equipment is impacted by an AIP funded project that is unchanged by this policy.) There is no change to the eligibility of AIP funds being used for justified airfield lighting improvements (such as the installation of a threshold bar or in-pavement centerline runway lights) that are needed to support upgraded approaches.

c. Airport Takeover of F&E Owned ILS. As the FAA transitions from ground based instrument landing systems to GPS approaches using RNAV, an airport may opt to recover ownership of FAA-owned ILS. In that case, the FAA will treat the equipment as a donation to

the sponsor and the eligibility of equipment replacement that has reached the end of its useful life will be as discussed above.

Appendix CC. Impact of the Transition to 2 CFR 200 on the AIP Handbook

CC-1. 2 CFR 200 Compilation of Existing Circulars.

The Office of Management and Budget published the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule, in 78 Federal Register Notice 78590 (December 26, 2013). This final guidance contains the administrative requirements formerly contained in (A-110 and A-102), cost principles (A-21, A-87, and A-122), and audit requirements (A-50, A-89, and A-133) for federal awards.

CC-2. Effective/Applicability Date.

OMB has required the Department of Transportation to publish a regulation adopting the policies and procedures that are applicable to federal awards by December 26, 2014. Therefore the standards in 2 CFR 200 will apply to AIP grants and sponsors once the Department of Transportation implements the regulation.

CC-3. AIP Transition to 2 CFR 200.

This version of the AIP Handbook uses the current references to published policy, for example to OMB Circular A-87. Once 2 CFR 200 is adopted by DOT, this Handbook will be revised to replace the references as applicable.

CC-4. Cancelation of 49 CFR part 18 (2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards).

As part of the DOT publication of a regulation adopting 2 CFR 200, DOT may cancel 49 CFR part 18 (2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards). If the DOT regulation adopting 2 CFR 200 does cancel 49 CFR part 18 (2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards), the references to 49 CFR part 18 (2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards) will be replaced with a subsequent publication of this Handbook.

Table C-1: 49 CFR § 18.36 – 2 CFR 200 Crosswalk

49 CFR § 18.36 Procurement.	2 CFR 200 Subpart D, Procurement Standards
(a) States	(2 CFR § 200.317, Procurements by states)
(b) Procurement standards	(2 CFR § 200.318, General procurement standards)
(b)(8)	2 CFR § 200.318(h)
(b)(10)(1)	2 CFR § 200.318(j)(1)
(b)(11)	2 CFR § 200.318(k)

Table C-1: 49 CFR § 18.36 – 2 CFR 200 Crosswalk

(b)(12)	2 CFR § 200.318(k)
49 CFR § 18.36(b)(12)(ii)	2 CFR § 200.318(k)
49 CFR § 18.36(c)Competition	2 CFR § 200.319, Competition
49 CFR § 18.36(c)(1)	2 CFR § 200.319(a)
49 CFR § 18.36(d) Methods of procurement to be followed	2 CFR § 200.320, Methods of procurement to be followed
49 CFR § 18.36(d)(1) Procurement by small purchase procedures	2 CFR § 200.320(b) Procurement by small purchase procedures
49 CFR § 18.36(d)(2) Procurement by sealed bids (formal advertising)	2 CFR § 200.320(c) Procurement by sealed bids (formal advertising
49 CFR § 18.36(d)(2)(i)(B)	2 CFR § 200.320(c)(1)(ii)
49 CFR § 18.36(d)(3) Procurement by competitive proposals	2 CFR § 200.320(d) Procurement by competitive proposals.
49 CFR § 18.36(d)(4) Procurement by noncompetitive proposals	2 CFR § 200.320(f) Procurement by noncompetitive proposals
49 CFR § 18.36(d)(4)(i)	2 CFR § 200.320(f) Procurement by noncompetitive proposals
49 CFR § 18.36(e)Contracting with small and minority firms	2 CFR § 200.321, Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms
49 CFR § 18.36(f)Contract cost and price	2 CFR § 200.323, Contract cost and price
49 CFR § 18.36(f)(1)	2 CFR § 200.323(a)
49 CFR § 18.36(f)(2)	2 CFR § 200.323(b)
49 CFR § 18.36(f)(4)	2 CFR § 200.323(d)
49 CFR § 18.36(g) Awarding agency review	2 CFR § 200.324, Federal awarding agency or pass-through entity review
49 CFR § 18.36(g)(1)	2 CFR § 200.324(a)
49 CFR § 18.36(g)(2)	2 CFR § 200.324(b)
49 CFR § 18.36(g)(2)(v)	2 CFR § 200.324(b)(5)

Table C-1: 49 CFR § 18.36 – 2 CFR 200 Crosswalk

49 CFR § 18.36(g)(3)	2 CFR § 200.324(c)
49 CFR § 18.36(h) Bonding requirements	2 CFR § 200.325, Bonding requirements
49 CFR § 18.36(i) Contract provisions	2 CFR § 200.326, Contract provisions
49 CFR § 18.36(i)(4)	2 CFR 200, Appendix II (D)
49 CFR § 18.36(i)(5)	2 CFR 200, Appendix II (D)
49 CFR § 18.36(i)(6)	2 CFR 200, Appendix II (E)
49 CFR § 18.36(i)(12)	2 CFR 200, Appendix II (G)
49 CFR § 18.36(j)—(t): references to U.S.C.	Not included in 2 CFR 200

CC-5. Differences Between AIP Policy and 2 CFR 200.

There are some differences between 2 CFR 200 and AIP policy. Where there are differences, the AIP policy always governs. This is because the AIP policy differences are based in statute, which governs when there is a difference between statute and federal regulation.

Some of the differences occur where 2 CFR 200 is addressing grant program administration. These differences are due principally because of the types of grant programs that are covered by 2 CFR 200. Examples are included in Table CC-1.

Some of the differences between AIP policy and 2 CFR 200 are listed in Table CC-2.

Table CC-1 Examples of Differences Where 2 CFR 200 Is Addressing Grant Program Administration

Examples include…
a. The Federal Highway Administration (FHWA) issues grants for a state's grant programs. The state Departments of Transportation then issue subgrants and administers the FHWA grant funding (this is similar to the FAA AIP Block Grant Program).
b. The AIP is a project grant program. AIP grants are written for a specific grant project. AIP grants do not allow a sponsor to use AIP to fund administration of the grant program, or to pay for sponsor overhead costs that are not specifically and directed related to a grant.

Table CC-2 Differences Between AIP Policy and 2 CFR 200

AIP Policy (which governs)	2 CFR 200	AIP Policy
a. Costs to recover improper payments are not allowable.	**§200.428** considers costs incurred recovering improper payments to be allowable costs. Costs to recover improper payments is part of grant program administration. AIP does not fund program administration. However, some federal grant programs are allowed to use grant funds for administration. These agencies do not have any other source of local funds, and must use grant funds to recover improper payments.	49 USC § 47110(b)(1) limits all costs paid with AIP funds must be *necessary* to carry out the project. It is the sponsor's responsibility to recover improper payments without using AIP funding to carry out the work effort.
b. Reserved		
c.		
d.		

R-K5 – FAA Order 5190.6B

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.

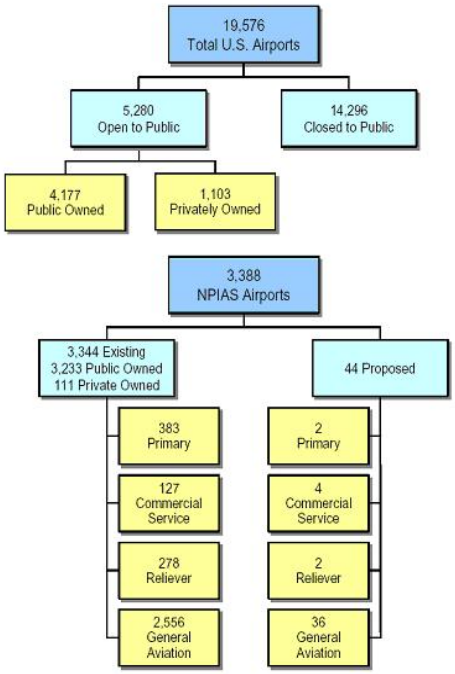
- The airport system should support national objectives for defense, emergency readiness, and postal delivery.

- 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.

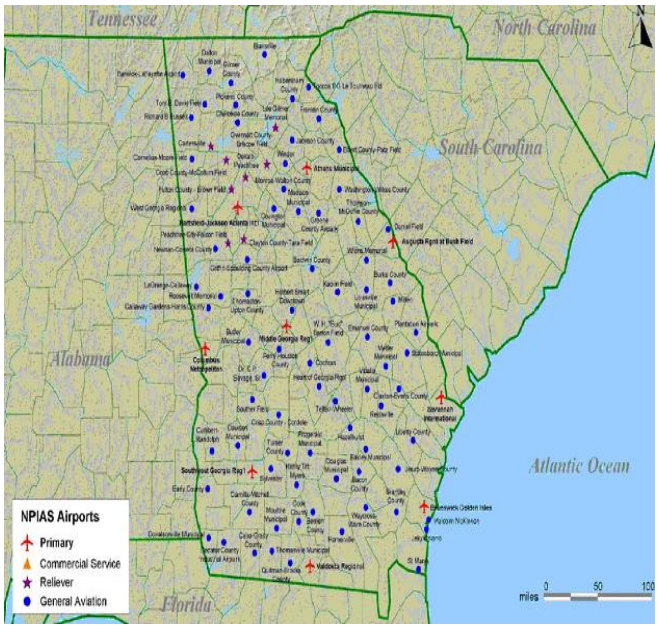
Airports should be permanent with assurance that they will remain open for aeronautical use over the long term.

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

Number of Airports by Ownership and Use (January 2004)



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).

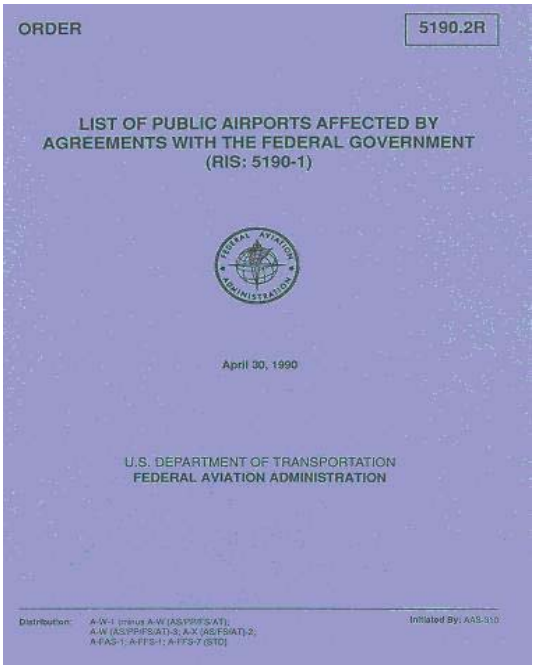
e. Amendment, Modification, or Release of Airport Sponsor Federal Obligations. The authority of the FAA to release or modify the terms and conditions of airport sponsor grant agreements varies based on the respective types of agreements. P.L. No. 81-311 prescribes specific circumstances and conditions 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

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.

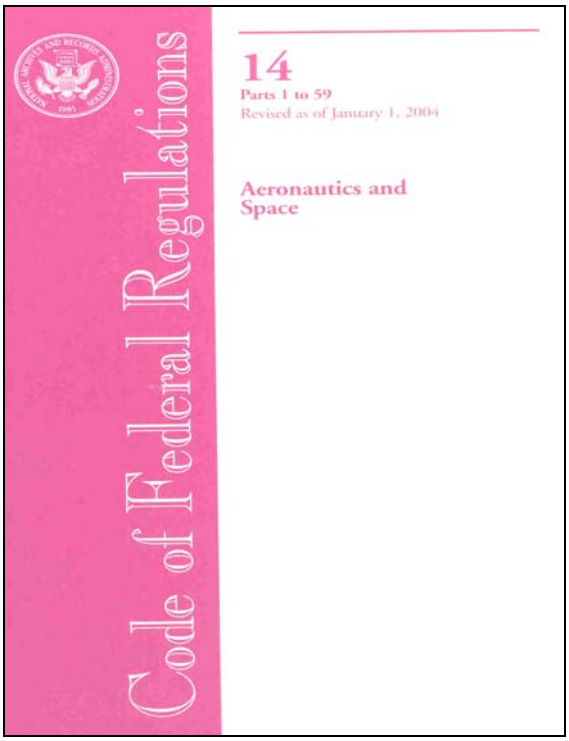
a. Education. The education of sponsors may take many forms, beginning when the sponsor receives its first federal grant or transfer of federal property. ADOs and FAA regional airports divisions should discuss with first-time sponsors the impact of specific grant assurances and/or land transfer federal 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
> 2 AIRPORT NAME: ST LOUIS DOWNTOWN
3 CBD TO AIRPORT (NM): 01 E
4 STATE: IL
6 REGION/ADO: AGL/CHI
LOC ID: CPS
5 COUNTY: ST CLAIR IL
7 SECT AERO CHT: ST LOUIS
FAA SITE NR: 04458.8*A

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. **Environmental Requirements**: 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. **Other Obligations:** 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

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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.

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.

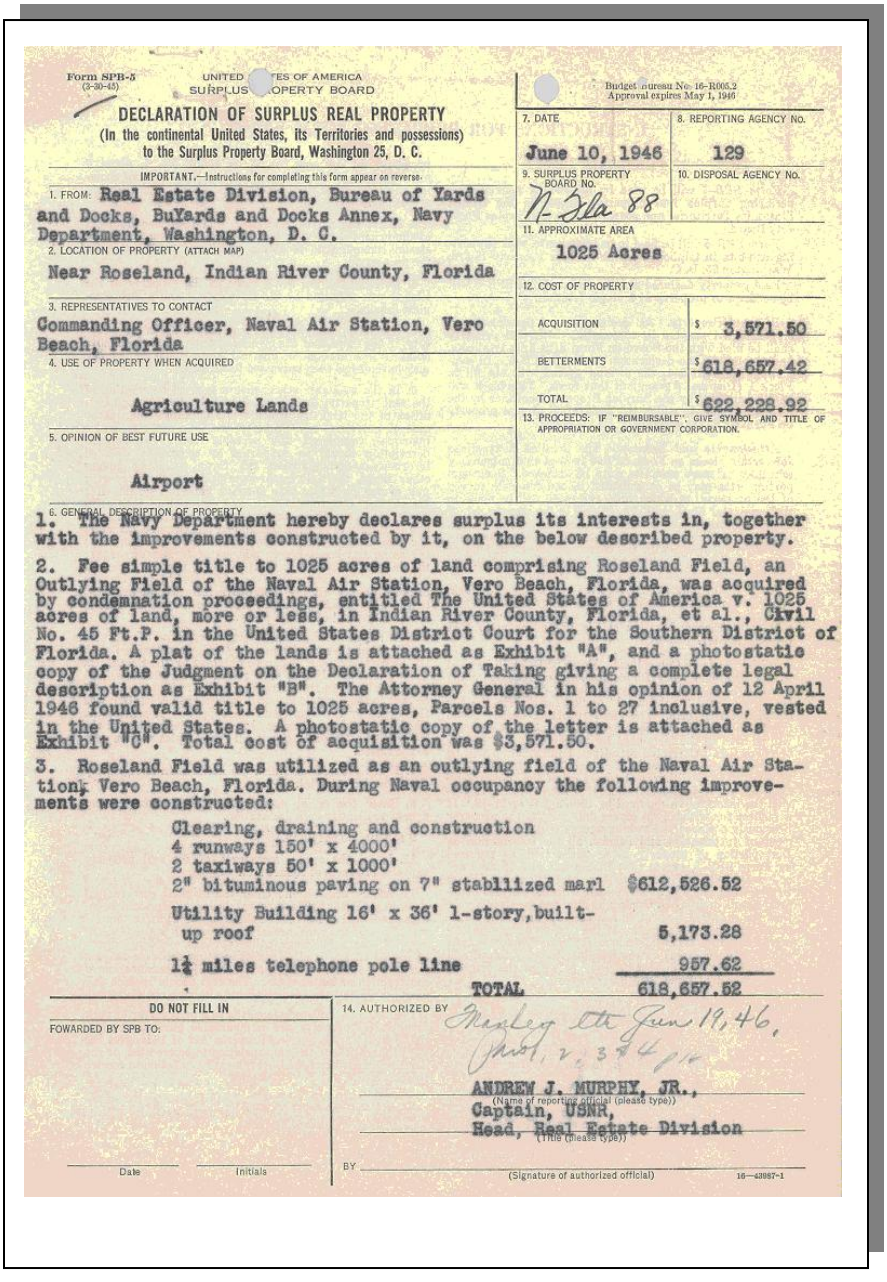


After World War II, most of the property conveyance instruments issued by the War Assets Administration (WAA) and General Services Administration (GSA) that conveyed real property contained provisions obligating the sponsor to operate and maintain the entire airport where the property is located, regardless 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).



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.

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.



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

11. APPROXIMATE AREA
1025 Acres

3. REPRESENTATIVES TO CONTACT
Commanding Officer, Naval Air Station, Vero Beach, Florida

12. COST OF PROPERTY

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

4. USE OF PROPERTY WHEN ACQUIRED
Agriculture Lands

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

5. OPINION OF BEST FUTURE USE
Airport

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" stabilized 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 Mailed this June 19, 46, Amdt. 2, 3 & 4 pc

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—43887-1

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.

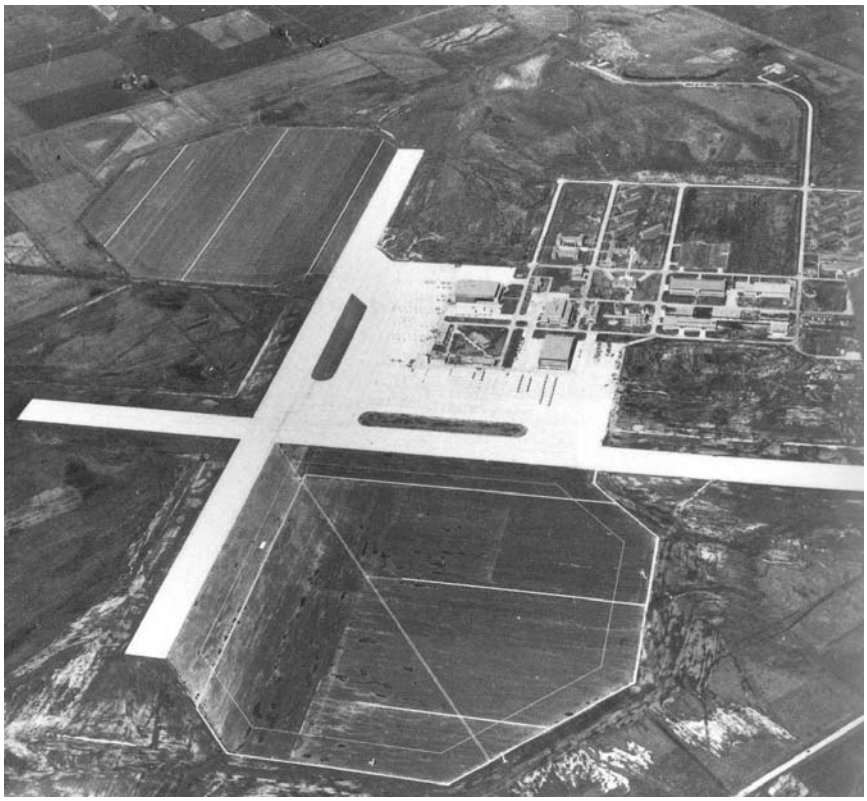
c. Trade-in of Personal Property. Airport sponsors may dispose of conveyed personal property that has outlived its useful life. If the sponsor uses such property for trade-in on new equipment, the FAA will not hold that sponsor accountable for that new equipment.

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.*)

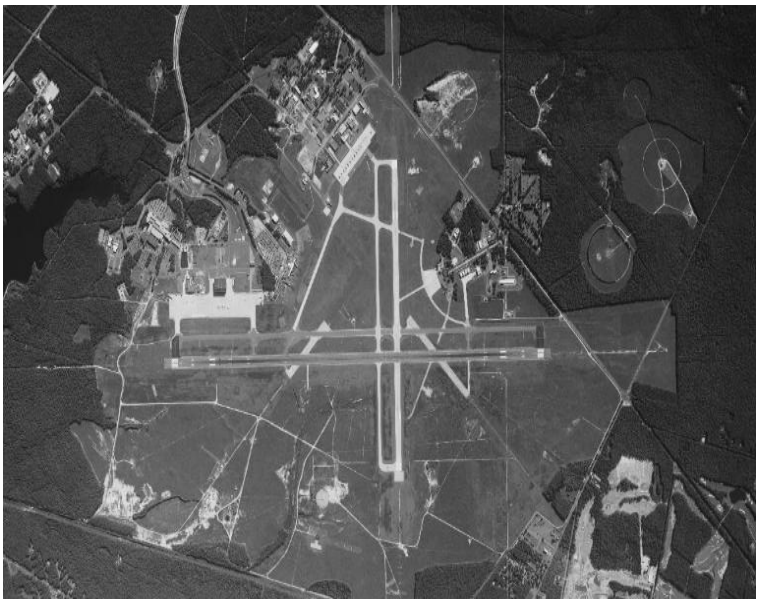
There are three types of agreements under which the government has the right to joint use of airport facilities, either with or without charge.

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 ($S\frac{1}{2}$ $S\frac{1}{2}$) of Section 28; the South Half of the South Half ($S\frac{1}{2}$ $S\frac{1}{2}$) of Section 29; the North Half ($N\frac{1}{2}$) of Section 34; the North Half of the South Half ($N\frac{1}{2}$ $S\frac{1}{2}$) 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 ($SE\frac{1}{4}SW\frac{1}{4}$) and the South Half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$), 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 ($SW\frac{1}{4}SW\frac{1}{4}$) of Section Thirty-five (35), Township Ten (10) South, Range Ten(10) East, and the Northeast Quarter of the Southwest Quarter ($NE\frac{1}{4}SW\frac{1}{4}$), 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.

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 5, 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.

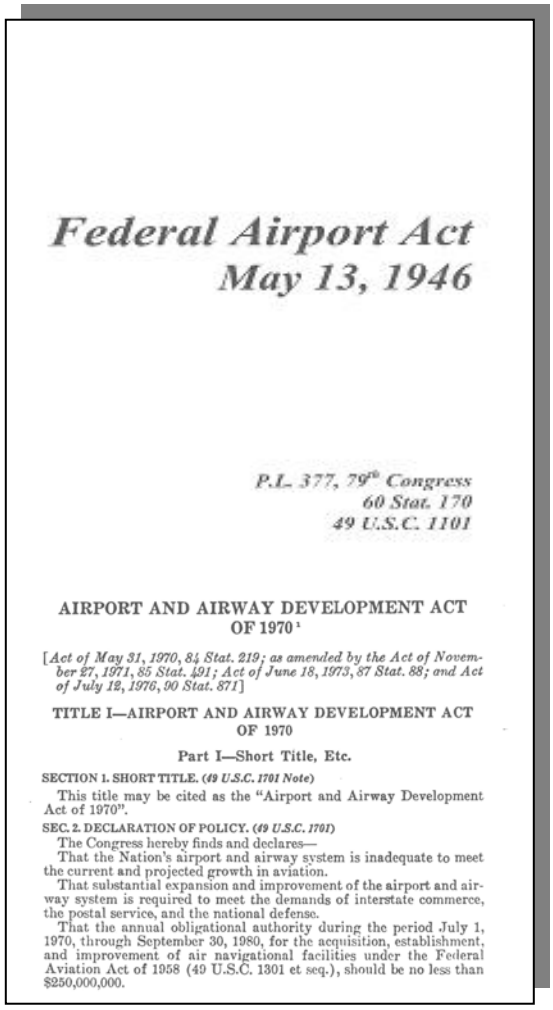
UNITED STATES OF AMERICA
Acting by and through
WAR ASSETS ADMINISTRATOR

By Robert P. Allard
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.

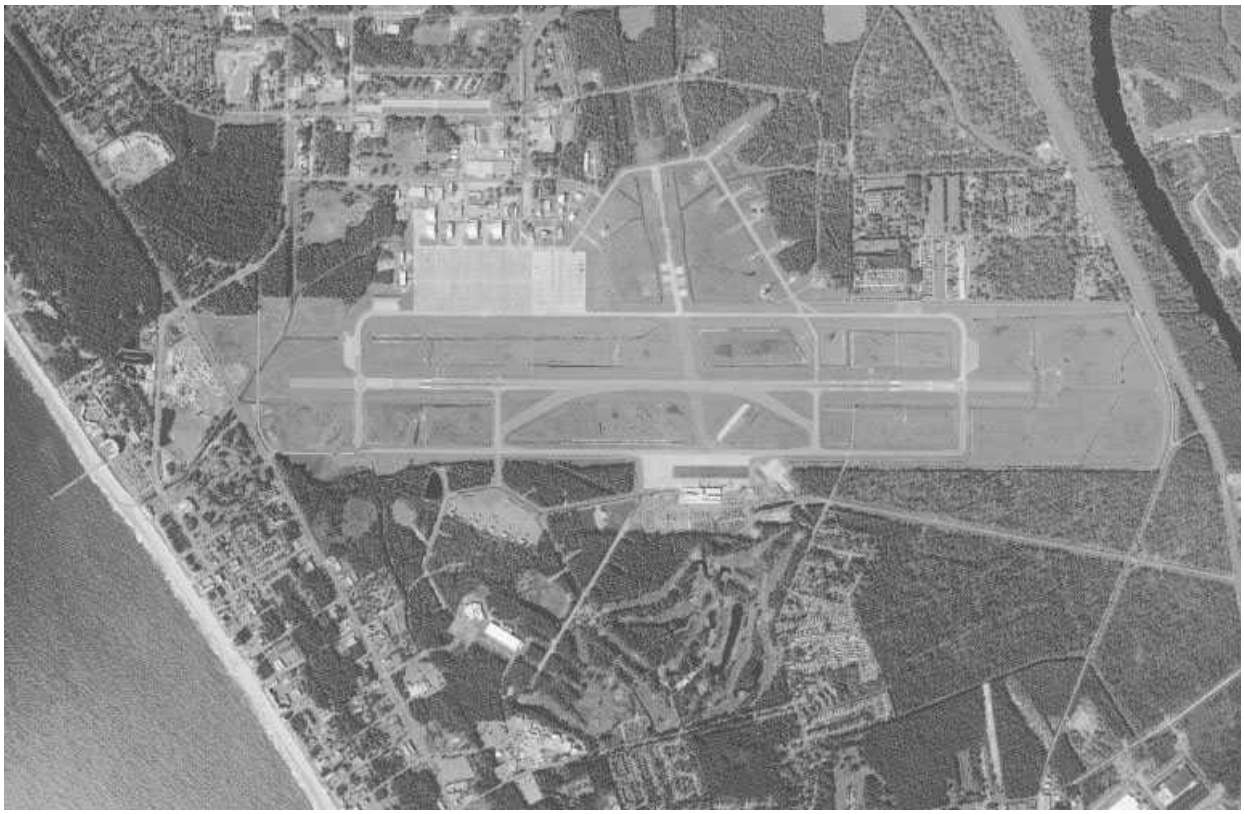
a. Since 1946, the FAA has administered three grant programs for development of airports:

(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.

(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.



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)

(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.

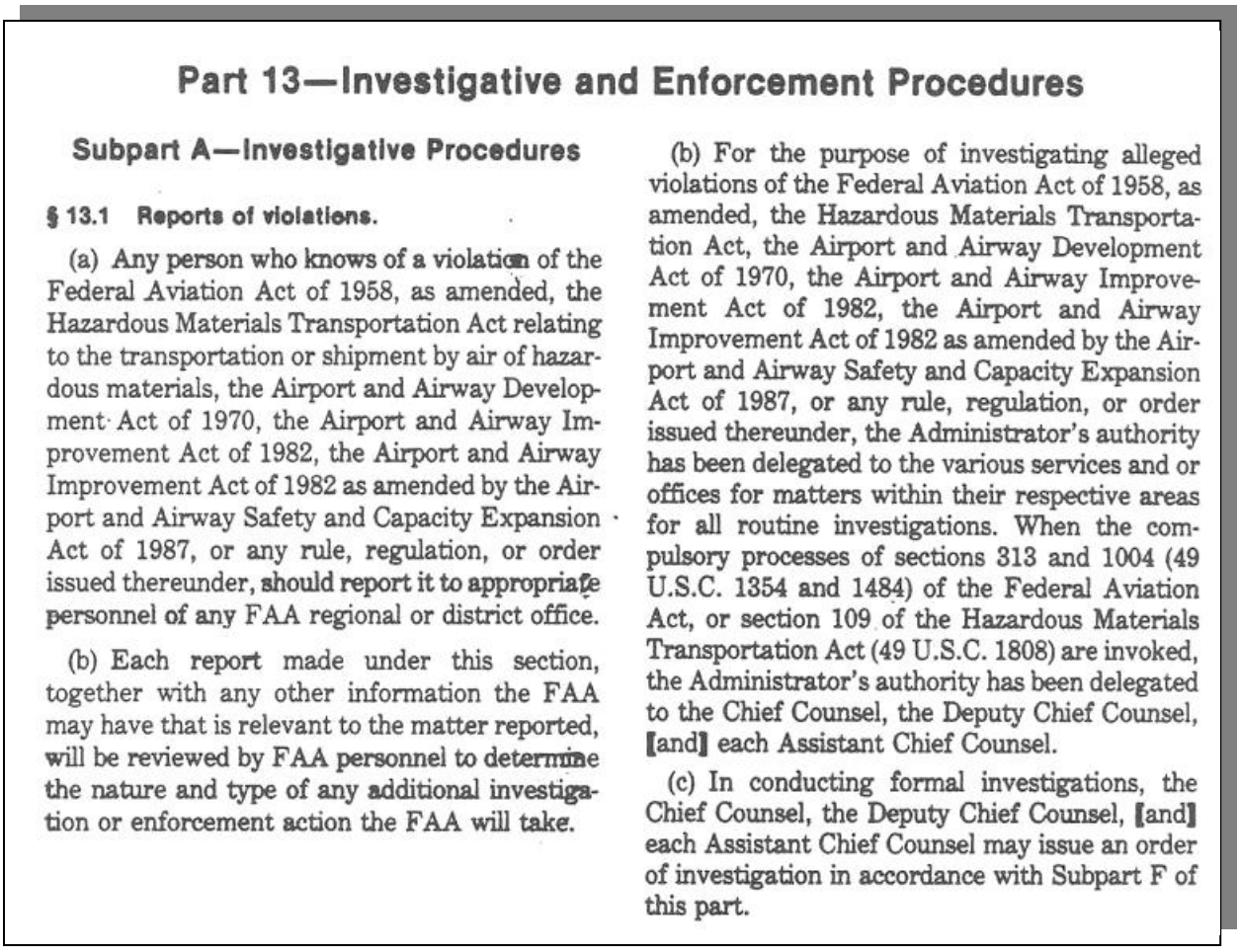
c. Block Grant States. When the allegations affect a sponsor in a block grant state, the ADO or regional airports division will work with the state department of transportation or aeronautics division to evaluate the allegation.

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.

[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.

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



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)

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.



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)

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

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.

This chapter presents guidelines and procedures for inspecting airport pavements.





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)

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) l50/5340-30D, *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:

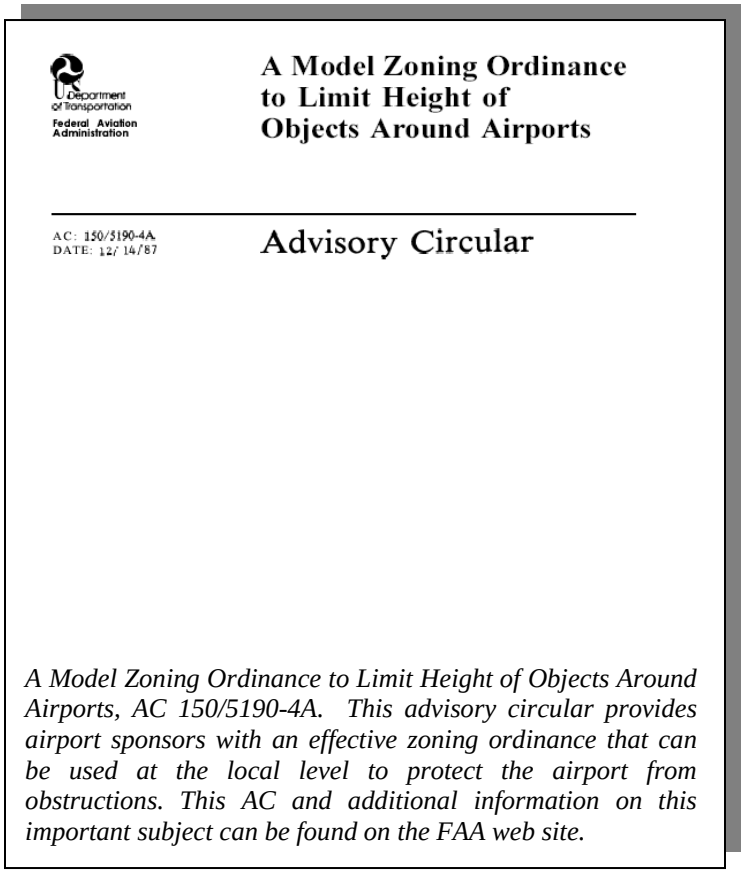
(i). An airport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement.

(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,


Department of Transportation
Federal Aviation Administration

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.

[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.

(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.



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

(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.

[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 l982 (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.

(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.



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)

(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

[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.

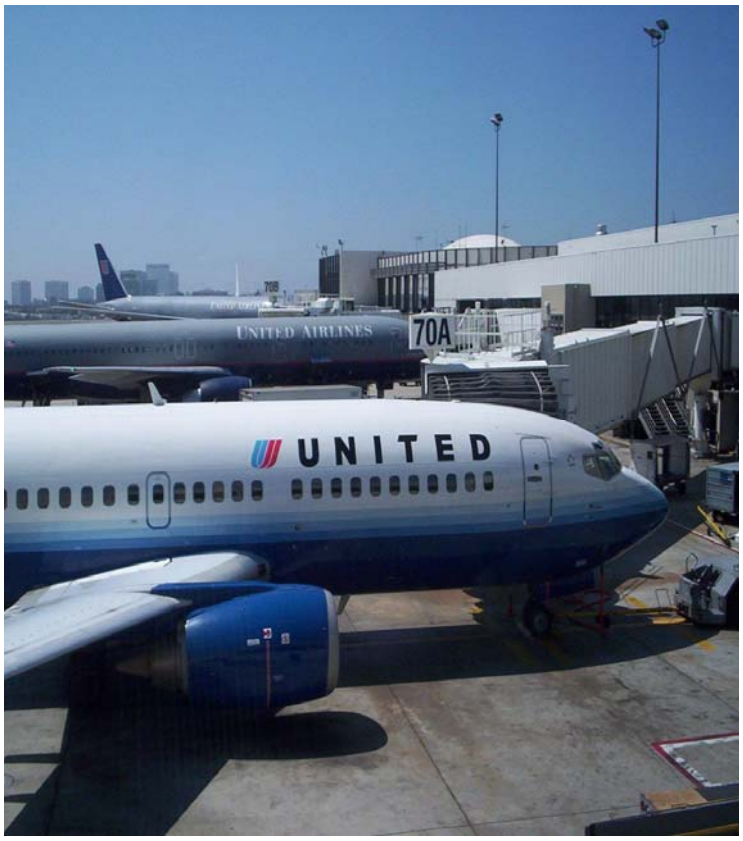
a. Federal Grant Obligations. Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to make its aeronautical facilities available to the public and its tenants on terms that are reasonable and without unjust discrimination. This federal obligation involves several distinct requirements.

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*.

[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.

[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.

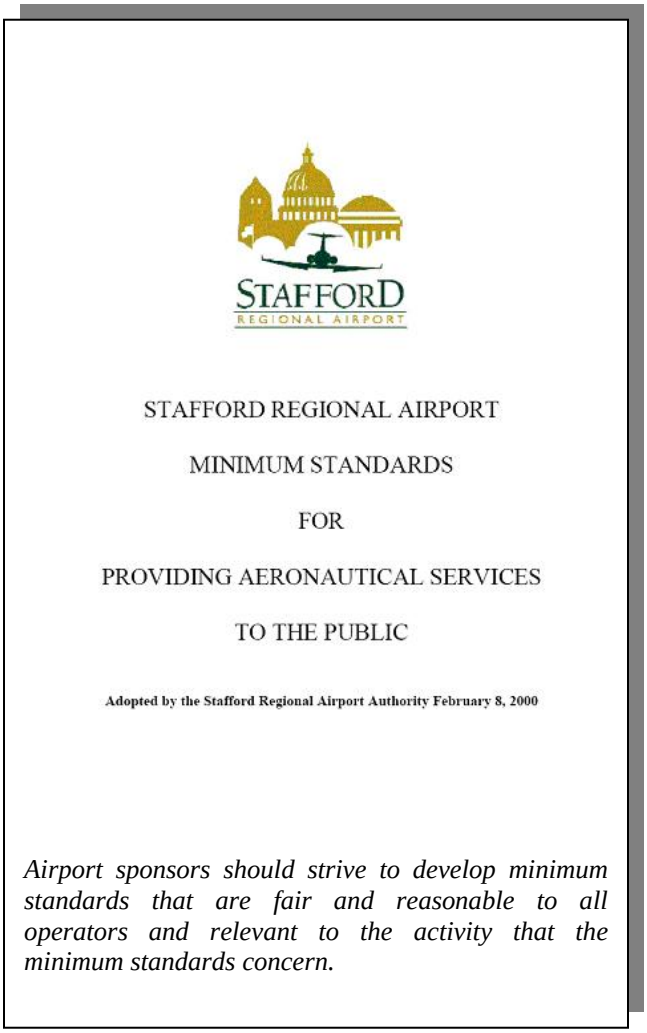
10.3. Use of Minimum Standards to Protect an Exclusive Right. When the sponsor implements minimum standards for the apparent purpose of protecting an exclusive right, the FAA will find the sponsor in violation of the exclusive rights prohibition. Evidence of intent to grant an exclusive right might be, for example, the adoption of a standard that only one particular operator can reasonably or practically meet.

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,


STAFFORD
REGIONAL AIRPORT

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.

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:

(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



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)

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]

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."



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).

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*.

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*.)



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)



11.4. 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



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.

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.



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)

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.

(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



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)

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.

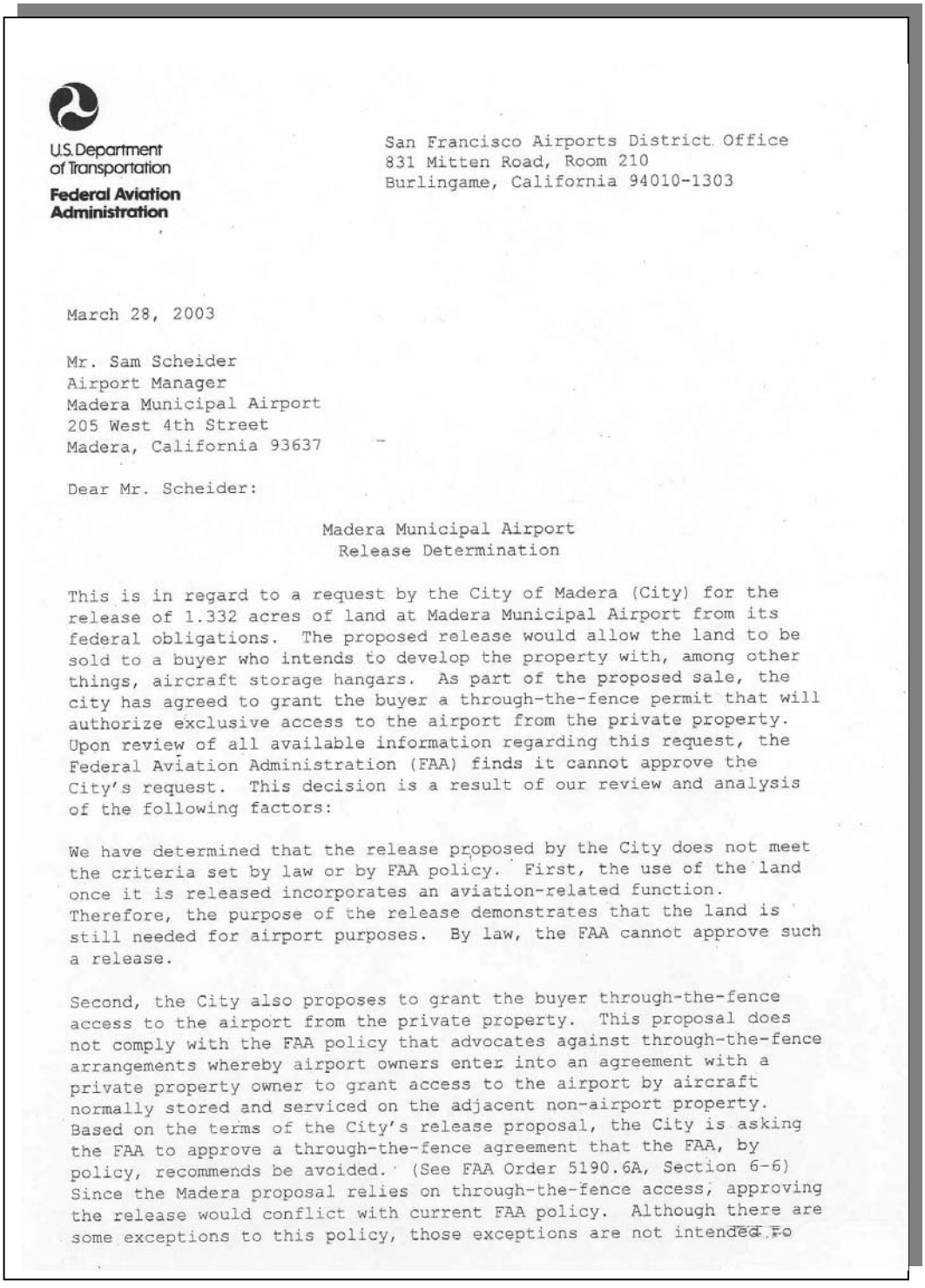
I trust that this information is helpful.

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

-2-

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.

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



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 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;

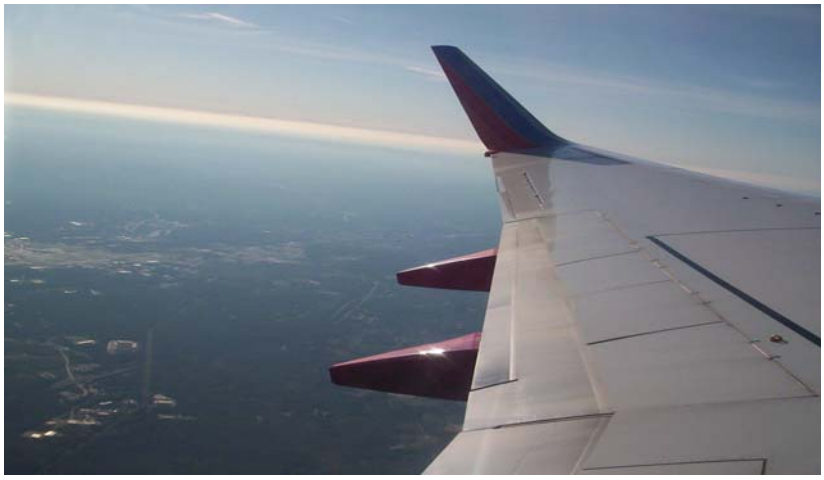
(3). Implementation of restrictions on the use of the airport by type or class of aircraft based on the noise characteristics of the aircraft;

(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).

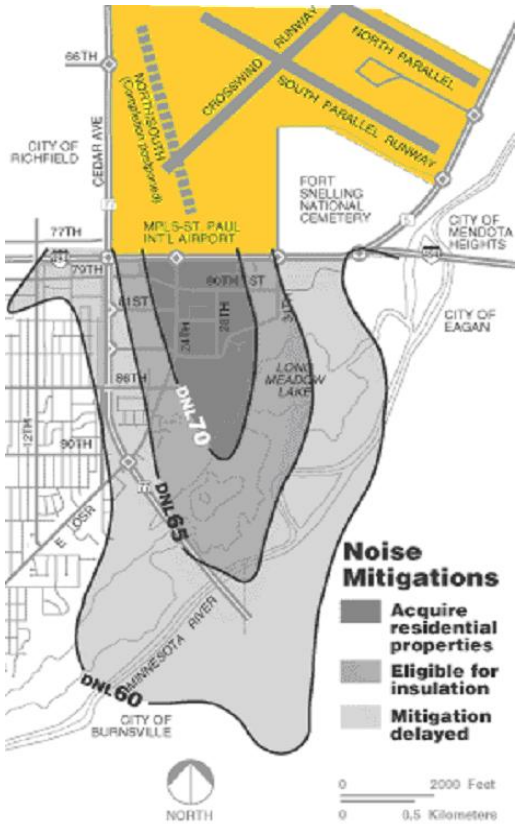


b. Federal Methodology. Failure to consider a combination of measures, such as land acquisitions, easements, noise abatement procedures, and sound insulation could result in a finding that a balanced approach was not used in addressing a noise problem. A sponsor's acceptance of federal funds places upon 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.

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



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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

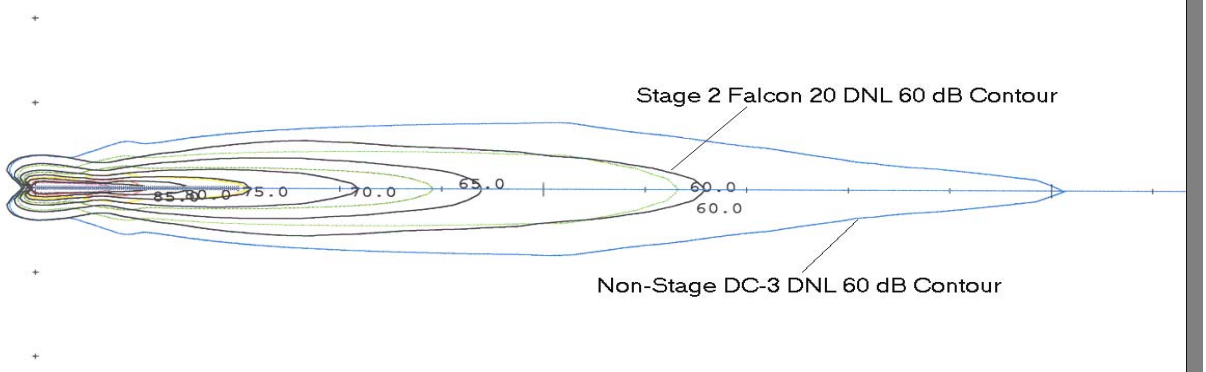
MANUFACTURER	AIRPLANE	ENGINE	TOGW 1000 LBS	EST DBA	FLAPS	NOT
BEECH	35-C33A	I0-520-B	3.30	70.0	-	
BEECH	F33A	I0-520-B	3.40	70.0	-	
BEECH	K35,M35	IO-470-C	3.00	70.0	-	
CESSNA	182P	O-470-S	3.00	70.0	-	1
CESSNA	320C	TSI0-470-D	5.20	70.0	-	
CESSNA	337H	IO-360-G	4.60	70.0	-	
PIPER	601P	IO-540-S1A5	6.00	70.0	-	
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.

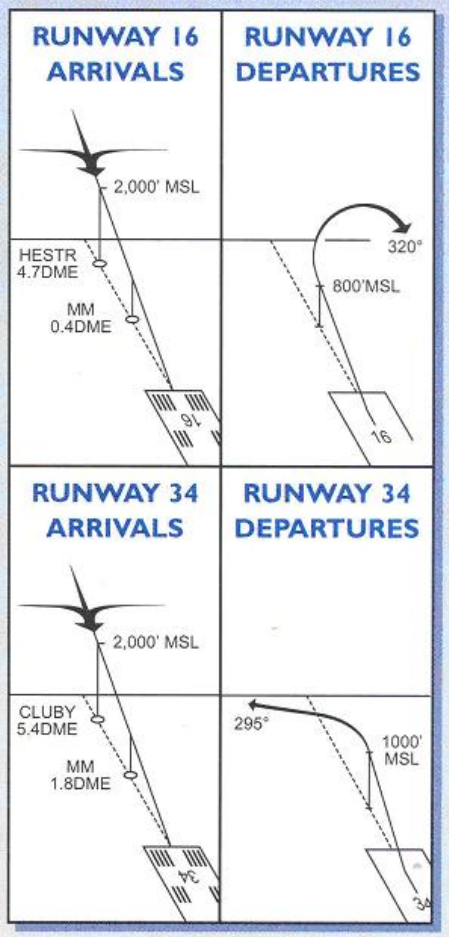
RUNWAY 11 AND 29:

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.



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)

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

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*.

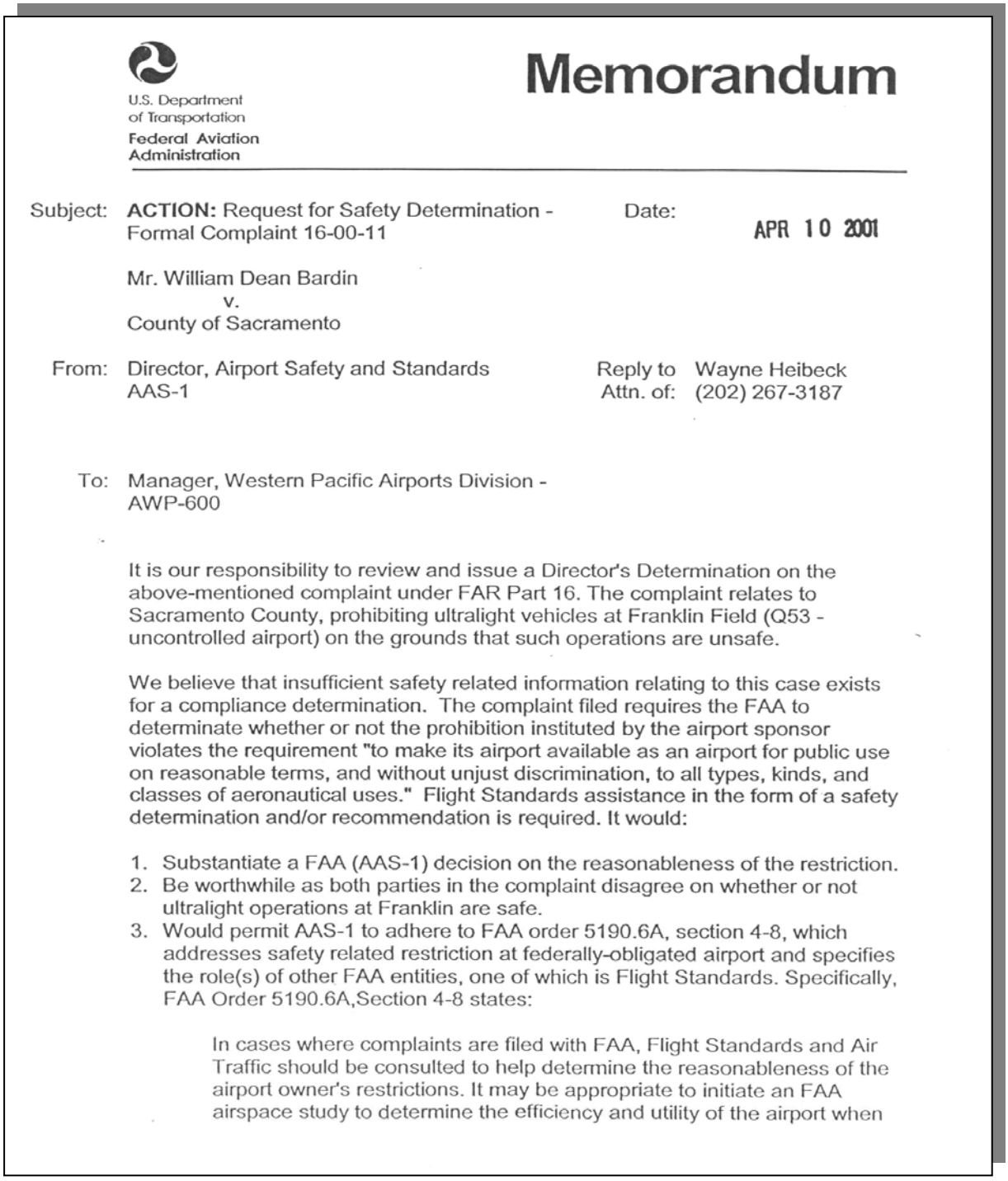
14.9. Sport Pilot Regulations.

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

Date: APR 10 2001

Mr. William Dean Bardin
v.
County of Sacramento

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.

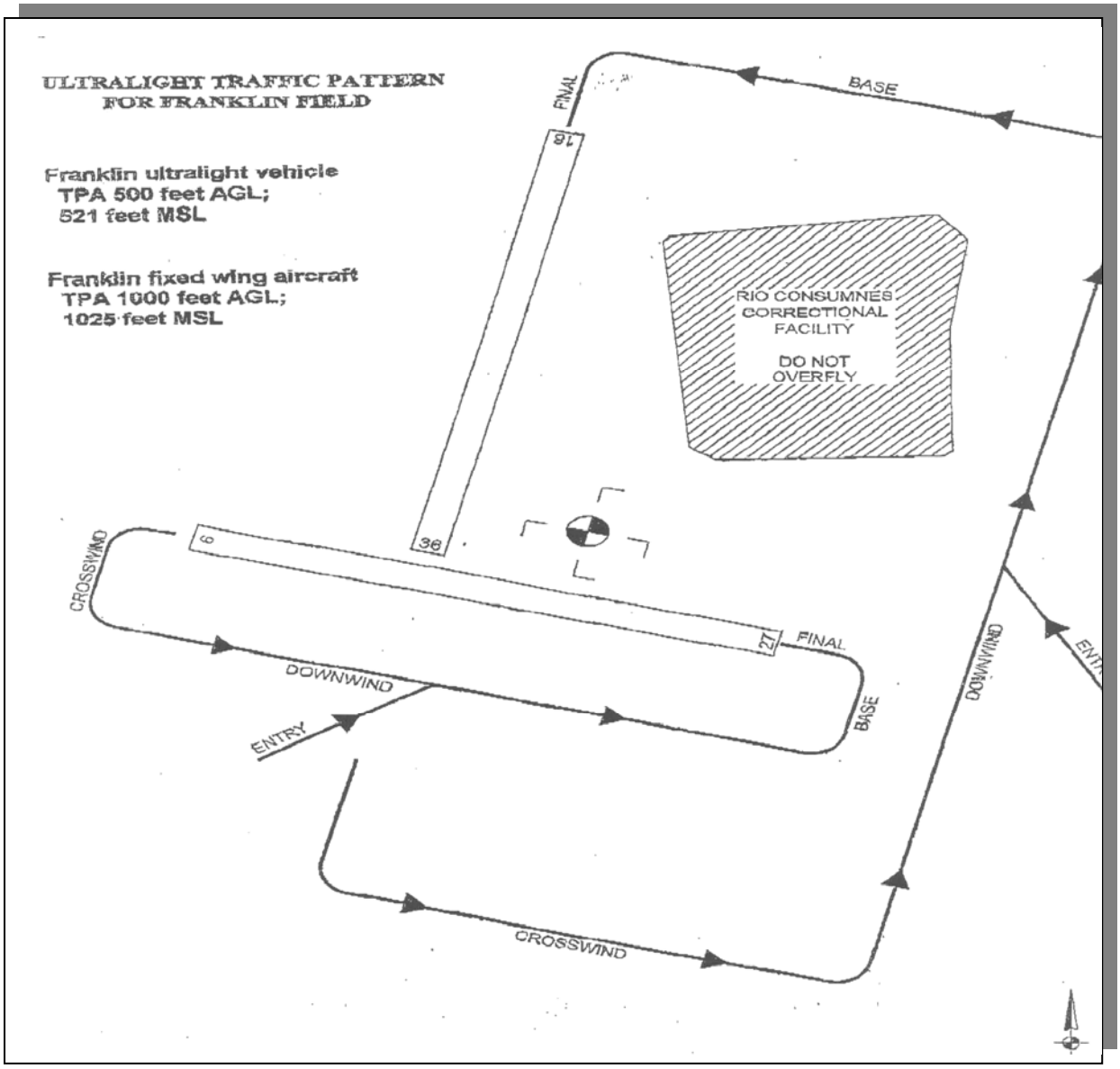
The area northwest along the airport boundaries is large enough to provide reasonable accommodation for ultralight operations. An area in the grass could be graded for a landing and ramp areas. The traffic pattern altitude should no higher than 400 feet; this would keep the ultralights away from the 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

Memorandum

U. S. Department
of Transportation
Federal Aviation
Administration

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.

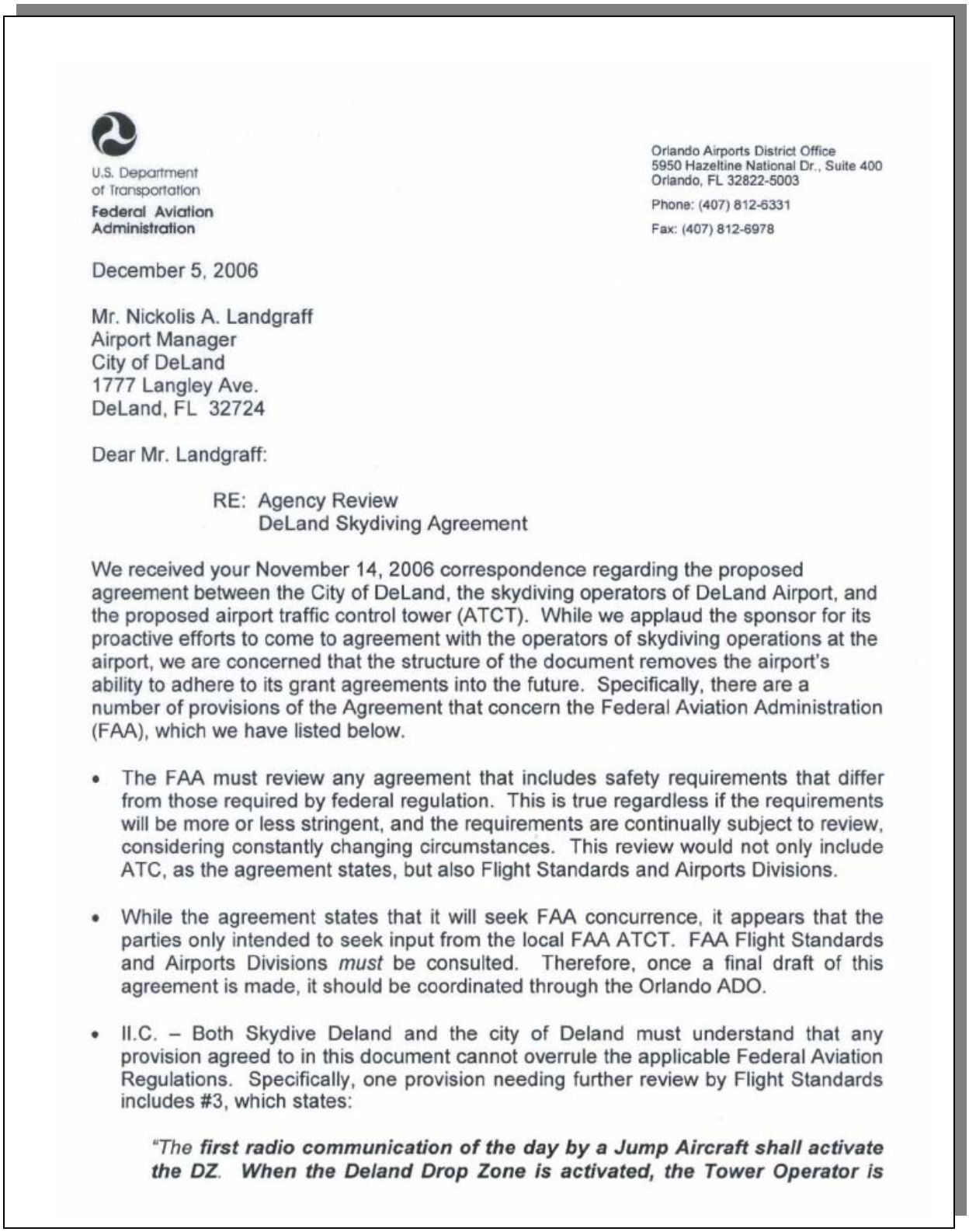
Traffic volume at PIE is quite variable. As stated above, there are times when PIE is forced to deny operations for safety reasons, and we do this by curtailing the number of aircraft making practice approaches or touch-and-go's. At times, touch-and-go's are not permitted due to traffic volume and complexity. 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

Sandra L. Bathon

Sample Air Traffic Assessment and Response, Page 3



U.S. Department
of Transportation
Federal Aviation Administration

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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***

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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

Sample FAA Objection to a Proposed Overreaching Accommodation of an Aeronautical Activity, Page 2

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

Sample FAA Objection to a Proposed Overreaching Accommodation of an Aeronautical Activity, Page 3

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.

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[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.

15.14. through 15.19. reserved.



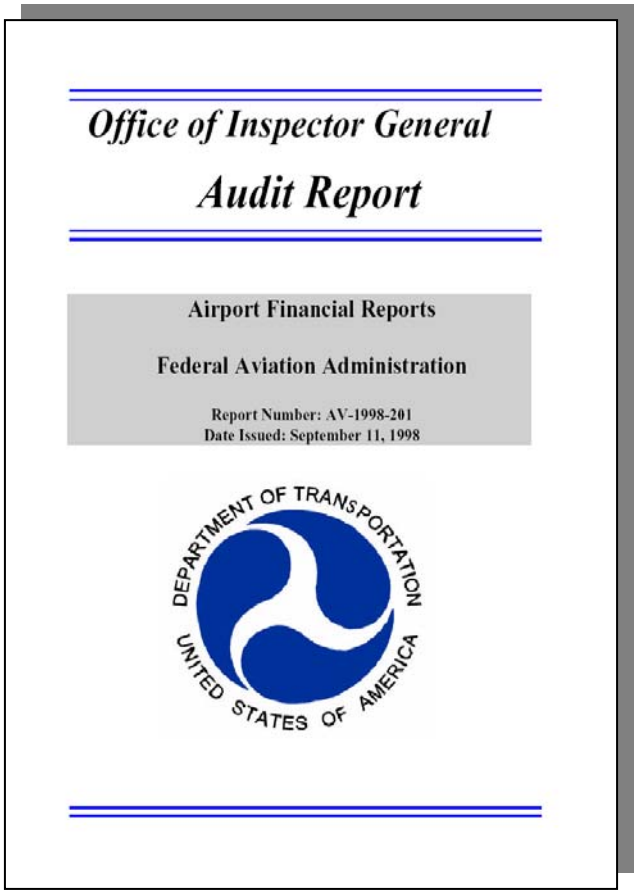
Fees that can be waived during a promotional period include all or a portion of landing fees or space rent for passenger or cargo processing services or for operational activities. When developing its rate base, the airport may not consider in its calculations the promotional discounted fees and waivers. 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)

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

[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.

As explained in more detail in chapter 18 of this Order, *Airport*



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)

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.

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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.

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.



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)

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 <u>not</u> 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 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

Sample FAA Position Letter on Residential Airparks - Page 2

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;

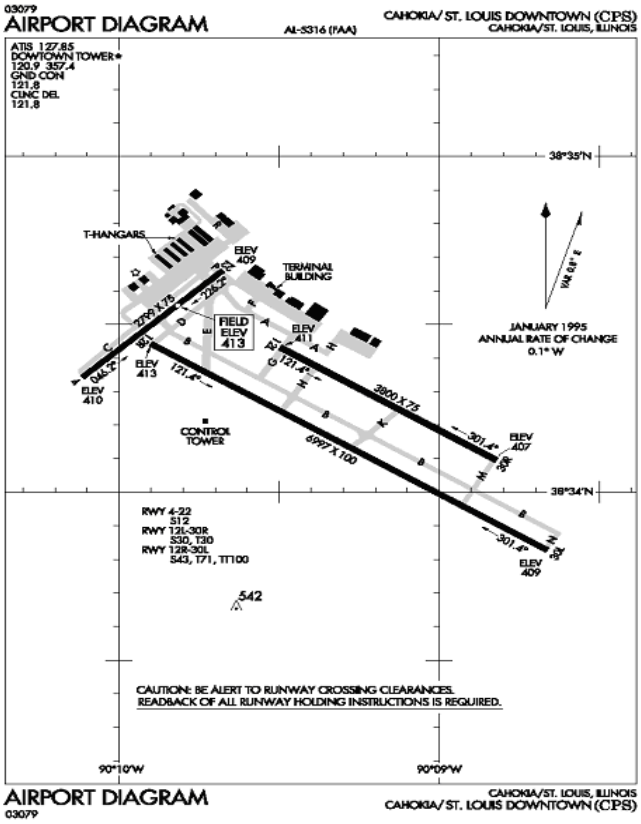
(3). the allocation of appropriations;

(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:



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)

(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.

(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.

[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)

[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. Inspection Site Location

Opa Locka Airport (OPF), Miami-Dade County, FL

II. FAA Representatives

Roger O. Hall, Airport Programs Manager, Airports Division, Atlanta, Georgia
Ilia A. Quinones, Program Manager, Orlando Airports District Office

III. Miami-Dade Aviation Department (MDAD) Contacts

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. Date of Inspection

April 12-14, 2005

V. Purpose

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.

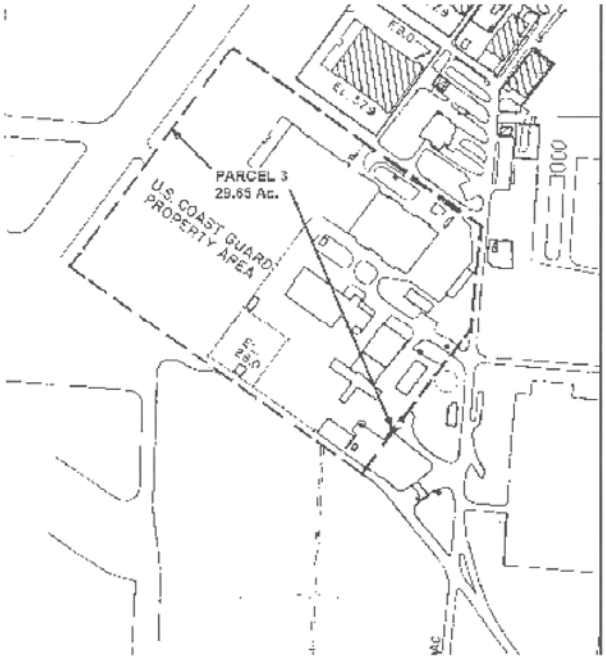
The data collected by these inspections is compiled and included in an Annual Airport Improvement Program Report to Congress. This report lists airports that are not in compliance with grant assurances or other requirements with respect to airport lands.

VI. Opa Locka Airport Land Background - The following is based on records and files kept by the FAA Orlando Airport District Office:

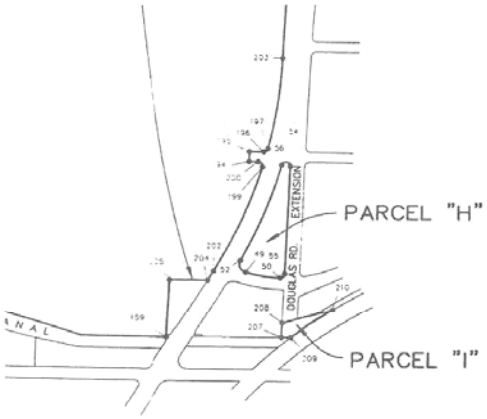
A. Federal Land Transferred To The County:

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.

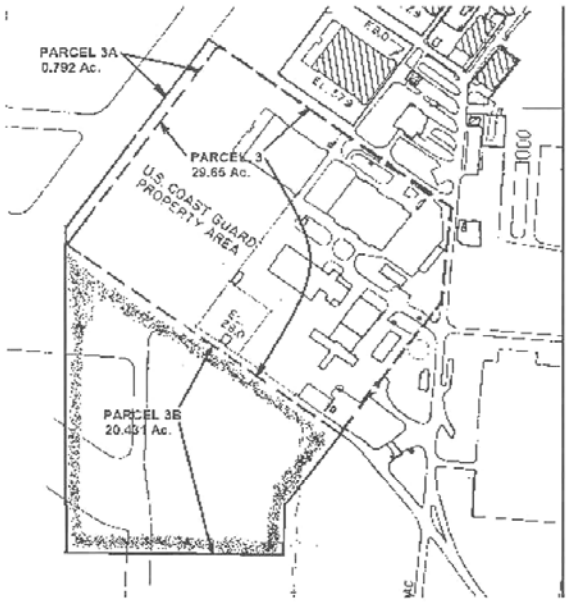


B. County Land Transferred To The USCG:

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.

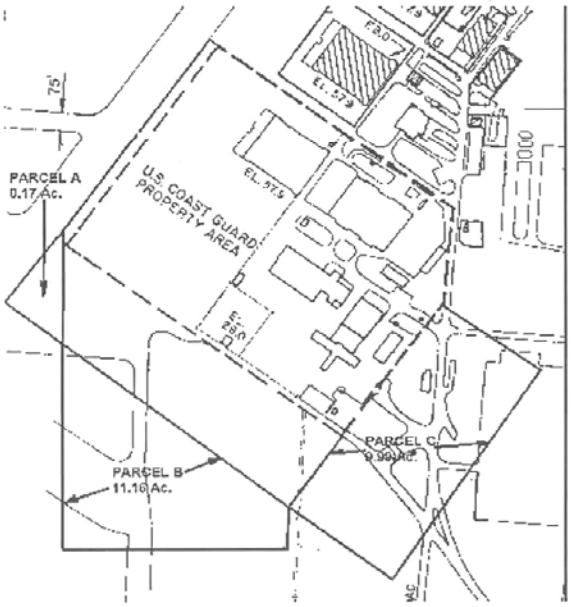
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Sample Post-Inspection Land Use Report, Page 2



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.



Sample Post-Inspection Land Use Report, Page 3

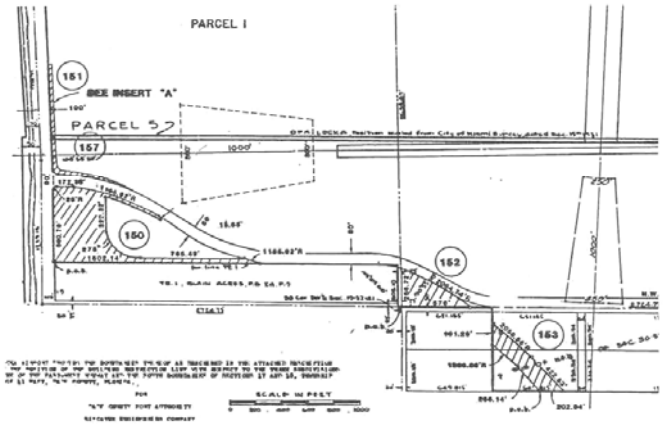
During the land-use inspection, County representatives indicated that Congress had approved the exchange of Parcel "B" for Parcels "A" and "C". However, no confirmation of Congressional approval has been provided. To FAA's corporate knowledge, the FAA did not approve this transfer. The FAA representatives 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.

Sample Post-Inspection Land Use Report, Page 4

- 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

Sample Post-Inspection Land Use Report, Page 6

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

7

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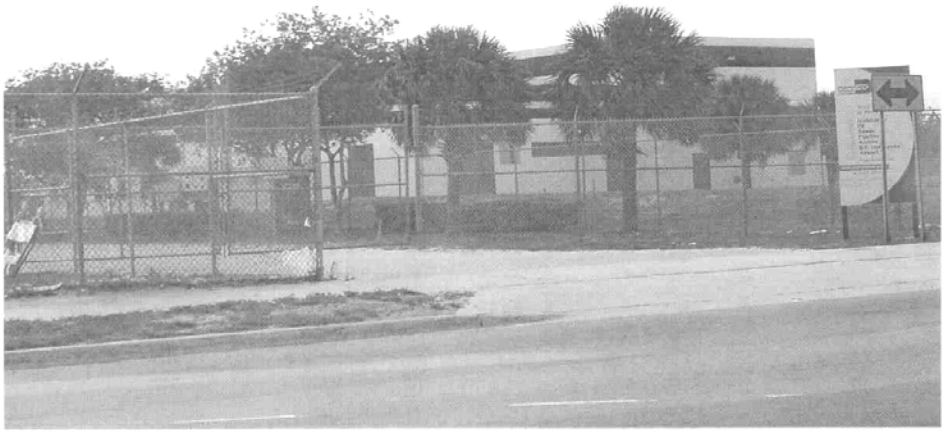


Non-Aeronautical Trailers



Prison

Sample Post-Inspection Land Use Report, Page 8



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

Sample Post-Inspection Land Use Report, Page 9

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.

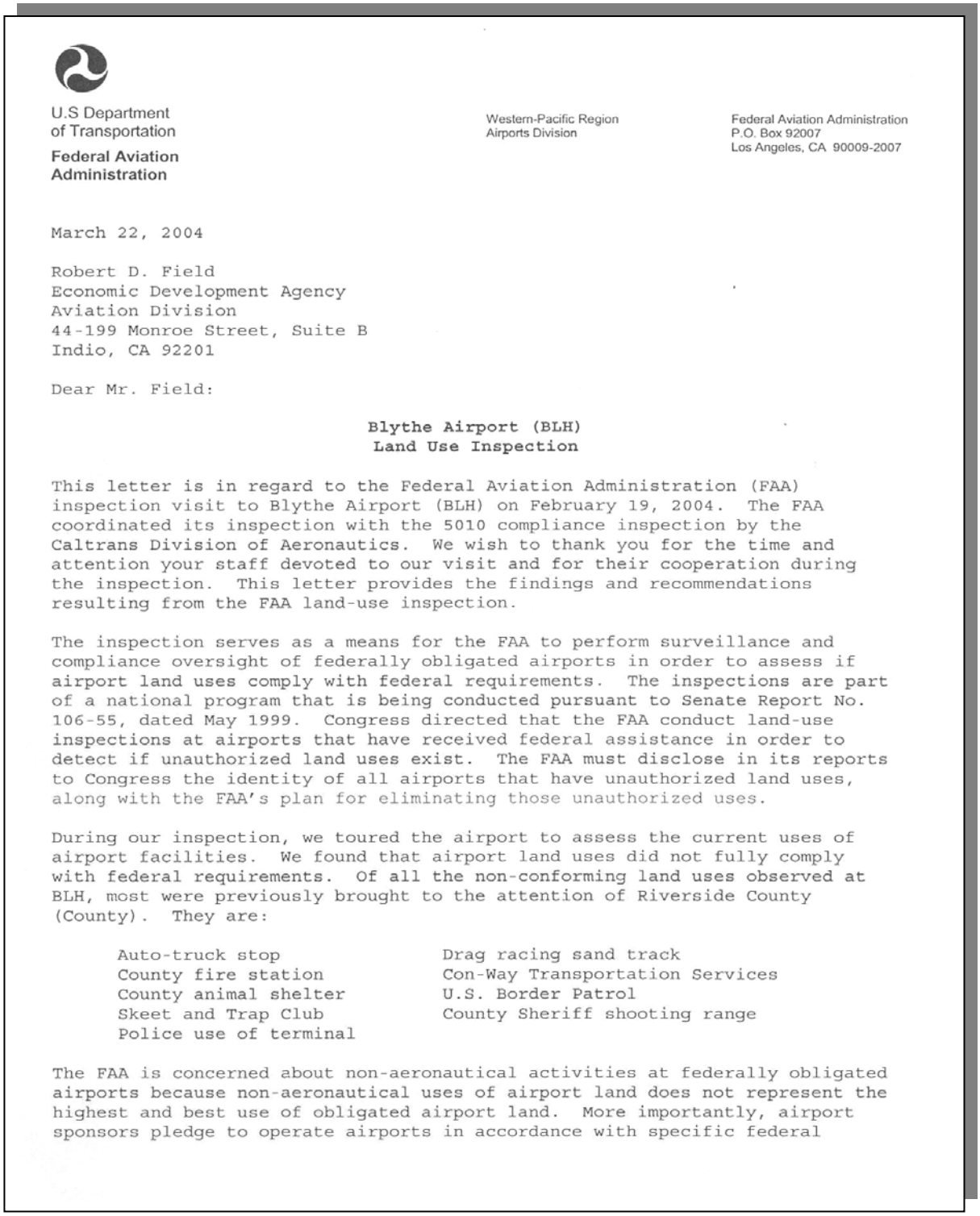
The external areas surrounding the perimeter of the airport have been almost completely developed. It would seem, without the benefit of a market survey, that if commercial development is going to continue to grow and prosper in this area, the airport is the last large, vacant area for potential development 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.

Sample Post-Inspection Land Use Report, Page 10



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

Sample Notification of Violation, Page 3

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.

Sample Notification of Violation, Page 4

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

Sample Notification of Violation, Page 5

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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.



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)

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,

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.

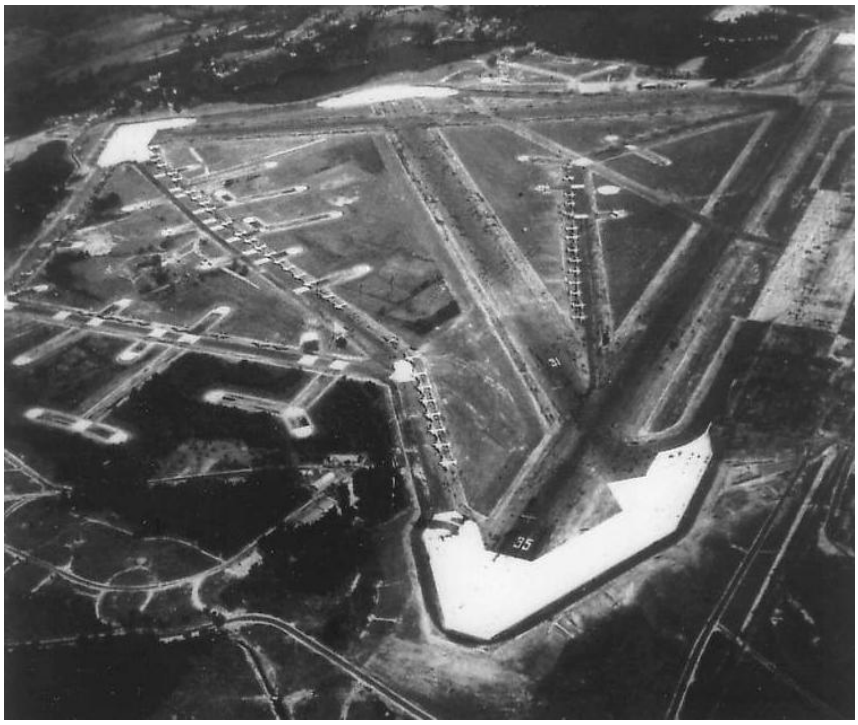
Airport sponsors receive surplus real property in many various sizes and shapes. Often the property is not ideally sized or arranged to serve the evolving needs of the airport. Adjustments can be made that benefit the airport. The airport sponsor must convince the FAA that its plans for the use, and 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.

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,



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)

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:

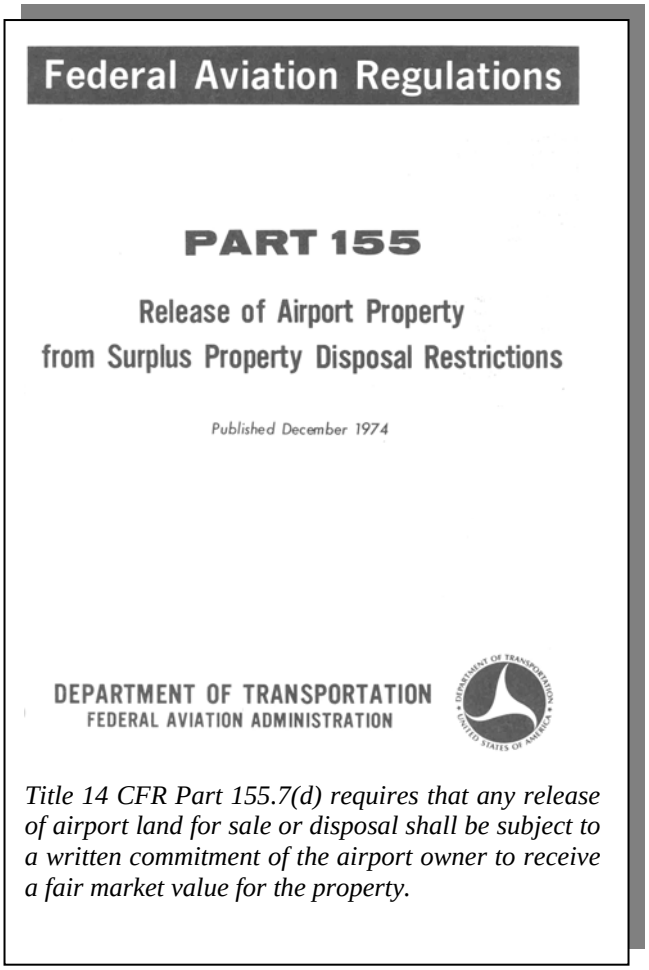
(a). Eligible items of airport development set forth in the current airport grant program and reflected in the airport's capital improvement program (CIP).

(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.



(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.

(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).



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)

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.

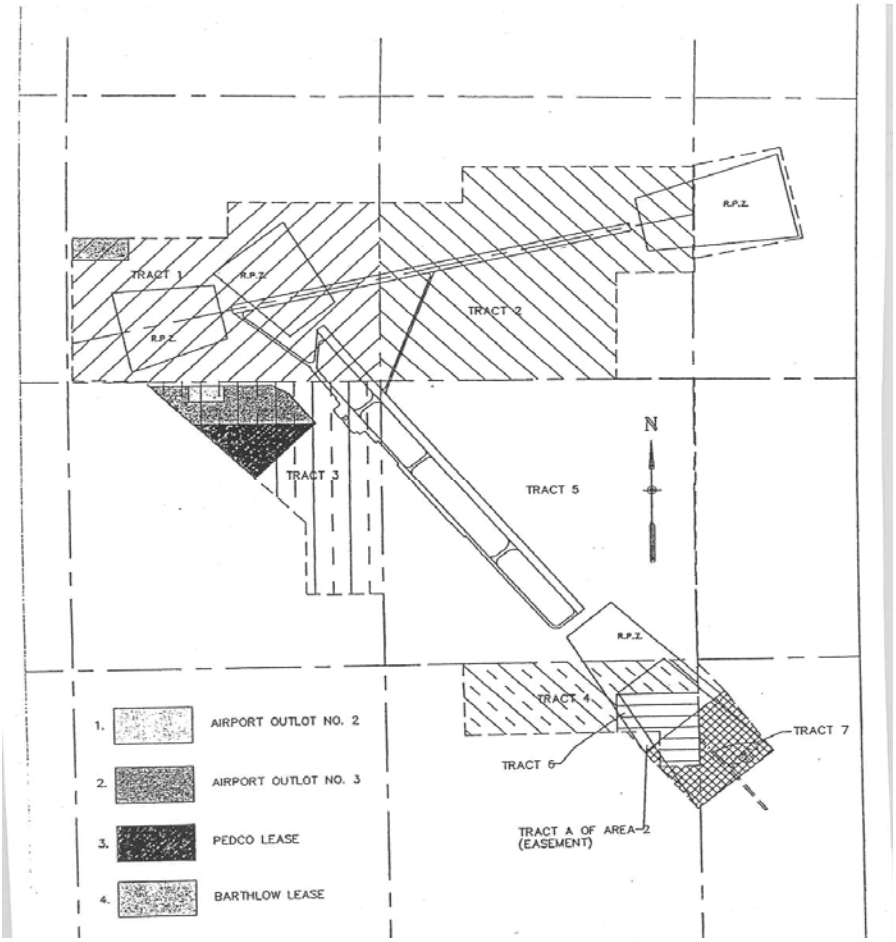
Sample NEUP Legal Description

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

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,

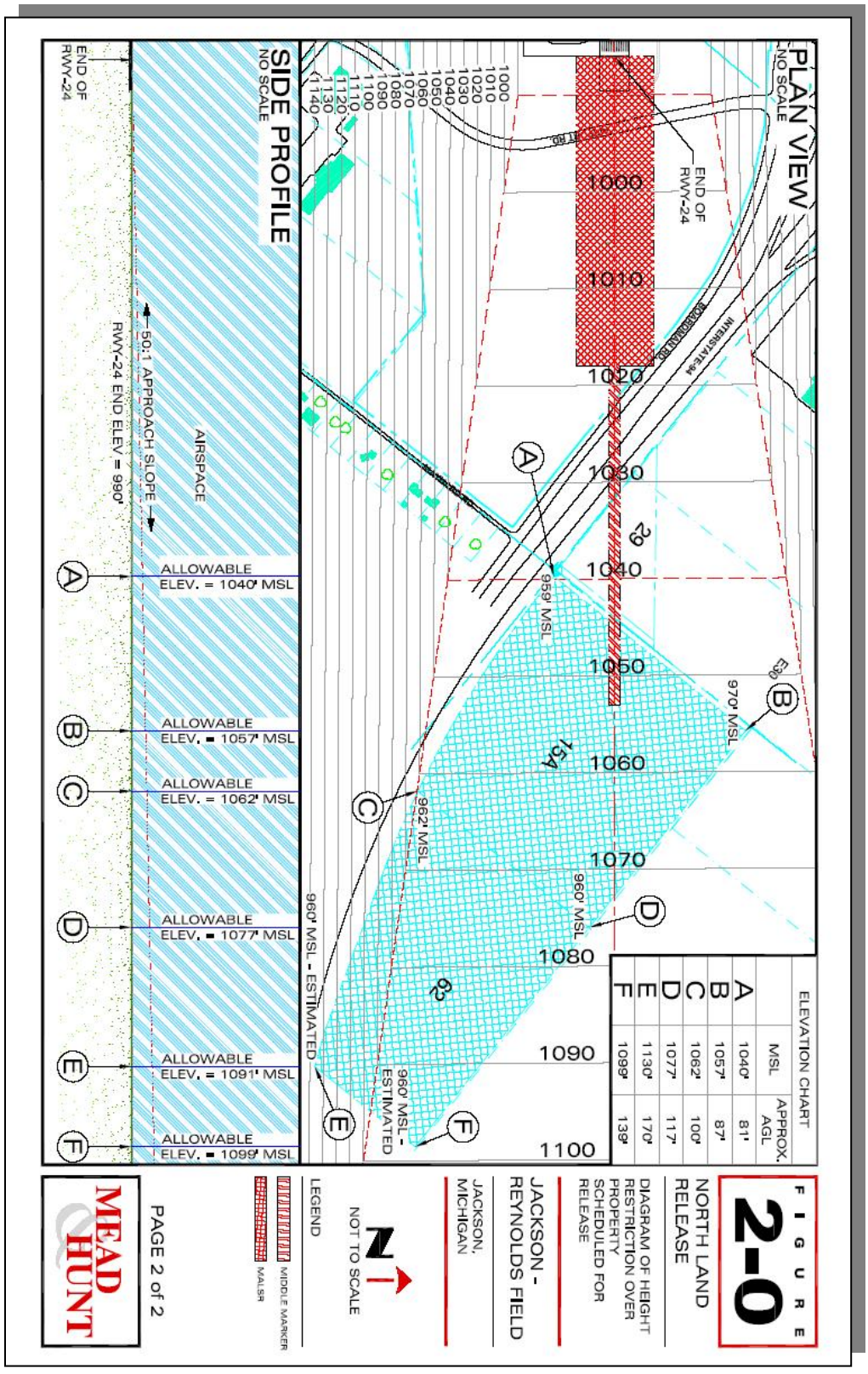
Irene R. Porter

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 1562.65 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,

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)

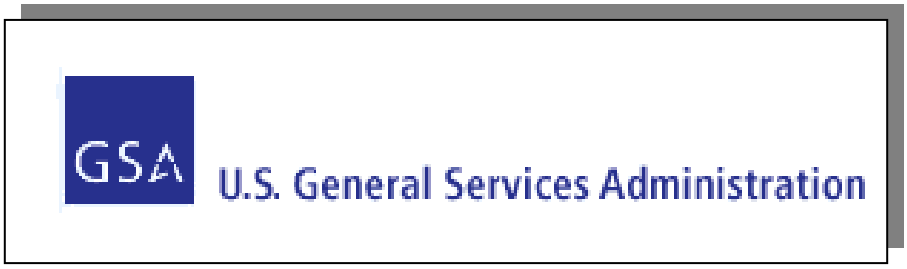
My commission expires 9-4-66.

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).

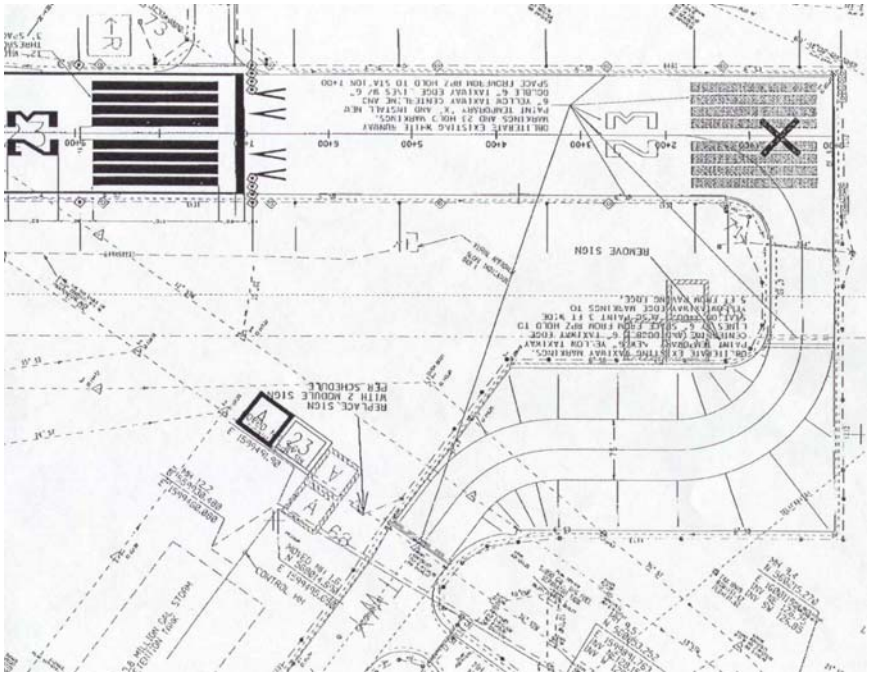
b. Section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act) (P.L. No. 91-258, May 21, 1970) (84 Stat. 219 and following).

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 l982, 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 l944 (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 l938 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 l982, 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, l972, and AC 150/5190-1A, *Minimum Standards for Commercial Aeronautical Activities on Public Airports*, dated December 16, l985, are cancelled.

3. BACKGROUND. In accordance with the Airport and Airway Improvement Act of l982, 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 l944 (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 l938 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

- Current Policy on Airport Rates and Charges (showing 2008 amendments)
- U.S. Court of Appeals Decision (July 13, 2010)
- Notice of Amendment to Policy Regarding Airport Rates and Charges (January 17, 2008)
- Policy Regarding Airport Rates and Charges (July 14, 2008)
- Final Policy Regarding Airport Rates and Charges (June 21, 1996)

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Appendix E ► Policies and Procedures Concerning the Use of Airport Revenue

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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 **A**uthorization 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)

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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]
BILLING CODE 4910-13-P

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Appendix E-1 ► Factors Affecting Award of Airport Improvement Program (AIP) Discretionary Grants

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

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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

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

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.
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16.21 Pre-complaint resolution.
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16.215 Depositions.
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16.223 Evidence.
16.225 Public disclosure of evidence.
16.227 Standard of proof.
16.229 Burden of proof.
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16.233 Record.
16.235 Argument before the hearing officer.
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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. APPROACH PROTECTION (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. USE OF AIRPORT PROPERTY (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. CONFORMITY TO AIRPORT LAYOUT PLAN (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. CONTINUING SPECIAL CONDITIONS (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. DISPOSAL OF GRANT ACQUIRED LAND (FAAP/ADAP/AIP)
(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. COMPATIBLE LAND USE (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]

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 . . 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 at the time 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 existing or proposed 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 NOT 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)

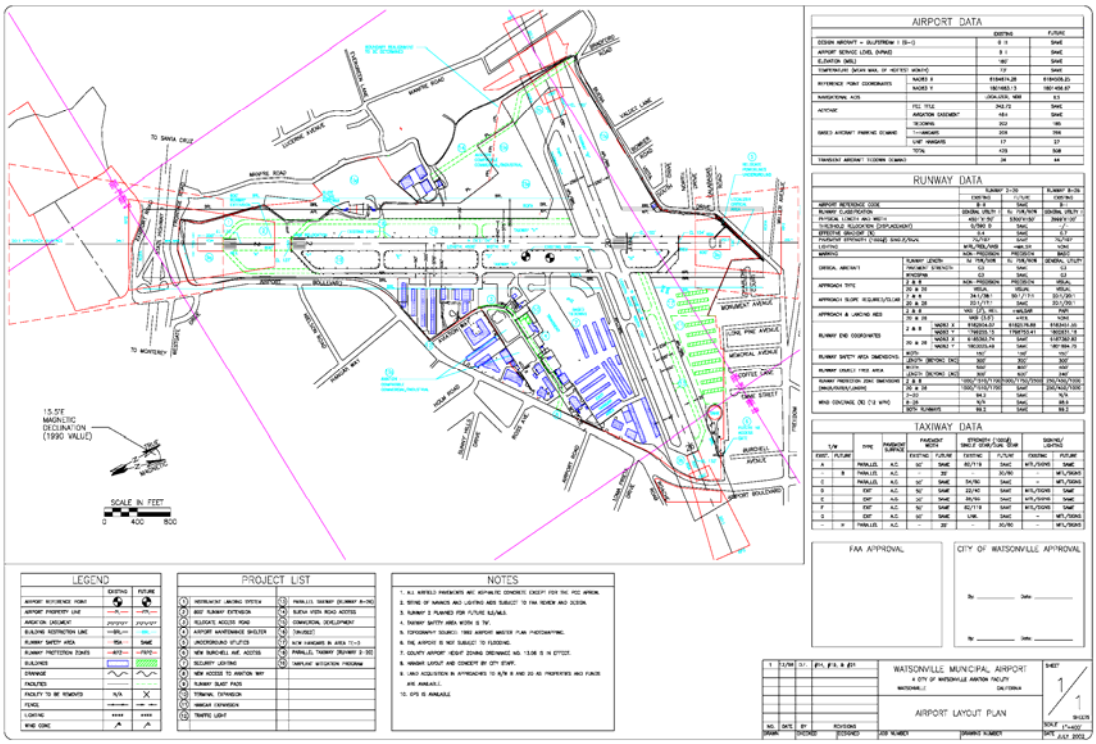
(12) RGL 98-1, Policy on … Review of Airport Master Plan Forecasts (10/97)

(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

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

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

§	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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R-K6 – FAA Assurances Requirements – Grant Agreements for Airport Development, Airport Planning, and Noise Compatibility Program Grants

FAA
Airports

ASSURANCES

Airport Sponsors

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, 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 this grant offer by the sponsor, these assurances are incorporated in and become part of this 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 this 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 this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

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.
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. 90-148, as amended.
j. Coastal Zone Management Act, P.L. 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))
m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.[1]
s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.[1]
t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.[1]
u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.[1]
w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.[2]
y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

Executive Orders

a. Executive Order 11246 - Equal Employment Opportunity[1]
b. Executive Order 11990 - Protection of Wetlands
c. Executive Order 11998 – Flood Plain Management
d. Executive Order 12372 - Intergovernmental Review of Federal Programs
e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction[1]
f. Executive Order 12898 - Environmental Justice

Federal Regulations

a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].[4, 5, 6]
c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
d. 14 CFR Part 13 - Investigative and Enforcement Procedures14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
e. 14 CFR Part 150 - Airport noise compatibility planning.
f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
h. 29 CFR Part 1 - Procedures for predetermination of wage rates.[1]
i. 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.[1]
j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).[1]
k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).[1]
l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.[3]
m. 49 CFR Part 20 - New restrictions on lobbying.
n. 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.
o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.[1] [2]
q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.[1]
s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
t. 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.
u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

Specific Assurances

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

Footnotes to Assurance C.1.

[1] These laws do not apply to airport planning sponsors.

[2] These laws do not apply to private sponsors.

[3] 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

[4] On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

[5] Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

[6] Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. **Responsibility and Authority of the Sponsor.**

   a. Public Agency Sponsor:

   It has legal authority to apply for this 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 this 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 this 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 landing area of the airport 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 this 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 this 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 obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such 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 which 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 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 non-compliance 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 non-compliance 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 this grant agreement and shall insure that such arrangement also requires compliance therewith.

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

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. **Metropolitan Planning Organization.**

    In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

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 this grant, the total cost of the project in connection with which this 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 this 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 this 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 this 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 this 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 Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by 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 this 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 non-aeronautical 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-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based 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, non-tenant, 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 utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory 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-based 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-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based 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, 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 revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other 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. The following exceptions apply to this paragraph:

1) 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.

2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.

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 this 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:

1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

2) 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 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 Government aircraft in common with other aircraft at all times without charge, except, if the use by 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 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 landing areas by other authorized aircraft, or during any calendar month that –

a. Five (5) or more 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 Government aircraft is 300 or more, or 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.

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;

3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and

4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. 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 except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. **Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.

b. Applicability

1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.

2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the 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:

1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or

2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.

2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.

3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.

4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. **Disposal of Land.**

a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, 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 be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

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 or transferred to another

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

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 _____ (the latest approved version as of this grant offer) 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.**

    a. 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.
    b. 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.
    c. 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 obligation to fund special facilities for intercity buses or for other modes of transportation.

37. **Disadvantaged Business Enterprises.**

    The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 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 1936 (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.

R-K7 – FAA Bulletin: Best Practices – Surface Access to Airports

Bulletin 1: BEST PRACTICES-SURFACE ACCESS TO AIRPORTS

INTRODUCTION

A primary goal of all modes of transportation is the safe and efficient movement of people and goods. Transportation is conducted through two basic facilities, terminals (nodes) and routes (segments). Airports are terminals that connect surface access segments with airway segments. To meet this role, airports must always be considered critical elements of the total transportation system.

Airport sponsors and the FAA have been effective in coordinating individual airport surface access projects with transportation agencies, such as State Departments of Transportation (DOT) and transit operators. This bulletin will provide information to facilitate future coordination with surface transportation agencies. It will also identify current and future research in the planning and design of airport surface access facilities related to terminal curbside, access roads, and pedestrian walkways.

The following topics are addressed herein:

Section A: Use of PFC, AIP, and airport revenue for airport ground access projects
Section B: Coordination of airport access needs with surface transportation agencies
Section C: Summary of useful resource documents
Section D: Research projects for airport surface access planning and design

Bulletins on airport surface access best practices will be issued periodically as research studies are completed and additional information is gained from coordination with surface transportation agencies.

The terms “surface access” and “ground access” are used interchangeably in this bulletin. “Surface access” is the more comprehensive term as it includes ground access and water access (i.e. ferry boats). However, the term “ground access” is used in other FAA guidance, and is used herein when referring to that guidance. For the purpose of this bulletin, ground access will include water access.

This guidance is intended principally for FAA regional Airports divisions and Airport District Office staff. FAA regional or field offices should provide a copy of Section B (only) to all airport sponsors. The guidance of Section B should be discussed at the pre-planning meetings for airport master plans.

SECTION A: USE OF PFC, AIP, AIRPORT REVENUE FOR AIRPORT GROUND ACCESS PROJECTS

FAA regional Airport divisions and Airport District Offices should coordinate all substantial airport surface access projects with APP-500, and under certain circumstances, AAS-100. This includes all new or expanded rail lines, bus-ways, light rail lines, ferry terminals, transportation centers, and connections to interstate or interstate type highways, or other major surface arterials that provide access to an airport.

1). Use of PFC Funds for Ground Access Projects

FAA policy on the eligibility of airport ground access projects for PFC financial participation is contained on pages 6366-6371 of the *Federal Register Notice* dated February 10, 2004. This *Federal Register Notice* is appended to this bulletin.

Questions, please contact APP-500 (Airports Financial Assistance Division)

2). Use of AIP Funds for Ground Access Projects

Eligibility decisions often depend on the specifics of the project. This discussion provides general guidance.

Current guidance on AIP eligibility for access roads is found in FAA Order 5100.38C, AIP Handbook, Paragraph 620.a. Current guidance on AIP eligibility for rapid transit systems is found in Paragraph 622 of the AIP Handbook.

The Federal Register Notice of February 10, 2004 (see Appendix) should also be consulted for AIP eligibility of airport surface access projects. AIP eligibility for such projects conforms to that for PFC projects, except for those provisions (i.e. significant contribution) exclusive to the PFC program.

In several recent PFC decisions based on AIP eligibility, the agency has approved applications for PFC funding of transit rail connections to airports where part of the facilities were off the airport but on right-of-way owned or controlled by the airport sponsor. These decisions relied more on the access road principles of Paragraph 620.a., than on the language of Paragraph 622.

Also, the agency has made clear that when an on-airport project would have both airport and general use, PFC funding (again, relying on AIP eligibility) could <u>not</u> be used for any portion of the project, because the project was not for exclusive airport use. (March 1995 ARP-1 letter to SFO on preliminary SFO BART station design.)

Longstanding agency guidance on eligibility does not permit AIP (or PFC) funding of ground access projects that:

> Are not located on airport property or on right-of-way owned or controlled by the airport; or
>
> Are intended for the use of both airport and non-airport passengers, regardless of the benefit to the airport.

Questions, please contact APP-500.

3). Use of Airport Revenue for Ground Access Projects

Guidance for the use of airport revenues on airport ground access transportation projects is provided in "Policies and Procedures Concerning the Use of Airport Revenue," Section V.A. 9 (64 FR, 7718-7719, February 16, 1999).

For airports that have received Federal assistance, revenues generated by the airport may be used only 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. (49 USC §47107(b), § 47133)

Ground access facilities that are an integral part of an airport capital project could be covered by (A) as a capital cost of the airport. All other ground access facilities, especially if located off airport property, would need to meet (C)—capital and operating cost of facilities owned or operated by the airport owner and substantially and directly related to the air transportation of passengers or property. This is a somewhat different standard than the one applied to PFC eligibility, which requires that the facilities be exclusively for airport use. The purpose of this requirement is to ensure that local governments do not impose a "hidden tax" on air travel, by diverting airport-generated revenues to non-airport related municipal uses.

Policy guidance. The FAA's final policy on use of airport revenue, issued in February 1999, affirms that airport revenue may be used for capital and operating costs of transit system and ground access facilities owned or operated by the airport and directly and substantially related to the air transportation of passengers or property. The policy effectively tracks the language of the legislative guidance and does not provide additional detail or explanation.

In October 1996, the FAA issued a letter to the City of San Francisco advising that airport revenue could be used for specific structures and equipment of the planned BART station at San Francisco International Airport (SFO). Approved use of airport revenue was limited to actual costs of on-airport facilities that were to be used exclusively by

airport passengers. However, limitation of the approval to on-airport facilities constructed solely for airport purposes was based on the limits of the request received, rather than on an agency interpretation of the limits of eligibility.

Airport revenue has been used in limited circumstances for portions of other airport transit rail stations, but only for on-airport facilities that clearly fall within the statutory guidance.

In 1999, the FAA approved the use of airport revenue for a portion of the Portland International Airport light rail project. (Revenue in this case was in the form of value received by the airport from a contribution of construction of a part of the light rail system by Bechtel.)

In 2000, the FAA approved an apportioned contribution of airport revenue for the Hiawatha Corridor Light Rail System in Minneapolis. The system served the airport through two on-airport stations, but also served non-airport passengers between the downtown area and the Mall of America. The airport contribution was allowed in proportion to projected airport use in relation to total use of the parts of the system on airport property.

Accordingly, actual decisions to date support the following principles of interpreting the basic statutory guidance:

> The portion of a ground access project that is on the airport, is designed and constructed exclusively for airport use, and is integrated into the airport terminal complex may be considered a "capital project of the airport," as in the incorporation of the BART station in the SFO international terminal building.
>
> All other ground access facilities would be evaluated against the requirement that they be facilities "owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property."
>
> "Owned" means that the airport owner or operator holds legal title to the facilities for which airport revenue is used.
>
> "Operated" means that the local or state government or authority that owns or operates the airport is legally responsible for the operation of the ground access facility (e.g., transit system), and operates the facility either with its own employees or through a management contract with a private firm or other public agency. Subsidy of the local transit system is not considered "operation" of the system by the airport.
>
> "Directly and substantially related to the air transportation of passengers," as applied to a ground access project, means that the project:
>
> > Is <u>intended</u> primarily for the use of airport passengers (air passengers,

airport employees, airport visitors), i.e., it is designed and constructed for ground transportation to the airport; *and* is projected to be used primarily by airport passengers.

The use of airport funds for a project that would be used to some degree by non-airport passengers is permitted, but is limited in two ways:

Airport funds cannot be used for portions of the project that are not necessary for the purpose of serving airport passengers.

Airport funds must be prorated to airport use. I.e., for portions of the project used by both airport and non-airport passengers, airport funds to be used for the project cannot exceed a portion of total project funding greater than the projected percentage of total use of the project by airport passengers.

If an on-airport ground access project is designed and constructed for the exclusive use of airport passengers and does not have a general transportation function, the incidental use of the facility by non-airport passengers does not require proration of the airport contribution.

Questions, contact AAS-400 (Airport Compliance Division)

SECTION B: COORDINATION OF AIRPORT ACCESS NEEDS WITH SURFACE TRANSPORTATION AGENCIES

The guidance below is based on discussions between APP-400 and surface transportation agencies. These agencies included the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), a State DOT, a Metropolitan Planning Organization (MPO), and a Regional Planning Commission. Additional coordination was not felt to be necessary since the guidance is broad in nature and based on standard planning practices. Considerable additional coordination would be required to capture all of the nuances of the 50 state DOTs, the hundreds of MPOs, the hundreds of transit operators and the thousands of regional planning bodies.

1). Airport Sponsor Participation in MPO Meetings

Airport users place considerable demand on local roads, intersections, highways and transit systems. When these surface access facilities become stressed, it can result in impacts to the traveling public as well as airport-related businesses and employees. In urbanized areas, regular participation by airport officials in technical committee meetings of the MPO related to transportation planning is important. Participation in MPO activities allows off-airport surface access and land use needs of the airport to be presented to those officials that can address the needs within the context of the regional transportation system. Participation also allows airport officials to educate the community on the benefits of the airport and helps build support for worthwhile airfield and landside development. Intermediate and long-range (10-20 years) airport plans should be included in the MPO long-range transportation plans (which by regulation, must cover a minimum of 20 years) so that land use, surface access and air quality budget requirements can be accommodated. MPO addresses can be found at: http://www.planning.dot.gov/overview.asp

Airports in less populated regions may not have an MPO for the area. In these cases, the State Department of Transportation (DOT) or a local planning entity are responsible for transportation planning and project development. The airport should contact the State DOT for information on technical committee meetings. State DOT addresses can be found at: http://www.fhwa.dot.gov/webstate.htm

Airport sponsors should also meet regularly with the local State DOT field offices and the State DOT aviation offices to discuss surface transportation activities they may have planned and their potential effect on the airport. At times a planned transportation project could be modified to accommodate an airport need without cost to the airport sponsor.

2). Prioritization of Surface Transportation Projects by Surface Transportation Agencies

Frequently an airport has off-airport surface transportation needs that cannot be funded by AIP, PFC or airport revenue. Project needs vary from the ordinary such as signage, intersection improvements, and roadway maintenance, to substantial new bus or rail systems and additional highway lanes. Many of these projects can be funded through FHWA and/or FTA surface transportation monies allocated or apportioned to State DOTs and public transportation operators. There is strong competition for this money and projects must achieve local consensus to be considered for funding. Transportation investment decisions under these programs principally are the responsibility of State and

local officials, not FHWA or FTA.

FHWA and FTA have established a number of transportation planning and programming processes for documentation, coordination and prioritization of surface transportation projects. These processes are used for state and local decisions on the use of FHWA and FTA funds. The processes that airport officials should be familiar with are:

- Metropolitan Long-Range Transportation Plan: Shows significant transportation development in a metropolitan area for a 20+-year period. Major rail, bus, and highway access projects to airports should be included in the long-range transportation plan.
- Transportation Improvement Program (TIP): Listing of priority transit, roadway, bikeway and other surface transportation projects prepared by an MPO for its area of jurisdiction. The TIP is for a four-year period and is updated at least every four years. The TIP is similar in function to an individual airport Capital Improvement Plan.
- Statewide Transportation Improvement Program (STIP): A STIP is prepared for each state. It is a compilation of the individual MPO TIPs and State DOT projects for areas outside the jurisdiction of an MPO. The STIP and TIP are authorizations to seek funding but not an obligation to fund. The STIP is similar in function to the FAA regional office Airport Capital Improvement Plan.

For additional information on the Long-Range Transportation Plan, TIP and STIP, please refer to:

- " Citizens Guide to Transportation Decision Making" at: http://www.fhwa.dot.gov/planning/citizen
- "Title 23, Part 450-Planning Assistance Standards"-Highways at: http://www.fhwa.dot.gov/legsregs/legislat.html
  Click on Highway Related Regulations
- "TIP-A Guide for Municipal Officials, Special Interest Groups, and Citizens. http://www.dvrpc.org
  Click on "TIP Quicklinks," then "TIP," and finally "TIP Guide."

The Delaware Valley Regional Planning Commission, the MPO for the Philadelphia Region, prepared the document "TIP-A Guide for Municipal Officials, …" State DOTs and MPOs in other parts of the U.S. may have similar documents.

3). Coordination of Airport Access Needs With Surface Transportation Agencies

Airport officials should use existing methods and channels to coordinate surface transportation needs with federal, state and local transportation agencies, if such

coordination is successful, appropriate and legal. Otherwise, airport officials should consult with the State DOT field office, the local transit operator, MPO or local planning body to determine:

- Jurisdictional agency for requested project(s)
- Data and analysis needed to justify project(s)
- How the long-range transportation plan, TIP and STIP processes work, including how projects are prioritized
- Funding options

State aviation agencies should be consulted to determine willingness to support project entry into the TIP/STIP or long-range transportation plan.

Some off-airport surface access projects, such as signage improvements, may not need to be specifically included in the TIP/STIP. Contact the appropriate field office of the State DOT to determine jurisdiction for such projects.

4). Summary

Airport officials should:

- Regularly participate in MPO technical meetings related to transportation and land use
- Regularly meet with local State DOT field offices and State DOT aviation offices to discuss planned surface transportation activities
- Educate the community on the importance of the airport (establish stakeholder coordination process)
- Obtain local support for airport access (and airfield) projects
- Ensure that airport master plan and state/regional aviation system plans identify surface access needs
- Understand and participate in the development of the region's long range transportation plan, TIP and the STIP
- Know what justification and data needed to support an off-airport access project
- Work with the State DOT, MPO and transit operator to get worthwhile off-airport access projects on the TIP or long-range transportation plan
- Work with the State DOT and transit operator to get projects on STIP implemented

Questions, please contact APP-400 (Airports Planning and Environmental Division)

SECTION C: SUMMARY OF USEFUL RESOURCE DOCUMENTS

The documents noted below are dated, yet they contain certain relevant material that may be useful to airport sponsors in planning for surface access improvements. TCRP Report 83 is being updated under the Airport Cooperative Research Program.

1). **"Intermodal Ground Access to Airports: A Planning Guide"**
DOT/FAA/PP96-3; FHWA and FAA, December 1996

Limited copies available from APP-400 (FAA Airport Planning and Environmental Division)
Copies also available from the National Technical Information Service, Springfield, Virginia

The report contains the following information that may be useful in surface access planning for airports:

- Performance measures-Chapter 3
- Data collection and surveys-Chapter 4
- Patterns and demands-Chapter 5
- Access road signage-pages 106-108
- Parking alternatives-pages 123-129
- Airport access services (i.e. taxi)-tables 6.4-2, 6.4-3 and 6.4-4

2). **"Improving Public Transportation Access to Large Airports"**
Transit Cooperative Research Program (TCRP) Report 62, FTA/TRB, 2000

Copies available from the Transportation Research Board; National Research Council; 2101 Constitution Avenue, N.W.; Washington, D.C. 20418

The report contains the following information that may be useful in surface access planning for airports:

- Lessons learned from successful rail access systems-page 6 and Chapter 5
- New and emerging technologies-pages 6-7 and Chapter 6
- Defining the airport ground access market-pages 45, 46
- Airport ground access passenger survey techniques-pages 48-54

3). **"Strategies for Improving Public Transportation Access to Large Airports"**
Transit Cooperative Research Program Report 83, FTA/TRB, June 2006

The report can be viewed at: http://trb.org/publications/tcrp/tcrp_rpt_83a.pdf
Copies available from TRB at the address noted under item C2), above

The report contains the following information that may be useful in surface access planning for airports:

- Improving public mode share for employees-Chapter 4
- Strategies for improving the management of airport ground access services-Chapter 5
- Getting intermodal information to the customer-Chapter 7

Questions, please contact APP-400 (Airports Planning and Environmental Division)

SECTION D: RESEARCH PROJECTS FOR AIRPORT SURFACE ACCESS PLANNING AND DESIGN

1**). "A Guide For Assessing Airport Curbside Operations And Terminal Area Roadways"-**Airport Cooperative Research Project-TRB and FAA

Approved project that is expected to be complete mid-year 2008.

Objective: Develop a guide to analyze the operation of the airport curbside and terminal area roadways.

2). **"New Concepts For Airport Terminal Landside"-**Airport Cooperative Research Project-TRB and FAA

Approved project that is expected to be complete mid-year 2008.

Objective: Develop new concepts that will stimulate design innovation for terminal landside facilities at large and medium-hub airports. Intent is to improve passenger accessibility and level of service between ground transportation and the secure part of the terminal.

3). **"Case Studies Of Successful Airport Intermodal Projects**."-FAA Technical Center-Phase 1

Phase 1 of the project will start in 2006. Final product expected by the end of 2007. Additional case studies (i.e. Phase 2) may be funded based on the findings of Phase 1.

Questions, please contact APP-400 (Airports Planning and Environmental Division)

R-K8 – Theory and Law of Airport Revenue Diversion

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THEORY AND LAW OF AIRPORT REVENUE DIVERSION

By Paul Stephen Dempsey, Tomlinson Professor of Law, McGill University[1]

I. INTRODUCTION

Harvard economist John Kenneth Galbraith observed, "In all countries the economic system depends on and develops from the State financing of highways, airports, postal services and urban infrastructure of the most diverse and essential sort."[2] Traditionally, many national governments have provided infrastructure services that were too complex and expensive for the local authorities to provide. Such services include airports and air navigation, meteorology, and communications systems. Federal oversight satisfied the need for a high degree of uniformity and standardization. The government also provided the services of health, immigration, customs, and the protection and security of civil aviation. But, relatively recently, several nations have embraced private enterprise and competition, rather than government oversight, to provide essential transport and have "corporatized" various portions of the infrastructure, such as airports and air traffic control services.[3]

Unlike the global paradigm of nationally owned and operated or corporatized or privatized airports, most airports in the United States are owned and operated by local (city, county, regional, and in some instances state) governments.[4] Despite local government ownership, the federal Airport Improvement Program (AIP) grants and Passenger Facility Charge (PFC) authorizations provide significant funding for many of these airports and oversee local airports directly, through Titles 14 and 49 of the Code of Federal Regulations, and indirectly, in the form of conditions imposed in grant agreements. The fiscal problems facing local governments more generally (including, for example, the needs of urban roads, water, sewage, parks, schools, hospitals, and other infrastructure, and fire and police protection) coupled with a declining tax base have forced many to search for new sources of revenue. Redirecting revenue from airports to fund nonairport municipal needs appears attractive to some local political leaders. Yet Congress has stepped in to promulgate laws to circumscribe the ability of federally funded airports to divert airport revenue "downtown." Conflicts over locally owned and operated airports and federal funding and regulation are by no means unique to revenue-diversion issues, but they manifest themselves here as well.

While, on the one hand, Congress has been concerned with assisting airports with their need to secure adequate funding, on the other, it has been concerned about the possibility that airports might use airport revenue for nonairport purposes. Where federal funds have been spent to build or improve local airport infrastructure, allowing airport revenue to be spent on nonaviation-related activities in effect results in an indirect transfer from the federal to the local treasury. Airlines and aircraft operators, as well as airport concessionaires, have objected to diversion on grounds that if airport revenue is spent on nonaviation uses, they will be forced to shoulder the economic burden thereby created. Airports account for between 4 percent and 6 percent of

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[2] Bev Desjarlais, *Doug Young's Defection Shows His True Colors*, HILL TIMES, June 5, 2001, at 16.

[3] *See*, *e.g.*, Soon-Kil Hong & Kwang Eui Yoo, *A Study on Airport Privatization in Korea: Policy and Legal Aspects of Corporatization and Localization Over Airport Management*, 66 J. AIR L. & COM. 3 (2000); PAUL DEMPSEY ET AL., THE MCGILL REPORT ON GOVERNANCE OF COMMERCIALIZED AIR NAVIGATION SERVICES (2006), reproduced at http://www.mcgill.ca/files/iasl/ANS_Report_final.pdf (Last visited Jan. 23, 2008).

[4] For many years, the Washington, D.C., airports (Reagan National and Washington Dulles) were federally owned and operated, but these too have been transferred to local governmental institutions. In 1987, the U.S. government transferred the operation of Ronald Reagan Washington National and Dulles International Airports to the newly created Metropolitan Washington Airports Authority under a 50-year lease.

Most airports in the U.S. were created as departments of cities or counties; most remain owned and operated by a governmental institution. As of 2003, city-owned airports were the most common form of ownership in the United States (38 percent), followed by regional/airport authority (25 percent), single county (17 percent), and multiple-jurisdictions (9 percent). For example, the cities of Atlanta, Chicago, Denver, Detroit, Miami, and Philadelphia own their airports. State ownership accounts for 5 percent of the total, including Baltimore Washington International Airport, Anchorage International (and most other airports in Alaska), and the Hawaiian airports. Airports at Boston, Dallas/Ft. Worth, Minneapolis/St. Paul, New York/New Jersey, Seattle/Tacoma, and Washington are operated by independent authorities (several by multi-purpose Port Authorities, which account for 3 percent of the total). Airports Council International–North America, Who Governs the Airport and Does It Matter?, http://www.aci-na.org/docs/70-Airport%20Governance.doc (Last visited Jan. 23, 2008).

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airline industry costs, and a diversion of revenue could, according to the airlines, only worsen the airlines' financial condition, which, since deregulation, has fallen to historic lows.[5]

As a consequence, Congress has imposed constraints on the use of airport funds for off-airport municipal activities, at least for most airports receiving federal financial support. This study examines the issue of airport revenue diversion, the theoretical rationale for its prohibition, and the array of federal statutes and Federal Aviation Administration (FAA) policies that regulate it.

II. AIRPORT FINANCE

A. General Principles of Airport Finance

Understanding revenue diversion requires a basic understanding of general principles of airport cost and revenue and their subcomponents—capital and operating expenditures and the various sources of revenue.[6] The laws and policies restricting revenue diversion are concerned with both revenue and expenditures. Thus, we evaluate financial issues at two levels.

First, an airport seeking to expand its facilities or a governmental entity seeking to build a new airport must raise sufficient capital to finance such infrastructure development from public or private sources or a combination of both. *Capital costs* consist of the component costs (e.g., labor, materials, and equipment) of construction of the airport and its component parts. Funds come from a variety of public (including federal) and private (including municipal general obligation (GO) bonds and general airport revenue bonds (GARBs)) sources.[7] Sources of capital for airport development include governmental or international organization loans and grants; commercial loans from financial institutions; equity or debt (typically bonds) from commercial capital markets, including private investors, banks investment houses, or fund pools; and the extension of credit from contractors and suppliers. Commercial loans typically incur the highest interest rates, though such rates may be reduced by governmental loan guarantees. Existing airports also may have retained earnings in a capital development account.

Second, once built, an airport must earn sufficient revenue to pay its operating expenses and retire its debt. Revenue comes from a number of sources, including rents, aeronautical fees, concessions, and parking.[8] *Operating costs* include expense items such as interest and depreciation or amortization on debt, taxes, and maintenance and administrative costs, including salaries, power, and repairs.

B. Funding for Airport Infrastructure

This section examines how airport infrastructure is financed and the role federal funding has in infrastructure development. The reader is introduced to cash flow revenue streams, private bonding sources, the AIP, PFCs, and state and local financing.[9]

1. Cash Flow

In order to understand airport finance, one must comprehend not only where the revenue goes, but where it originates. Airside revenue streams include landing fees, fuel taxes, and maintenance and cargo facility leases. Landside revenue streams include terminal rents and gate leases, concessions, and parking fees. PFCs are another significant source of revenue that cannot be readily classified as air side or land side. All revenue generated by a public airport, as well as local fuel taxes, must be used for legitimate airport purposes—the capital or operating costs that directly and substantially relate to air transport. PFCs are subject to additional limitations and requirements as discussed below.

In addition to government grants and subsidies, the airport turns to its tenants—the airlines, concessionaires, parking providers—and the passengers they serve to finance its maintenance and operating costs and debt service. Airports derive revenue streams from rents, charges, and fees imposed upon airlines; various concessionaires (such as car rental companies, restaurants, news stands, taxi and van services, catering and baggage services); fuel providers; and parking. Except for many small airports, most U.S. commercial airports are self-sustaining, with revenue collected from businesses (concessionaires), passengers, and airlines covering most airport operating expenses. In fact, about half of the smaller commercial airports (nonhub primary and nonprimary commercial service airports) in the United States do not break even. Likewise, most general aviation airports are subsidized by their owners.

Airport concessionaires (such as restaurants, news stands, auto rental companies) typically pay rent for the space they occupy, while some pay a gross-receipts fee. These revenues, in turn, finance operating and mainte-

[5] See Daniel P. Rollman, *Flying Low: Chapter 11's Contribution to the Self-Destructive Nature of Airline Industry Economics*, 21 EMORY BANK. DEV. J. 381 (2004); PAUL DEMPSEY & ANDREW GOETZ, AIRLINE DEREGULATION & LAISSEZ FAIRE MYTHOLOGY (1993).

[6] See generally Christopher R. Rowley, *Comment: Financing Airport Capital Development: The Aviation Industry's Greatest Challenge*, 63 J. AIR L. & COM. 605 (1998); John Sabel, *Airline–Airport Facilities Agreements: An Overview*, 69 J. AIR L. & COM. 769 (2004); PAUL DEMPSEY, ANDREW GOETZ & JOSEPH SZYLIOWICZ, DENVER INTERNATIONAL AIRPORT: LESSONS LEARNED 183-228 (1997); PAUL DEMPSEY, AIRPORT PLANNING & DEVELOPMENT: A GLOBAL SURVEY 178–80 (2000); and ALEXANDER WELLS, AIRPORT PLANNING & MANAGEMENT 159–69 (3d ed. 1996).

[7] See Sabel, *supra* note 6; PAUL DEMPSEY, ROBERT HARDAWAY & WILLIAM THOMS, AVIATION LAW & REGULATION § 7.06 (1992).

[8] REGIS DOGANIS, THE AIRPORT BUSINESS 57 (Routledge 1992).

[9] See generally Rowley, *supra* note 6, and Dempsey, *supra* note 6, at 174–77.

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nance expenses, principal and interest debt service, and various "pay as you go" infrastructure, such as terminal or runway expansions or improvements.[10]

Airlines pay rental charges for the space they occupy at ticket counters, gates, and baggage handling, maintenance, and catering facilities, and also pay takeoff and landing fees, parking fees, and fuel fees.[11] Two methodologies dominate computation of airline fees and charges under airport use agreements: the residual method and the compensatory method.[12] Many airports use a combination of residual and compensatory rate-making.

In a *residual agreement*, the signatory airlines accept the financial risk, and guarantee to provide the airport with sufficient revenue to cover its operating and debt-service costs. Under this approach, the airport deducts an agreed amount of nonairline (concession) revenue from its expenses, leaving the airlines responsible for the remaining (residual) amount.[13] Airline rates then are set accordingly. Airlines bear the risk that their fees will be increased should concession revenue fall short. Airports using residual methodology typically give airlines majority-in-interest power to veto new major capital expenditures.[14]

Compensatory agreements, whereby the airport undertakes the risk of meeting its costs, usually exist at mature airports that have achieved successful revenue generation. Under the compensatory method, an airport is divided into various cost centers (such as airfield, terminals, and parking areas), and airlines pay a share of those costs based on the amount of space they occupy (at, for example, ticket counters, gates, and baggage sorting and catering facilities); volume of landing and departing aircraft; and other measures of airline use.[15] The airport retains concession revenue for discretionary capital improvement projects.

These so-called "captive customers" (i.e., airlines and concessionaires) have become highly interested in whether airports might charge them fees exceeding the cost of operating the airport in order to cross-subsidize the local governmental institution that owns the airport. Politically, they have encouraged the Congress to promulgate prohibitions on certain forms of revenue diversion.

2. Commercial Debt (Bonds)

Historically, in the United States, funding for airport capital infrastructure, such as runways, taxiways, and terminals, has come from two primary sources: (1) federal ticket taxes (or AIP funds) from the Airport Trust Fund collected on every airline ticket purchased in the United States; and (2) tax-free GARBs issued by municipalities. In the late 1990s, approximately 80 percent of the capital for the airport project came from AIP grants, while the remaining 20 percent was raised by municipalities in GARBs.[16] In the half century between 1946 and 1996, the U.S. government granted more than $24 billion in grants to airports.[17] In 1990, Congress

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[10] National Civil Aviation Review Commission, Airport Development Needs and Financing Options (June 4, 1997), reproduced at: http://www.faa.gov/ncarc/whitepaper/airports/#cfs (Last visited Jan. 23, 2008).

[11] Air Transport Association of America, Airline Handbook, ch. 7 (available at http://members.airlines.org/about/d.aspx?nid=7951 (visited Jan. 23, 2008).

[12] One source notes:

> At most commercial service airports, the financial and operational relationship between an airport and the airlines it serves is defined in legally binding agreements that specify how the risks and responsibilities of airport operations are to be shared between the two parties. Commonly referred to as "airport use agreements," these contracts generally specify the methods for calculating the rates airlines must pay for use of airport facilities and services, as well as identify the airlines' rights and privileges, which in some cases include the right to approve or disapprove any major proposed airport capital development projects (which the airlines are required to finance).

National Civil Aviation Review Commission, Airport Development Needs and Financing Options (June 4, 1997), reproduced at http://www.faa.gov/ncarc/whitepaper/airports/#cfs (visited Jan. 23, 2008).

[13] Airlines typically stand behind the revenue bonds with "use and lease agreements," pledging to make up the difference in revenue shortfalls by paying higher landing fees. The quid-pro-quo for the residual funding agreement historically has been a long-lease term for gates and a "majority-in-interest clause" (MII) giving airlines a say (often an effective veto) over airport expansion and a return of excess revenue collected, often in the form of lower landing fees. ALEXANDER WELLS, AIRPORT PLANNING AND MANAGEMENT 181 (1992). As of 1990, majority-in-interest clauses were in effect at 36 of the 66 largest U.S. airports. Kenneth Mead, Airline Competition (testimony on passenger facility charges before the House Subcomm. on Aviation, June 19, 1990). As of 1999, the U.S. DOT reported that most of the large and medium hub airports had MII clauses in their use and lease agreements. U.S. DEP'T OF TRANSP., AIRPORT BUSINESS PRACTICES AND THEIR IMPACT ON AIRLINE COMPETITION ix (1999), available at http://ostpxweb.dot.gov/aviation/Data/airportsbuspract.pdf (Last visited Jan. 23, 2008) (identified 30 out of 45 large airports with MII clauses based on an ACI-NA survey). However, these data may be somewhat overstated, as many airports have either moved away from majority-in-interest clauses or substantially weakened them in recent lease negotiations.

[14] Nancy Kessler, Airport-Airline Fee Disputes and Privatization of Airports (address before the 117th Summer Meeting of the Virginia Bar Association (July 21, 2007)).

[15] Air Transport Association of America, *supra* note 11.

[16] HENRY HYDE & JESSE JACKSON, JR., THE PARTNERSHIP FOR METROPOLITAN CHICAGO'S AIRPORT FUTURE 30 (1997). The GAO recently published a report with more up-to-date figures on the use of bonds versus AIP. U.S. GOV'T ACCOUNTABILITY OFFICE, AIRPORT FINANCE, OBSERVATIONS ON PLANNED AIRPORT DEVELOPMENT COSTS AND FUNDING LEVELS AND THE ADMINISTRATION'S PROPOSED CHANGES TO THE AIRPORT IMPROVEMENT PROGRAM, GAO-07-885 (June 2007), http://www.gao.gov/new.items/d07885.pdf (Last visited Jan. 23, 2008).

[17] U.S. GENERAL ACCOUNTING OFFICE, AIRPORT PRIVATIZATION 8 (Feb. 29, 1996). Annual Reports of AIP accomplishments can be used to provide approximate figures of

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also passed the Aviation Safety and Capacity Expansion Act, creating a federally authorized but locally collected program of airport PFCs to supplement public airport capital needs.[18] Between 2001 and 2005, airports received an average of approximately $13 billion a year for capital development, most of which comprised bonds ($6.5 billion), federal grants ($3.6 billion), and PFCs ($2.2 billion). The nation's 67 largest airports, which account for approximately 90 percent of passenger traffic, rely more heavily on bond financing, while the remaining 3,300 smaller airports in the national system rely more heavily on grants.[19]

Early airport construction was financed by GO bonds backed by the "full faith and credit" of a governmental unit and secured by taxes collected by it.[20] The industry was in its infancy, and airports were not capable of generating sufficient revenue to finance infrastructure costs. Since World War II, GARBs have replaced GO bonds as the preferred means of financing new airport construction, expansion, or improvement. In fact, since 1982, more than 95 percent of airport debt, exceeding some $50 billion, has been in the form of GARBs.[21] GARBs are paid off by revenue generated by the facility they finance.[22] Although GARBs have been the primary source of debt financing, special facility bonds secured by revenue from the indebted facility (e.g., hangar or maintenance facility) are sometimes issued.[23] Both GARBs and GO bonds historically have been tax exempt (as industrial revenue bonds), allowing states, municipalities, and airport authorities to lower the long-term costs of capital financing.[24] The cost of capital (i.e., interest rates) paid by airports on GARBs is lower than commercial rates because of the tax benefits. GARBs typically run for a 25–30 year term and usually pay lower interest than taxable corporate bonds of comparable risk.[25]

3. Federal Funding: The Airport and Airway Trust Fund and the Airport Improvement Program

Prior to 1970, federal funding of the airport and airway system was from the general fund. That year, the Airport and Airway Trust Fund (AATF) and the Airport Development Aid Program were established. Revenue to fund the trust fund was derived from passenger ticket and other excise taxes.[26]

The Airport and Airway Improvement Act of 1982[27] (AAIA) established the current framework for federal financing of U.S. airport development and improvement projects. The AATF is the depository for airport infrastructure revenue under the AIP. Such revenue is derived from airline ticket taxes, fuel taxes, airway bill taxes, and other taxes and fees.[28]

Before 1997, the aviation taxes deposited in the AATF included a 10 percent ticket tax, a 6.25 percent

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grants for the period 1997 thru 2007. These reports can be obtained from the FAA Web site at the following URL: http://www.faa.gov/airports_airtraffic/airports/aip/grant_histories (Last visited Jan. 23, 2008).

[18] 49 U.S.C. § 40177. See Village of Bensenville v. FAA, 363 U.S. App. D.C. 78, 376 F.3d 1114 (D.C. Cir. 2004).

[19] U.S. GOVERNMENT ACCOUNTABILITY OFFICE, AIRPORT FINANCE: OBSERVATIONS ON THE ADMINISTRATION'S PROPOSED CHANGES IN THE AIRPORT IMPROVEMENT PROGRAM, GAO-07-885 (June 2007), available at http://www.gao.gov/new.items/d07885.pdf (Last visited Jan. 23, 2008).

[20] One source notes:

> In the 1950's and early 1960's, general obligation (GO) bonds were more widely used than revenue bonds for airport development. GO bonds were backed by the taxing authority of the issuer. Since the 1960's, airport revenue bonds have been the major financing mechanism for capital improvements at large, medium, and some small hub airports. These financial instruments pledge the airport's revenue streams to repay bond holders. The ability of an airport to utilize revenue bonds depends on a number of factors, including: debt structure; airport management, administration and scope of operations; revenue structure and financial operations, economic base; and plant.

National Civil Aviation Review Commission, Airport Development Needs and Financing Options (June 4, 1997), reproduced at http://www.faa.gov/ncarc/whitepaper/airports/#cfs (Last visited Jan. 23, 2008).

[21] Air Transport Association of America, *supra* note 11.

[22] Rowley, *supra* note 6; DEMPSEY, GOETZ & SZYLIOWICZ, *supra* note 6, at 186.

[23] U.S. GENERAL ACCOUNTING OFFICE, AIRPORT FINANCING: FUNDING SOURCES FOR AIRPORT DEVELOPMENT 38, GAO/RCED-98-71 (Mar. 1998), http://www.gao.gov/archive/1998/rc98071.pdf (Last visited Jan. 23, 2008).

[24] Michael Bell, AIRPORT FINANCING, IN AIRPORT REGULATION, LAW & PUBLIC POLICY 93-95 (R. Hardaway ed., 1991).

> The availability of tax-exempt bonds is estimated to save airports and airlines over $1 billion a year in interest costs. (Airports and airlines also make extensive use of Special Facility bonds which are revenue bonds that are usually secured by the guarantee of an airport tenant. Also, airports continue to make use of GO bonds that are secured by the taxing authority of the issuer, but there is heavy competition to use such bonds for other municipal purposes.)

National Civil Aviation Review Commission, Airport Development Needs and Financing Options (June 4, 1997), reproduced at http://www.faa.gov/ncarc/whitepaper/airports/#cfs (Last visited Jan. 23, 2008).

[25] The cost of private capital typically is higher than public capital, though interest rates can be ameliorated by governmental guarantees and insurance. The competitiveness of airport bonds in the market can be gauged by the bond ratings by the major investment houses, the interest rate, and the default ratio. Tax exemptions on the bond's purchase price or interest can also stimulate investor interest in airport bonds. INTERNATIONAL CIVIL AVIATION ORGANIZATION, AIRPORT ECONOMICS MANUAL 69 (1991).

[26] National Civil Aviation Review Commission, *supra* note 10.

[27] 97 Pub. L. No. 248, 96 Stat. 671. This Act replaced the Airport and Airway Development Act of 1970, 91 Pub. L. No. 258, 84 Stat. 219.

[28] The Airport and Airway Trust Fund also provides the financing for the FAA's capital and research and development budget and for most of the FAA's operating budget.

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cargo waybill tax, a $6 international departure tax, a 15 cents per gallon general aviation gasoline tax, and a 17.5 cents per gallon general aviation fuel tax.[29] Legislation passed that year shifted much of AIP funding away from the traditional 10 percent tax imposed on each ticket sold.[30] Beginning in January 2000, aviation-related federal taxes generated to fund the AIP included a 7.5 percent domestic ticket tax and a $2.50 per person per flight segment fee for all flights, though certain rural airports were exempted from the latter. The federal grant programs also are funded by a $12.00 international arrival tax and a $12.00 international departure tax (adjusted for inflation from 1999), a 6.25 percent domestic air freight tax, a 4.3 cents per gallon domestic air fuel tax, and taxes on the fuel consumed by small aircraft and for noncommercial purposes.[31] Table 1 summarizes the tax structure that funds the trust fund.

[29] For a complete list of the taxes charged, see PAUL STEPHEN DEMPSEY & LAURENCE GESELL, AIRLINE MANAGEMENT: STRATEGIES FOR THE 21ST CENTURY 402–13 (1997), and PAUL DEMPSEY, ROBERT HARDAWAY & WILLIAM THOMS, 1 AVIATION LAW & REGULATION § 2.26 (1993). See also Rowley, *supra* note 6.

[30] The new taxing structure was as follows:

Commercial

- Ticket tax of 9 percent in FY 1998; 8 percent in FY 1999; and 7.5 percent in FY 2000 through FY 2002;
- Segment charges per passenger of $1.00 in FY 1998, $2.00 in FY 1999, $2.25 in FY 2000, $2.75 in FY 2001, and $3.00 in FY 2002;
- International departure and arrival taxes of $12;
- Frequent flyer award tax;
- $0.043 commercial user fuel tax (formerly the deficit reduction tax); and
- 6.25 percent cargo waybill tax.

Noncommercial

- $0.193 aviation gasoline tax and
- $0.218 aviation jet fuel tax.

NATIONAL CIVIL AVIATION REVIEW COMMISSION, AVOIDING AVIATION GRIDLOCK & REDUCING THE ACCIDENT RATE II-26 (1997).

[31] Air Transport Association of America, *supra* note 11.

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TABLE 1. CURRENT AVIATION EXCISE TAX STRUCTURE[32]
(Taxpayer Relief Act of 1997, P.L. 105-35)

Aviation Taxes	Comment	Tax Rate
PASSENGERS		
Domestic passenger ticket tax	Ad valorem tax	7.5% of ticket price (October 1, 1999, through November 30, 2007)
Domestic flight segment tax	Domestic segment = a flight leg consisting of one takeoff and one landing by a flight	Rate is indexed by the Consumer Price Index (CPI) starting January 1, 2002. Rate per passenger per segment in calendar years (CYs): 2003 – $3.00 2004 – $3.10 2005 – $3.20 2006 – $3.30 2007 – $3.40
Passenger ticket tax for rural airports	Assessed on tickets on flights that begin/end at a rural airport Rural airport: <100K enplanements during 2nd preceding CY, and either (1) not located within 75 miles of another airport with 100K+ enplanements, (2) is receiving essential air service subsidies, or (3) is not connected by paved roads to another airport	7.5% of ticket price (same as passenger ticket tax). Flight segment fee does not apply.
International arrival and departure tax	Head tax assessed on passengers arriving or departing for foreign destinations (and U.S. territories) that are not subject to passenger ticket tax	Rate is indexed by the CPI starting January 1, 1999. Rate per passenger in CYs: 2003 – $13.40 2004 – $13.70 2005 – $14.10 2006 – $14.50 2007 – $15.10
Flights between continental United States and Alaska or Hawaii		Rate is indexed by the CPI starting January 1, 1999. International facilities tax rate (+ applicable domestic tax rate) in CYs: 2003 – $6.70 2004 – $6.90 2005 – $7.00 2006 – $7.30 2007 – $7.50
Frequent flyer tax	Ad valorem tax assessed on mileage awards (e.g., credit cards)	7.5% of value of miles
FREIGHT / MAIL		
Domestic cargo/Mail		6.25% of amount paid for the transportation of property by air
AVIATION FUEL		
General aviation fuel tax Commercial fuel tax		Aviation gasoline: $0.193/gal Jet fuel: $0.218/gal $0.043/gal

[32] Source: http://www.faa.gov/about/office_org/headquarters_offices/aep/aatf/media/Simplified_Tax_Table.xls (Last visited Jan. 23, 2008).

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The AIP provides funding for airport planning and development projects that enhance capacity, safety, and security and mitigate noise. Several thousand airports have been designated by the FAA as eligible for AIP funding. Most funds are allocated on the basis of a statutory entitlement formula based on passenger enplanements, with set-aside categories for designated types of airports and airport projects.[33] The largest U.S. airports receive only about 10 percent of their capital funding through AIP, while the smaller airports as a group acquire more than half of their capital funding from AIP.[34] During fiscal year 2006, AIP funds totaling $3.6 billion funded 2,059 new grants and 729 grant agreements.[35]

4. Federal Funding: Passenger Facility Charges

Recognizing the need to generate local discretionary sources of capital, Congress in 1990 created the PFC program, which allowed airports to impose a $1, $2, or $3 charge directly on each boarding passenger (up to a maximum of $12 per passenger) for FAA-approved projects. For the largest airports, Congress required the airport to surrender half of its AIP funding in exchange for the right to impose the PFC.[36] Priority was given to capital improvements to finance capacity, safety, security, and environmental projects and projects to enhance airline competition.

These limits have since been increased. Beginning in 2000, the maximum PFC rate was increased to $4.50 per segment, with a roundtrip cap of $18.00.[37] These taxes must be pledged to specific FAA-approved capital improvements that (1) preserve or enhance the safety, capacity, or security of the national air transportation system; (2) reduce noise; or (3) enhance air carrier competition. Once all the money needed for the approved projects has been raised, the airport may no longer collect the PFC approved therefor.[38]

By 1994, the FAA had approved applications by about 100 airports to generate $6.4 billion in PFC revenue.[39] By the late 1990s, PFCs were generating more than $1.1 billion annually for approved projects at more than 200 airports.[40] Today, more than 300 airports have been authorized to collect PFCs that total more than $62 billion. In recent years, PFCs have generated more than $2.5 billion per year.[41]

PFCs also differ from other forms of financing in their potential susceptibility to revenue diversion. PFCs may only be collected for specified, FAA-preapproved projects. Hence, it is less likely that such funds will be used for nonapproved purposes.

5. State and Local Financing

Most states also provide financial assistance to airports, usually in the form of matching funds for AIP grants. States fund their contribution through aviation fuel and aircraft sales taxes, highway taxes, bonds, and general fund appropriations. In 1996, the states provided $285 million to U.S. airports.[42] Between 2001 and 2005, states provided approximately $3.8 billion to the national system airports, 57 percent of which went to general aviation or reliever airports.[43] Even when states contribute matching funds, they normally do not contribute the full matching share, but expect the airport or municipality owning the airport also to contribute. Occasionally a local municipality or outside developer may provide financial assistance to an airport. Usually such assistance is in the form of operating subsidies for smaller airports.[44]

C. The Theory of Natural Monopoly and Monopolistic Abuse

It has been asserted that airports constitute a monopoly "…with the ability to charge fees and control aviation traffic. Diverting funds while charging fees and

[33] U.S. GENERAL ACCOUNTING OFFICE, AIRPORT IMPROVEMENT PROGRAM: MILITARY AIRPORT PROGRAM AND RELIEVER SET-ASIDE UPDATE 2, GAO/T-RCED-96-94 (Mar. 13, 1996), http://ntl.bts.gov/lib/1000/1400/1450/rc96094t.pdf. (Last visited Jan. 23, 2008).

[34] U.S. GENERAL ACCOUNTING OFFICE, AIRPORT FINANCING: COMPARING FUNDING SOURCES WITH PLANNED DEVELOPMENT 1, GAO/T-RCED-98-129 (Mar. 19, 1998), http://www.gao.gov/archive/1998/rc98129t.pdf (Last visited Jan. 23, 2008).

[35] FEDERAL AVIATION ADMINISTRATION, AIRPORT IMPROVEMENT PROGRAM FISCAL YEAR 2006 (2007), available at http://www.faa.gov/airports_airtraffic/airports/aip/grant_histories/media/aip_annual_report_fy2006.pdf (Last visited Jan. 23, 2008).

[36] One source notes:

> Since it was recognized that principally large and medium hub airports would benefit from PFC revenues, such airports imposing PFCs were required to "turnback" 50 percent of their AIP entitlement funds. (75 percent of the forfeited entitlements funds were used to create the AIP Small Airport Fund, benefiting non-commercial service airports and non-hub commercial airports. The remaining 25 percent was added to the AIP discretionary fund. Of this 25 percent, half was to be provided to small hub airports and half was to be distributed between other discretionary accounts. The idea was that small airports would not raise PFCs directly, and this was a way for them to benefit indirectly from PFCs levied by the larger airports.)

National Civil Aviation Review Commission, *supra* note 10.

[37] The passenger entitlement turn-back percentage was raised from 50 percent to 75 percent for airports imposing a PFC of more than $3.

[38] Air Transport Association of America, *supra* note 11.

[39] U.S. House Comm. on Public Works & Transportation, Aviation Infrastructure Act of 1993, H.R. REP. NO. 103-240, at 27 (1993).

[40] National Civil Aviation Review Commission, *supra* note 30, at II-43.

[41] Federal Aviation Administration, Key Passenger Facility Charge Statistics (Nov. 1, 2007) available at http://www.faa.gov/airports_airtraffic/airports/pfc/monthly_reports/media/stats.pdf (Last visited Jan. 23, 2008). See also Air Transport Association of America, *supra* note 10.

[42] U.S. GENERAL ACCOUNTING OFFICE, *supra* note 23, at 43.

[43] U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 19, at 26–27.

[44] U.S. GENERAL ACCOUNTING OFFICE, *supra* note 23, at 43.

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receiving funds through the AIP funds essentially is double-dipping and taxpayers pay the brunt of this practice. Air carriers and air travelers also pay a heavy price for airport revenue diversion."[45]

Monopolies generally have been disfavored in American law since promulgation of the Sherman Act of 1890. Antitrust legislation tends to reflect the normative conclusion that large firms or corporations that dominate particular industries as bastions of enormous concentrations of wealth and power are undesirable.[46] By the late 19th century, Richard Ely had identified a number of industries as natural monopolies, including railroad, express, telegraph, streetcar, gas, and water companies.[47] Other examples of natural monopolies include gas and oil pipelines, electricity transmission, and local distribution utilities such as telephone service, gas, water, electricity, and cable television.

In most cities, airports are natural monopoly bottlenecks[48] (with declining costs over a long range of output).[49] Costs tend to decline until airside or landside demand exceeds capacity, for airport infrastructure expansion can be politically difficult and financially challenging. Many airports are hemmed in by surrounding development and opposed by residents fed up with noise and congestion. Some residents may embrace a "NIMBY" (not in my back yard) attitude toward new airport development or existing airport expansion. Congestion imposes the need for landside and airside expansion, yet land constraints and local political opposition to the construction of new airports or expansion of existing ones impose severe financial and political barriers to economical expansion. Some argue that airports do not share the characteristics of most other natural monopolies in terms of declining costs over a long range of output. One source put it this way:

> Compared with the more traditional "natural" monopoly examples, supply in the airport industry is probably characterised [sic] by increasing, rather than decreasing, long-run costs at quite moderate levels of output. That is to say, if we double the potential output of a sizable airport by doubling the capacity available for use, total costs will more than double…. The source of the airport monopoly, therefore, is not the usual economies of scale in the long-run production function, but the fixity of "locational" inputs (i.e. good sites) and economies of scope associated with established air service networks.[50]

In the United States, the large commercial airports are owned predominantly by local governments. In several countries where airports have been privatized, economic regulation or price caps have been imposed to prohibit monopolistic exploitation of tenants, for airports hold monopoly power over airlines, and private ownership encourages wealth maximization.[51]

Because of concerns about the potential for airports to exhibit the characteristics of natural monopolies, airlines have a strong interest in ensuring that airports do not charge fees beyond those necessary to provide adequate and safe infrastructure. To airlines and air-

[45] Airport Revenue Diversion, Hearings before the U.S. Sen. Subcomm. on Aviation of the Commerce Comm. (May 1, 1996), at 34, reproduced at: http://books.google.com/books?id=nQEDkwETmdkC&dq=%22airport+revenue+diversion%22&printsec=frontcover&source=web&ots=f7QKBCZe8&sig=ZsilCY2rHH1ZSYysVMapyMALmMM#PPA30,M1 (Jan. 23, 2008).

[46] Thomas W. Hazlett, *The Curious Evolution of Natural Monopoly Theory*, IN UNNATURAL MONOPOLIES 3 (R. Poole, Jr. ed., 1985).

[47] Richard Ely, *The Future of Corporations*, HARPERS 260 (July 1887).

[48] A "bottleneck" is a term used generally by some economists to describe a situation where all the traffic must pass through a single portal. For a discussion of the concept of a "monopoly bottleneck," see also United States v. W. Elec. Co., 269 U.S. App. D.C. 436, 846 F.2d 1422 (D.C. Cir. 1988). In some cities with only a single commercial airport, and without intercity rail service, an airport can be such a "bottleneck" for intercity passenger service. The concept of an airport "bottleneck" and its competitive implications is discussed in Spirit Airlines v. Northwest Airlines, 431 F.3d 917, 927 (6th Cir. 2005), and Reza Dibadj, *Saving Antitrust*, 75 U. COLO. L. REV. 745 (2004).

[49] See International Air Transport Association, Airport Privatization, in http://www.iata.org/NR/rdonlyres/473F5695-12A6-4071-8C64-2141913373B6/0/airport_privatisation.pdf (Last visited Jan. 23, 2008).

[50] David Starkie, A New Deal for Airports (Institute of Economic Affairs, Nov. 1, 1999), at http://www.iea.org.uk/record.jsp?type=book&ID=373 (Last visited Jan. 23, 2008).

[51] In 1994, the Canadian government announced its intention to privatize (or "corporatize") Canada's airports and air traffic control system (NavCan). Peter Holle, *Privatized Air Control a Canadian Success Story*, GUELPH MERCURY, Sept. 24, 2002, at A7. Toronto's Lester Pearson Airport was privatized in 1996. Canada's major airports were transferred to local nonprofit companies that would continue to pay the federal government rent of the Crown land on which the airports sat. Critics pointed out that Canada's eight largest airports pay $250 million a year to the federal government in rent, which, of course, is passed through to airlines and their passengers as a hidden tax. Walter Robinson, *Let Air Canada Heal Self-Inflicted Wounds*, HAMILTON SPECTATOR, Apr. 2, 2003, at A11; Stephanie Rubec, *Bungled Air Deals Millions Lost in Airport Privatization*, CALGARY SUN, Oct. 18, 2000, at 2. After Canada's airports were privatized, airlines experienced a significant increase in airport landing and terminal fees and rents. *Air Canada Welcomes Transport Canada Airport Policy Initiatives*, CANADA NEWSWIRE, June 13, 2001. The International Air Transport Association (IATA) complained that airport fees at Toronto Pearson Airport would have to increase by at least 150 percent to pay for the debt incurred in terminal expansion, making it the world's fifth most expensive airport in which to operate. It was projected that increased fees for Air Canada alone would exceed $100 million annually. CANADIAN PRESS NEWSWIRE, Dec. 31, 2003; *Weaker Dollar and High Costs Hurt Canada's Airlines*, AIRLINE FINANCIAL NEWS, May 17, 1999. Denouncing Pearson Airport as a "true monopolist," IATA Director General Giovanni Bisignani declared, "Clearly the future of Pearson as Canada's largest international gateway is in jeopardy of sinking under the weight of the airport's $6-billion debt." *Start-Up for Pittsburgh,* AIRLINE BUS., Nov. 1, 2003, at 14. *World Airline Group Takes Shots at New Pearson "Tollway for Extravagance,"* CANADIAN PRESS NEWSWIRE, Apr. 5, 2004.

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port concessionaires, airport revenue diversion constitutes a hidden municipal tax upon them. Moreover, growing airport costs have been of increasing concern to airlines. According to the Air Transport Association of America (ATA):

> While the fees airlines pay to airports represent a small portion of overall airline operating costs (approximately 5 percent), they have been one of the industry's fastest-rising costs. Between 1992 and 1999, airport costs exclusive of PFCs, rose 35 percent. Including PFCs, they rose 70 percent. In contrast, the producer price index over that same period of time increased less than eight percent and airline prices rose less than four percent.[52]

The airlines are concerned that spending airport revenue on nonairport services results in increased rents, fees, and charges to airlines exceeding the cost of airport capital and operating expenses. ATA observes, "Of increasing concern to airlines (and many airport operators) has been local political interest in siphoning money away from airports for other nonaviation purposes."[53] According to ATA, "revenue diversion is a burden on interstate commerce—an unfair tax on airline passengers and shippers, not unlike forced 'tribute' charged in ancient times for safe passage through foreign lands."[54] The funding of airports has been on a closed-loop financial basis, supported by fees paid by airlines, their passengers, and other users and not through local taxes: "Local tax revenues did not and do not support our national system of airports." Moreover, "because airports are local monopolies, federal law also places significant restrictions on airports' ability to take advantage of their monopoly status."[55]

Similarly, the Aircraft Owners and Pilots Association (AOPA) opposes airport revenue diversion. AOPA Senior Vice President of Government and Technical Affairs Andy Cebula insists,

> When an airport doesn't get the revenue it's due, its expenses still have to be paid. They often result in higher rates and fees charged to individual pilots and aircraft owners, which is one of the reasons AOPA fights to make sure airports get all the money that's coming to them.[56]

The AOPA argues that revenue diversion impacts aviation in many ways: "Airport tenants may be asked to pay higher rates and charges as a result of diverted revenue. The lack of funds could also impact much needed safety enhancements and capital improvement projects at the airport."[57] Commercial airlines and general aviation aircraft operators have been successful in lobbying Congress to protect them from diversion, though several grandfather provisions have been carved out.

However, the airport trade association, Airports Council International–North America (ACI-NA), has a different view. Airports, ACI-NA contends, are not predatory monopolies at all, but instead are governmental institutions that provide essential infrastructure. ACI-NA argues that U.S. airports are self-sustaining and nonprofit enterprises, subject to intensive, if not excessive, government regulation. ACI-NA insists that airports are competitive with other airports and have little incentive to abuse their market power.[58] In addition, a number of airports have concentrated on lowering, not increasing, costs charged to airlines and other aeronautical users. Examples include debt refinancings by Minneapolis/St. Paul and Denver. These transactions were primarily undertaken in order to reduce the costs to airlines using the respective airports. Airports in different cities or within the same metropolitan area compete in many ways. For example, they compete for international traffic and cargo and vie for the status of becoming airline hubs. Thus, ACI-NA is generally opposed to federal regulation of airport rates and charges.

Nevertheless, ACI-NA also opposes revenue diversion, insisting, "airport operators have been—and continue to be—staunchly opposed to diversion of airport revenues….[A]irport operators reaffirm their commitment to the dedication of user charges and fees, and other revenue derived from airport activities, to be used only for airport purposes."[59] One can understand the aversion an airport operator might have to seeing its revenue siphoned off for use by the local government for nonairport purposes.

III. FEDERAL LEGISLATION

A. The Federal Relationship with Airports

In the United States, the overwhelming number of public commercial airports have been owned and operated by local governments with federal financial support and federal regulatory oversight.[60] Congressional enactments governing aviation began with the Kelly Act (Contract Air Mail Act of 1925), which gave the Postmaster General authority to award contracts for

[52] Air Transport Association of America, *supra* note 11.

[53] Air Transport Association of America, *supra* note 11.

[54] Airport Revenue Diversion, Hearings Before the U.S. Sen. Subcomm. on Aviation of the Commerce Comm., May 1, 1996, at 49 (testimony of Edmund Merlis), reproduced at: http://books.google.com/books?id=nQEDkwETmdkC&dq=%22airport+revenue+diversion%22&printsec=frontcover&source=web&ots=f7QKBCZe8&sig=ZsilCY2rHH1ZSYysVMapyMALmMM#PPA30,M1.

[55] *Id.* at 48–49.

[56] http://www.aopa.org/whatsnew/newsitems/2004/04-2-096x.html (Last visited Jan. 23, 2008).

[57] http://www.aopa.org/whatsnew/region/revenue.html (Last visited Jan. 23, 2008).

[58] David Plavin, The Top 10 Myths about Airports—The North American Experience (Apr. 15, 2004), http://www.aci-na.org/dexa/docs/70_Myths%20about%20Airports.ppt#256,1 (Last visited Jan. 23, 2008).

[59] Airport Revenue Diversion, *supra* note 54, at 87–88.

[60] At one time, the federal government owned and operated Washington National and Washington Dulles International Airports, but divested itself of them in the 1980s.

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the carriage of mail to private carriers—essentially, a subsidy system for the nascent airline industry. The first federal legislation addressing airport finance, the Air Commerce Act of 1926, provided initial federal funding for airport infrastructure. It authorized the Secretary of Commerce to regulate the design of aircraft and materials used in their construction, as well as the safety and maintenance of airways, airports and air navigation facilities.[61] That statute was replaced by the Civil Aeronautics Act of 1938, creating the Civil Aeronautics Authority (whose name was changed to the Civil Aeronautics Board 2 years later) and vesting in it safety and economic (pricing, entry, and antitrust) regulatory jurisdiction.[62] That legislation was subsumed by the Federal Aviation Act of 1958, which gave safety jurisdiction to the FAA.[63] The FAA was housed in the U.S. Department of Transportation (DOT) with the U.S. DOT's creation in 1966. The federal government provides financial support to airports through the AIP program, authorizes the collection of additional revenue from local passengers through the PFC program, and provides regulatory oversight over certain airport practices, including issues surrounding both revenue and expenditures.

B. Airport Revenue Statutes

Several federal statutes govern the use of airport revenue, including principally:

- The Anti-Head Tax Act of 1973
- The AAIA
- The Airport and Airway Safety and Capacity Expansion Act of 1987
- The Aviation Safety and Capacity Expansion Act of 1990
- The Federal Aviation Administration Authorization Act of 1994 (FAAA Act)
- The Airport Revenue Protection Act of 1996.

In *Evansville–Vanderburgh Airport Authority v. Delta Air Lines,*[64] the U.S. Supreme Court rejected a "Commerce Clause" challenge to a $1.00 airport tax imposed upon airline passengers to fund local airport construction and maintenance. The Court held that "a charge designed only to make the user of state-provided facilities pay a reasonable fee to help defray the costs of their construction and maintenance may constitutionally be imposed on interstate and domestic users alike."[65] Congress responded by promulgating the Anti-Head Tax Act of 1973*,* prohibiting head taxes (taxes on passengers traveling in air commerce), taxes on the transportation of an individual, taxes on the sale of air transportation, or air commerce or transportation gross receipts taxes.[66] However, the statute does authorize airports to collect property, income, franchise, and sales and use taxes, as well as reasonable and nondiscriminatory rental charges, landing fees, and other service charges.[67]

The AIAA[68] established the current framework for federal financing of U.S. airport development and improvement projects.[69] As originally enacted, AAIA required that the airport owner and operator "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."[70] The AAIA also provides that, as a condition precedent for receiving federal funds, airports must agree that their facilities "will be available for public use on fair and reasonable terms and without unjust discrimination."[71] Certain prior uses of airport revenue for nonairport purposes were grandfathered.[72]

The AAIA[73] prescribes assurances to which an airport sponsor receiving federal funds must agree as a condition precedent to receipt of federal financial assistance.[74] These grant assurances are the quid pro quo for AIP funding. Upon acceptance of an AIP grant by an airport sponsor, the assurances contained in the AIP grant agreement become a binding obligation between the airport sponsor and the federal government. Such sponsorship assurances must be included in every AIP grant agreement.[75] The airport operator must give writ-

[61] 69 Pub. L. No. 254, 44 Stat. 568 (May 20, 1926).

[62] 75 Pub. L. No. 706, 52 Stat. 973 (June 23, 1938).

[63] 85 Pub. L. No. 726, 72 Stat. 731 (Aug. 23, 1958).

[64] 405 U.S. 707 (1972), 92 S. Ct. 1349, 31 L. Ed. 2d 62.

[65] *Id*. at 714.

[66] 49 U.S.C. § 40116(b).

[67] 93 Pub. L. No. 44, 87 Stat. 88; 49 U.S.C. § 40116(e)(2) (1995). See Airway Arms, Inc. v. Moon Area Sch. Dist., 498 Pa. 286, 446 A.2d 234 (Pa. 1982); Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 64 Cal. App. 4th 1217, 76 Cal. Rptr. 2d 297 (Cal. App. 1998).

[68] Title V of the Tax Equity and Fiscal Responsibility Act, 97 Pub. L. No. 287, 96 Stat 1225 (now codified at 49 U.S.C §§ 47107(b), 47133).

[69] Roy Goldberg, *Airline Challenges to Airport Abuses of Economic Power*, 72 J. AIR L. & COM. 351 (2007); PAUL DEMPSEY, AIRPORT PLANNING & DEVELOPMENT: A GLOBAL SURVEY 174 (2000).

[70] 49 U.S.C. § 47107(b).

[71] 49 U.S.C. § 2210(a)(1). See James F. Gesualdi, *Gonna Fly Now: All the Noise about the Airport Access Problem*, 16 HOFSTRA L. REV. 213, 232–33 (1987).

[72] FAA, Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 16, 1999).

[73] 49 U.S.C. § 47107(a).

[74] *Id*.

[75] Section 511(b) of the AAIA, 49 U.S.C. § 47107(g)(1) and (i) as amended by Pub. L. No. 103-305 (Aug. 23, 1994) authorizes the DOT Secretary to prescribe project sponsorship requirements to ensure compliance with §§ 511(a), 49 U.S.C. § 47107(a)(1)(2)(3)(5)(6). See FAA Order 5100.38A, Airport Improvement Program Handbook, ch. 15, Sponsor Assurances and Certification, § 1, Assurances-Airport Sponsors (Oct. 24, 1989). Current assurances are set forth at

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ten assurances that airport revenue will be used for the capital and operating costs of the airport, the local airport system, or other facilities directly and substantially related to air transportation.[76] Therefore, airports must provide an annual report specifying all sums paid by the airport to other governmental entities, the purposes thereof, and all services provided to other governmental entities and the amount of compensation received.

The Airport and Airway Safety and Capacity Expansion Act of 1987[77] circumscribed the use of airport revenues to facilities "substantially" and directly related to air transportation. It also required local aviation fuel taxes enacted after December 30, 1987, to be spent on the airport or, in the case of state fuel taxes, state aviation programs or noise mitigation.[78]

The Aviation Safety and Capacity Expansion Act of 1990 established the PFC program as a means of allowing airports to collect revenue locally for approved infrastructure improvements. This program is discussed in Section II.B.4.

Responding to the financial crisis in the airline industry in 1993, President Bill Clinton appointed a committee—the National Commission to Ensure a Strong Competitive Airline Industry—to study "whether the nation's beleaguered air carriers could benefit from a healthy dose of government authority." Its report to the President and Congress made several recommendations, including "rigorous enforcement of existing Airport Improvement Program grant assurance language barring diversion of airport revenues to non-airport purposes…[and] continued close scrutiny of airport proposals to collect [PFCs]."[79]

Also in 1993, the U.S. House of Representatives Surveys and Investigations Staff reported that airport revenue was being diverted at 17 of the 30 airports investigated, though most diversions were lawful. Out of approximately $900 million diverted, $641 was diverted lawfully under the grandfather provisions, and $141 million was diverted where the airport sponsors proclaimed eligibility for grandfather diversion. But $112 million was diverted under circumstances where the sponsor did not appear to meet the statutory exemption requirements.[80] In 1994, the U.S. DOT Office of Inspector General (IG) reported that FAA monitoring of airport revenue was not adequate to ensure that fee and rental structures were maintained at the level necessary to ensure that airports were as self-sustaining as possible or that unlawful revenue diversion was not occurring.[81]

The FAAA[82] reaffirmed that airports must be as self-sustaining as possible[83] and that airport charges, fees, or taxes must be reasonable and used for airport or aeronautical purposes.[84] Airports should not attempt to create revenue surpluses exceeding the amount needed for the airport system, including reasonable reserves and funds needed to facilitate financing or cover contingencies.[85] The U.S. DOT Secretary was instructed to enforce the revenue-use requirement promptly and effectively. The FAAA Act requires the U.S. DOT Secretary to establish policies and procedures to assure enforcement of the airport's self-sustaining and revenue-use grant assurances. These policies and procedures must prohibit airport revenue diversion for various uses, including direct or indirect payments other than those reflecting the value of services and facilities provided, as well as payments in lieu of taxes or other assessments that exceed the value of services provided.[86] Impermissible uses of revenue may include:

- Direct or indirect payments, other than payments reflecting the value of services provided to the airport;
- The use of airport revenue for general economic development, marketing, or promotional purposes unrelated to the airport;
- Payments in lieu of taxes that exceed the value of services provided; and
- Payments to compensate nonsponsoring governmental bodies for lost tax revenue in excess of stated tax rates.[87]

The Secretary may withhold approval of a grant application seeking to impose a PFC for violating the revenue-diversion requirements and may impose civil penalties up to $50,000 upon airport sponsors for violations.[88] The FAAA Act prohibits a state or political subdivision thereof from imposing a new tax, fee, or charge exclusively upon a business located at a public airport, other than a tax, fee, or charge whose revenue is used for airport or aeronautical purposes.[89] The FAAA Act also authorizes the Secretary of Transportation to determine the reasonableness of airport fees, though the Secretary is not to set the level of the fee.[90] The legislation explicitly affirms that different rate methodologies may be employed.

http://www.faa.gov/airports_airtraffic/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf (Last visited Jan. 23, 2008).

[76] 49 U.S.C. § 47107(b).

[77] 100 Pub. L. No. 223, 101 Stat. 1486 (Dec. 30, 1987).

[78] FAA, Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 16, 1999).

[79] Suzanne Imes, *Comment: Airline Passenger Facility Charges: What Do They Mean for An Ailing Industry?*, 60 J. AIR L. & COM. 1039, 1051–52 (1995) [citations omitted].

[80] 61 Fed. Reg. 7134.

[81] *Id.*

[82] 103 Pub. L. No. 305, 108 Stat. 1569 (Aug. 23, 1994).

[83] 49 U.S.C. § 47101(a)(13).

[84] 49 U.S.C. § 47129.

[85] 49 U.S.C. § 47101.

[86] 49 U.S.C. § 47107.

[87] 49 U.S.C. § 47107(b)(2).

[88] 49 U.S.C. § 47111.

[89] 49 U.S.C. § 40116(d)(2)(A).

[90] 49 U.S.C. § 47129.

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In 1996, congressional hearings focused on airport revenue diversion, and in particular, the diversion by the City of Los Angeles from Los Angeles International Airport (LAX). The U.S. DOT's IG testified that FAA enforcement in this area was lax and that penalties for revenue diversion (then $50,000) were weak. The airline trade association testified that the FAA had failed to promulgate rules mandated in earlier legislation.[91] As a result, new legislation was introduced and passed strengthening the revenue diversion prohibition and the sanctions to be imposed.

The Airport Revenue Protection Act of 1996[92] expanded the revenue restriction requirement to any airport receiving federal financial assistance, public or private, after October 1, 1996.[93] It codified the existing grant assurance revenue-use requirements.[94] It also reaffirmed the power of the Secretary of Transportation (acting through the FAA Administrator) to withhold funds from a violator of the revenue-use requirements, to institute a civil action, and to impose civil penalties in an amount three times that of the unlawfully diverted revenue.[95] This legislation enacted a 6-year statute of limitations for reimbursement for sponsor capital contributions or operating expenses, running from the date of the contribution or expense.

IV. FEDERAL AVIATION ADMINISTRATION POLICIES AND PROCEDURES

A. Evolution of Policy

The statutes described in the preceding section are elucidated in a series of FAA policy statements and procedures addressing what are or are not appropriate expenditures for federally-assisted airports. This section addresses the evolution of federal policy principally as described in the FAA's attempts to apply legislative requirements to federal funding in a number of policy statements and regulations.

In 1986, the FAA announced that it would consider an airport sponsor's funds in support of nonaviation facilities as an element militating against a grant of discretionary AIP funds.[96]

The U.S. DOT issued a "Policy Regarding Airport Rates and Charges" in February 1995.[97] It provided that airports were not to charge more than aeronautic costs on a break-even basis. The rate base was to be valued according to historic cost, rather than fair market value (FMV).

In 1996, the FAA issued a comprehensive policy statement on airport rates and charges that superseded the 1995 policy statement.[98] It required that:

- Fees for the use of airfield and public-use roadways should be based on cost, as valued by their historic cost to the original airport proprietor;
- Rates, fees, and charges to aeronautical users must be fair and reasonable;
- Unjustly discriminatory rates and charges are prohibited; and
- The fee and rental structure for the airport must make it as self-sustaining as possible.[99]

The policy statement also required that the rate base be established by reasonable, consistent, and transparent methods. Fees may be set by the compensatory method, by the residual method, by a combination of the two, or by any other reasonable methodology so long as it is applied consistently to similarly situated aeronautical users and is just and reasonable. Capital and operating costs must be allocated to various cost centers on the basis of cost causation. New fees must not be imposed to create revenue surpluses, although reasonable reserves may be maintained to facilitate financing and cover contingencies.[100] The policy statement stressed the use of airport–airline consultation and negotiation as the preferred means of establishing fees.[101]

Also in 1996, the FAA issued its rules addressing practices in federally assisted airport proceedings, including rules for filing and adjudicating complaints.[102] Among other things, it declared that persons alleging revenue diversion that do business with, or pay fees or rents to, a federally assisted airport are deemed directly

[91] Airport Revenue Diversion, *supra* note 54.

[92] Title VIII of the Federal Administration Reauthorization Act of 1996, 104 Pub. L. No. 264 § 704, 110 Stat. 3213 (Oct. 9, 1996).

[93] 49 U.S.C. § 47133.

[94] *Id*.

[95] 49 U.S.C. § 46301(n)(5). The Department of Transportation and Related Agencies Appropriation Act of 1998, 105 Pub. L. No. 66, 111 Stat. 1425 (1998), included a provision relieving the State of Hawaii from reimbursing the airport for diverted airport revenue as compensation for ceded native land, but prospectively prohibiting further revenue diversion. Brian Duus, *Reconciliation Between the United States and Native Hawaiians: The Duty of the United States to Recognize a Native Hawaiian Nation and Settle the Ceded Lands Dispute*, 4 ASIAN-PACIFIC L. & POL'Y J. 393 (2003). See Office of Hawaiian Affairs v. Hawaii, 110 Haw. 338, 133 P.3d 767 (Hawaii 2006).

[96] FAA, Policy on Use of Airport Improvement Discretionary Funds, 51 Fed. Reg. 20728 (June 6, 1986).

[97] 60 Fed. Reg. 6906 (Feb. 3, 1995). *See also* FAA, Proposed Policy Regarding Airport Rates and Charges – Part VIII (supplemental notice of proposed policy), 59 Fed. Reg. 51836 (Oct. 12, 1994), and FAA, Policy Regarding Airport Rates and Charges—Part IV (request for comments), 60 Fed. Reg. 6906 (Feb. 3, 1995).

[98] FAA, Policy Regarding Airport Rates and Charges (policy statement), 61 Fed. Reg. 31994 (June 21, 1996).

[99] 61 Fed. Reg. 31994 (June 21, 1996).

[100] See Alaska Airlines v. Los Angeles World Airports, Doc. No. OST-2007-27331-184 (recommended decision of A.L.J. Richard Goodwin, May 15, 2007).

[101] 61 Fed. Reg. 31994, 32018.

[102] FAA, Rules of Practice for Federally-Assisted Airport Proceedings (final rule), 61 Fed. Reg. 53998 (Oct. 16, 1996).

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and substantially affected for purposes of having standing to file a revenue diversion complaint.[103] The FAA takes the position that if the sale of airport property for nonairport purposes causes an increase in airport fees, carriers serving the airport may file a complaint under 49 U.S.C. § 47129 to challenge the increase. The fees or rents they pay are considered airport revenue. An association will be allowed to file a complaint by its members who are directly and substantially affected by potential revenue diversion. Nonaeronautical users may also be deemed directly and substantially affected for purposes of standing. However, an airport employee does not have standing.[104] The FAA expected that before formal complaints were filed, complainants would first make good faith efforts to resolve the disputes informally.[105]

In 1999, the FAA concluded that the impact on AIP discretionary funding of revenue diversion, delinquent submission of financial reports, unsatisfactory progress on outstanding grant agreements, and the use of AIP funds on low-priority development was a priority in the FAA's National Priority System development plan.[106] Where the FAA concludes that an airport is not in compliance with the revenue-diversion prohibition, the FAA may, after opportunity for notice and hearing, and upon failure of the sponsor to take corrective action, withhold: (1) future AIP entitlement and discretionary grants;[107] (2) approval for the modification of existing grant agreements that seek an increase in the amount of AIP funds available;[108] and/or (3) payments under existing grants.[109]

Also in 1999, the FAA issued comprehensive policies and procedures on the use of airport revenue.[110] A person directly and substantially aggrieved by any alleged noncompliance may file a complaint with the FAA.[111] The complainant must provide a concise and complete statement of the facts relied upon to substantiate each allegation and describe how he or she was directly and substantially affected by the purported noncompliance.[112] If a prima facie case is established, the FAA will investigate.[113] In rendering its initial determination, the FAA may render a decision based on informal procedures (without a formal, on-the-record hearing) consisting of evidence adduced from the complaint and the responsive pleadings and documents provided by each party.[114]

A party adversely affected by the decision of the Director of the FAA Office of Airport Safety and Standards may file an appeal with the FAA Associate Administrator within 30 days of the date of service of the initial determination. The airport sponsor may request an evidentiary hearing if the Director's determination found a violation and entitlements are to be withheld. On appeal, the Associate Administrator assesses whether (1) the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and (2) the conclusions of law are consistent with applicable law, precedent, and public policy.[115] In making his or her determination, the Associate Administrator issues a final decision without a hearing.[116] If no appeal is filed within the prescribed period, the Director's determination becomes final and is not judicially reviewable.[117]

The FAA may impose sanctions against an airport operator if it concludes unlawful revenue diversion has occurred: "The FAA seeks current compliance by airport sponsors and generally does not take punitive action for past behavior except in very limited circumstances (such as in the case of unlawful diversion of airport revenue)."[118] The FAA may not withhold new grants and payments or withhold approval of an application for entitlement funds for more than 180 days unless the airport sponsor is provided with an opportunity for a hearing and a final decision of noncompliance is made.[119]

B. Less Formal Policies

In addition to formal policies published in the *Federal Register,* FAA policies also are expressed in FAA Chief Counsel and U.S. DOT General Counsel Opinions and in Guidance Letters issued by Airport Division Staff, as well as in Airport Grant Agreements. Several of these are discussed below.

[103] 49 U.S.C. § 47107(b); 14 C.F.R. § 16.23(a).

[104] Clarke v. City of Alamogordo, 2006 FAA Lexis 629 (2006).

[105] 14 C.F.R. pt. 16. *See also* FAA, Policy and Procedures Concerning the Use of Airport Revenues (supplemental notice of proposed policy), 61 Fed. Reg. 66735 (Dec. 18, 1996); and FAA, Policy and Procedures Concerning the Use of Airport Revenue (notice of proposed policy), 61 Fed. Reg. 7134 (Feb. 26, 1996).

[106] FAA, Factors Affecting Award of Airport Improvement Program (AIP) Discretionary Funding, 64 Fed. Reg. 31031 (June 9, 1999).

[107] 49 U.S.C. §§ 47106(d), 47111(e).

[108] 49 U.S.C. § 47111(e).

[109] 49 U.S.C. § 47111(d).

[110] FAA, Policy and Procedures Concerning the Use of Airport Revenue–Part II (final policy), 64 Fed. Reg. 7696 (Feb. 16, 1999). *See also* FAA, Policy Regarding Airport Rates and Charges (advance notice of proposed policy), 63 Fed. Reg. 43228 (Aug. 12, 1998).

[111] 14 C.F.R. § 16.23.

[112] 14 C.F.R. § 16.23(b)(3),(4).

[113] *But see* Continental Micronesia, Inc. v. Commonwealth of the Northern Mariana Islands and Commonwealth Ports Auth., DOT Order 95-4-14 (1995) (where the DOT concluded it had no jurisdiction over an airport revenue diversion complaint).

[114] 14 C.F.R. § 16.29.

[115] See Ricks v. Millington Municipal Airport, FAA Docket No. 16-98-19, at 21 (Dec. 30, 1999), and 14 C.F.R., § 16.227.

[116] 14 C.F.R. § 16.33.

[117] *Id.*

[118] Jim Martyn v. Port of Anacortes, Washington, 2003 FAA Lexis 162 (Apr. 14, 2003).

[119] 49 U.S.C. § 47111(d).

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C. Contractual Obligations of Airport Operators: Grant Assurances

As noted above, 49 U.S.C. § 47107, originating in the AAIA, requires that the U.S. DOT may approve a project grant application for airport development only if the airport provides certain written assurances, including assurances on the use of airport revenue.[120] The grant assurance on use of airport revenue provides:

> [A]ll revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other 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; 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.[121]

Thus, before a new grant is conferred, the FAA may insist that such funds be used only for specified purposes. Moreover, prospectively, theses grant assurances may hold the airport operator to certain commitments beyond those explicitly enumerated in the applicable statutes and regulations. The FAA has noted:

> The federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring the public has fair and reasonable access to the airport.[122]

[120] 49 U.S.C. § 47107(b).

[121] Assurance 25(a), "Airport Revenues," implementing the requirements of 49 U.S.C. §§ 47107(b) and 47133, reproduced at http://www.faa.gov/airports_airtraffic/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf (Last visited Jan. 23, 2008). *See also* In the Matter of Revenue Diversion by the City of Los Angeles at Los Angeles Int'l, Ontario, Van Nuys and Palmdale Airports, 1997 FAA Lexis 1535 (Mar. 17, 1997).

[122] Boca Aviation v. Boca Raton Airport Auth., 2003 FAA Lexis 143 (Mar. 20, 2003).

D. The Airport Compliance Program

The FAA ensures that airport sponsors adhere to their federal obligations through its Airport Compliance Program.[123] The FAA seeks to achieve voluntary compliance with such obligations. Sponsor obligations are imposed by statute and regulation, as well as through grant agreements, when the sponsor receives federal funds, or when accepting the transfer of federal property for airport purposes. Obligations incorporated into grant agreements and instruments of conveyance become contractually binding upon airport sponsors. Through the Airport Compliance Program, the FAA seeks to ensure compliance by airport owners with their contractual obligations as specified in their grant agreements and instruments of conveyance.[124]

One way an airport operator avoids conflicts over issues of revenue diversion with the FAA is to seek prior approval of land transfers. For example, certain airports have sought and obtained prior FAA approval for the exchange of airport land with private developers for privately owned land of greater potential for airport use.[125] Similarly, the sale of airport property at FMV has received FAA approval.[126] The FAA has authority to

[123] FAA Compliance Handbook, FAA Order 5190.6A (Oct. 2, 1989), contains guidance on the policies and procedures for FAA personnel to carry out in implementing the FAA Airport Compliance Program and interpreting and administering the commitments airport operators make as a condition of receiving federal grants or property.

[124] Airport compliance enforcement procedures are set forth in FAA Rules of Practice for Federally-Assisted Airport Proceedings, 14 C.F.R. pt. 16. See the current requirements at http://www.faa.gov/airports_airtraffic/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf (Last visited Jan. 23, 2008).

[125] Notice of Intent To Rule on Request To Release Airport Property at the Deer Park Municipal Airport, Deer Park, WA, 69 Fed. Reg. 63,191 (Oct. 29, 2004):

> The Deer Park Municipal Airport requests the release of non-aeronautical airport property consisting of approximately 5 acres on the east side of the airport to a private developer. The purpose of this release is to trade unimproved airport land to a private developer for use as a residential emergency egress, for 8.88 acres of improved light industrial property adjacent to the west side of the airport. The airport property proposed for release has not been used for aviation purposes and no aeronautical use of the property is planned or anticipated. The City of Deer Park has determined that the property requested is not within critical areas affecting safety of flight and that the proposed use of the property as a residential emergency egress would not interfere with airport operations. The property to be acquired by the Airport in trade would benefit the airport for future revenue producing development. The airport would realize a net gain of property.

[126] Notice of Intent To Rule on Transfer of Airport and Requests To Release Airport Property at the North Bend Municipal Airport, North Bend, OR, 69 Fed. Reg. 44,707 (July 27, 2004):

> The City of North Bend Oregon plans to transfer all assets and liabilities associated with the North Bend Municipal Airport, including surplus government land and AIP Grant obligations, to the Coos County Airport District. After the transfer, the Coos County Airport District will sell 6.92 acres of airport land

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provide guidance, and airports seek that guidance on whether a particular expenditure would violate the statutory requirements for the use of airport revenue.

The airport sponsor must submit an annual auditing report and other financial reports that the U.S. DOT may reasonably request.[127] The local government must support its capital and operating expenses charged to the airport with documented evidence.[128] The FAA takes the position that although a city may transfer airport revenue into its general fund, it must expend those funds for airport purposes.[129]

V. SYNTHESIS: FEDERAL LAW AND POLICY ON REVENUE DIVERSION[130]

A. Which Airports Are Subject to, or Immune from, the Revenue-Diversion Prohibition?

1. Airports That Receive "Federal Assistance"

The revenue-use requirements apply to every airport that receives "federal assistance."[131] "Federal financial assistance" is defined by FAA policy as: (1) airport development and noise mitigation grants; (2) planning grants related to a specific airport; (3) transfers of federal property under the Surplus Property Act;[132] and (4) deeds of conveyance issued under specified federal statutes.[133] However, the FAA's installation and operation of navigational aids or the FAA's operation of air traffic control towers is not considered federal financial assistance. Nor are reasonable fees paid by the federal government to the operator of an airport for use of facilities, land, or services provided.[134]

2. Private Airports

All airports that receive federal financial assistance are subject to the revenue-diversion prohibition. This now includes privately owned, public-use airports that received AIP grants after October 1, 1996.[135] Moreover, once an airport is deemed to fall under these rules, the revenue-use requirement remains in effect so long as the airport functions as an airport, even should it decline AIP grants in any subsequent year.[136]

3. Privatized Airports

Privatized airports, or the sale of airport land, would also fall under the revenue-diversion prohibition. Although the FAA will treat the proceeds from the sale or lease of an airport as revenue subject to the diversion prohibition, the FAA promises to remain "open and flexible in specifying conditions on the use of revenue…without unnecessarily interfering with the appropriate privatization of airport infrastructure."[137] The FAA cannot waive the revenue-use requirement, but it promises to "exercise its authority to interpret the requirement in a flexible way to account for the unique circumstances presented by a change of ownership."[138] The FAA also would attach to its approval of the sale of any airport a condition that the proceeds of the sale would be used consistently with the revenue-use requirements.[139]

The United Kingdom sold many of its major airports to private investors in 1987. A number of other nations have since followed suit and privatized their airports. In 1992, President George W. Bush issued Executive Order 12803, which removed a general requirement that state and local governments that sell or lease federally aided infrastructure assets must repay fully the federal money invested therein. However, as an Executive Order, this action was not sufficient to overcome statutory requirements for repayment, such as those included in the statute governing AIP. As part of the Federal Aviation Reauthorization Act of 1996, the U.S. Congress created the Airport Privatization Pilot Program,[140] a demonstration program authorizing the FAA to exempt five airports from certain statutory and regulatory requirements governing the use of airport revenue, including the airport's obligation to repay federal grants, to return property acquired under federal assistance, and to use the proceeds exclusively for airport purposes.[141]

The first two airports to apply to participate in the pilot privatization program were Brown Field near San Diego, California, and Stewart International Airport in

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to the City of North Bend. The City's sewage treatment plant is currently located on this parcel. The land is non-aeronautical property and will be sold at fair market value with proceeds used for airport capital improvement projects.

[127] 64 Fed. Reg. 7696, 7722. 49 U.S.C. §§ 47107(a)(15), (18), and (19).

[128] Letter from FAA Office of Airport Safety and Standards Director David Bennett to Weschester County Commissioner Joseph Petrocelli (Feb. 14, 1997).

[129] 14 C.F.R. pt. 16.

[130] Many of the letters and memoranda cited in this report were obtained by the researcher through his submission of a Freedom of Information Act Request to determine the outcome of cases and other information available.

[131] 49 U.S.C. § 47133.

[132] 49 U.S.C. § 47151.

[133] The statutes are Federal Airport Act of 1946 § 16, the Airport and Airway Improvement Act of 1970 § 23, and the Airport and Airway Improvement Act of 1982 § 516.

[134] 64 Fed. Reg. 7696.

[135] 64 Fed. Reg. 7696.

[136] 49 U.S.C. § 47133.

[137] 61 Fed. Reg. 7134, 7140.

[138] 64 Fed. Reg. 7696.

[139] 49 U.S.C. §§ 47107(b), 47133. 64 Fed. Reg. 7696, 7717.

[140] See Rowley, *supra* note 6, at 605, 628–29; Dan Kramer, *How Airport Noise and Airport Privatization Effect Economic Development in Communities Surrounding U.S. Airports*, 31 TRANSP. L.J. 213, 222 (2004); Paul R. Verkuil, *Public Law Limitations on Privatization of Government Functions*, 84 N.C.L. Rev. 397 (2006); and DEMPSEY, *supra* note 6, at 189–94.

[141] 49 U.S.C. § 47134.

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New York State.[142] At this writing, Stewart is the only airport to have been privatized under this program, and it is abandoning privatization in favor of a purchase by the Port Authority of New York and New Jersey.[143]

4. Grandfathered Airports

Certain grandfathered airport operators may use airport revenue for local purposes that are forbidden under the revenue-diversion prohibition. If, on or before September 2, 1982, a statute or ordinance controlling the airport operator's financing was enacted, or a covenant or assurance in an airport operator's debt obligation was issued, then airport revenue may be applied to general debt obligations or other facilities of the airport operator. Moreover, local taxes on aviation fuel in effect on December 30, 1987, may be used for any local purpose.[144] The U.S. DOT has observed:

> The general purpose of [the revenue diversion prohibition] is simply to prevent an airport owner or operator who receives federal assistance from using airport revenues for expenditures unrelated to the airport. Congress recognized, however, that not all sponsors were legally capable of so dedicating their revenue, due to legislation or covenants in their debt obligations. To avoid the inequity of omitting them from the federal aid grant program, Congress did not impose the strict revenue retention requirement on them.[145]

Nonetheless, as directed by statute, the FAA considers the use of airport revenue for local purposes under the grandfather provision as a factor militating against the award of discretionary AIP funding if the airport revenue so used in the fiscal year preceding the application for discretionary funds exceeded the amount of revenue used in the airport's first fiscal year ending after August 23, 1994, adjusted for inflation.[146] Moreover, should an airport fail to provide information necessary to determine whether these requirements were satisfied, that would also preclude the FAA from considering an application for discretionary funds.[147]

The jurisprudence on grandfather clauses generally suggests they are to be strictly construed.[148] However, U.S. DOT has taken the position that "grandfather clauses are generally calculated to prevent hardship by saving accrued rights and interests from the operation of a new rule. They are generally construed favorably to their benign purposes."[149]

The U.S. DOT concluded that the use of airport revenue by Boston Logan Airport over a 2-year period to pay more than $13 million in lieu of taxes to surrounding cities and make community charitable contributions of nearly $300,000 for scholarship, athletics, culture, recreation, and art was grandfathered in under Massport's 1956 Enabling Act and was consistent within the airport's right, as a corporation, to make charitable contributions.[150]

The U.S. DOT found that St. Louis Lambert International Airport's payments of 5 percent gross receipts to the city were grandfathered by virtue of the long-standing bond ordinances for these payments since 1962, even though several ordinances were issued after September 3, 1982.[151] However, responding to an attempt by the State of Maryland to amend a preexisting statutory scheme governing its transportation trust fund so as to transfer $22 million to the state's general fund to meet a budget shortfall, the U.S. DOT concluded: "A sponsor may not rely on the fact that its pre-AAIA statutory arrangements are grandfathered to enact additional direct or indirect diversion of airport revenue."[152] A 1988 City Council resolution seeking to transfer 1 percent of the historic value of property, plant, and equipment from the Palm Springs Airport (later increased to 2 percent) as an in lieu property fee was deemed not grandfathered since it was not in effect on September 3, 1982.[153]

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[142] U.S. GENERAL ACCOUNTING OFFICE, AIRPORT FINANCING: FUNDING SOURCES FOR AIRPORT DEVELOPMENT, GAO/RCED-98-71 (Mar. 1998). In 2000, the State of New York transferred the operation of Stewart International Airport, in Newburgh, New York, to National Express Group, a private company, under a 99-year lease. New York's Albany County airport sought FAA approval to be purchased by a private company. The FAA formed a taskforce to evaluate the application, but it deadlocked over the legal and financial feasibilities of the proposed sale, and ultimately denied the request. Kramer, *supra* note 140, at 213, 223.

[143] Joe Mysak, *Airport Privatization*, PITTSBURGH TRIBUNE-REVIEW, Feb. 4, 2007.

[144] 49 U.S.C. §§ 47107(b), 47133(b).

[145] Memorandum from Assistant DOT General Counsel Roberta Gabel to IG Regional Manager James Brucia (Apr. 12, 1994).

[146] 49 U.S.C. § 47115(f).

[147] Factors Affecting Award of Airport Improvement Program (AIP) Discretionary Funding, 64 Fed. Reg. 31031 (June 9, 1999).

[148] *See* Spokane Inland RR v. United States, 241 U.S. 344, 350, 36 S. Ct. 668, 671, 60 L. Ed. 1037, 1041 (1915); United States v. Allan Drug Corp., 357 F.2d 713 (10th Cir. 1966). No reported court cases address grandfather provisions in the context of airport revenue diversion. However, different grandfather clauses have been applied to airports in the environmental context in Khodara Envtl. Inc. v. Blakey, 376 F.3d 187 (3d Cir. 2004), and Clay Lacey Aviation v. City of Los Angeles, 2001 U.S. Dist. Lexis 24492 (C.D. Cal. June 18, 2001); and in the aircraft operations context in San Francisco v. Federal Aviation Admin., 942 F.2d 1391 (9th Cir. 1991).

[149] Memorandum from DOT Assistant General Counsel Roberta Gabel to IG Regional Manager James Brucia (Dec. 7, 1992).

[150] *Id.*

[151] Memorandum from DOT Assistant General Counsel Roberta Gabel to IG Regional Manager James Brucia (Dec. 8, 1992).

[152] Memorandum from Assistant General Counsel Roberta Gabel to IG Regional Manager James Brucia (Apr. 12, 1994).

[153] Memorandum from Assistant General Counsel Roberta Gabel to IG Regional Manager James Brucia (Nov. 18, 1992).

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B. What Constitutes "Airport Revenue"?

Airport revenue subject to the diversion prohibition consists of all fees, rents, charges, or other payments received by the airport sponsor,[154] including proceeds from the sale, lease, or disposal of airport property.[155] It includes revenue received from "air carriers, tenants, lessees, purchasers of airport properties, airport permittees making use of airport property and services, and other parties."[156] Airport revenue also includes sponsor activities at the airport such as revenue received from any activity conducted on airport property acquired with federal assistance, any aeronautical activity directly connected to the sponsor's ownership of the airport, and any noncommercial activity on airport property not acquired with federal assistance to the extent of the fair rental (or fair market) value of the property.[157]

Also included within the concept of airport revenue are state and local aviation fuel taxes in effect after December 30, 1987.[158] For most public, and some private airports, such revenue is subject to the revenue-diversion prohibition. If the property was acquired with federal funds or donated by the federal government, even more restrictive rules apply. However, a city's general sales tax, though collected by an airport from private tenants, is not considered airport revenue.[159]

PFCs are not considered "airport revenue" for purposes of the diversion prohibition. But they are subject to more stringent rules whereby charges collected may be used to fund only the allowable costs of preapproved projects. Moreover, a violation of the revenue-diversion policies may warrant denial of new authority to impose a PFC until corrective action is taken.[160]

In 1985, the Burlington Airport Authority sought an opinion as to whether the use of car rental revenue equal to the revenue from rentals not associated with the use of airport purposes could be used for nonairport purposes. The legislative history provided that the revenue diversion prohibition applied to "such facilities as terminal concessions…serving the terminal or other air transportation purposes."[161] From this, the FAA found that revenue derived from airport concessions constitutes airport revenue. The FAA concluded that the

> segregation of revenues received from Airport concessions in the manner proposed by you is not permitted. The fundamental principle [of the statute] is that all activities which generate revenue at an airport do so because of the airport. Therefore, these revenues must be applied to the airport which made them possible.[162]

In contrast, that same year the Erie Municipal Airport Authority sought an opinion as to whether royalties paid upon the discovery of natural gas on airport property constituted airport revenue. The airport sought to transfer the mineral rights to the City of Erie. The FAA observed that the statutory phrase "revenues generated by the airport" was broad enough to encompass gas royalties. However, the legislative history of the AAIA provided that:

> This provision is not intended to apply to revenue generated by facilities which are located on airport property but are unrelated to air operations or services which support or facilitate air transportation. It accordingly would not apply to revenue generated by such facilities as a water reservoir or a convention center which happen to be located on airport property but which serve neither the airport nor any air transportation service.[163]

Since natural gas production serves neither the airport nor air transportation services, the royalties received therefrom were deemed not to constitute airport revenue. However, the FAA made it clear that it preferred that the proceeds from such production be used "only for airport-related purposes," and that diverting them to nonairport uses could be viewed negatively in the future in considering the issuance of discretionary federal airport grants.[164]

In 1995, the Portland International Jetport sought an opinion as to whether a proposed waiver of landing fees for 90 days to any carrier providing new and improved service constituted revenue diversion. The FAA replied

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[154] 49 U.S.C. 47107(b).

[155] Taxes levied by municipalities against parking patrons and not parking lot owners do not constitute airport revenue, and therefore do not violate 49 U.S.C. § 47133. Susquehanna Area Reg'l Airport Auth. v. Middletown Area Sch. Dist., No. 2005 CV 2052, 2006 Pa. Dist & Cnty. Dec. Lexis 95 (June 13, 2006).

[156] 64 Fed. Reg. 7696, 7716. It includes revenue received for:

> 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).

Id.

[157] 64 Fed. Reg. 7696.

[158] However, these taxes may be used to finance State aviation programs or noise mitigation programs off the airport property.

[159] Memorandum from DOT Assistant General Counsel Roberta Gabel to IG Regional Manager James Brucia (Dec. 8, 1992).

[160] 64 Fed. Reg. 7696, 7718.

[161] S. REP. NO. 97-494, at 712 (1982).

[162] Letter from FAA Chief Counsel J.E. Murdock III to Burlington Mayor Bernard Sanders (Jan. 8, 1985).

[163] 2 H.R. REP. NO. 97-760, at 712 (1982).

[164] Letter from FAA General Counsel Jim Marquez to William Sesler (May 21, 1985).

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that it did not consider such a waiver a use of airport revenue, though it did express concerns that such a waiver might jeopardize its statutory obligation to make the airport as self-sustaining as possible.[165]

In the early 1990s, when Trans World Airlines (TWA) was in financial extremis and had entered one of its three bankruptcies, the City of St. Louis Airport Authority agreed to purchase certain property and equipment of TWA at and near Lambert International Airport. In Phase I of the transaction, the city would acquire property and equipment (such as gates, holdroom seating, and ramp equipment) used in TWA's day-to-day operations for $30 million, consisting of $24.7 million in cash, and $5.3 million in forgiveness of prepetition debt; TWA would repay the $24.7 million cash through rental payments over the remaining useful life of the acquired property and equipment. The FAA found that TWA's lease payments constituted airport revenue. Because the FAA also concluded that the property and equipment acquired constituted airport capital assets, it found the use of airport revenue in their acquisition was consistent with the city's federal obligations.

In Phase II of the transaction, the city would acquire some on-airport assets (i.e., a hanger and office building); property adjacent to the airport (i.e., a flight training center); and off-airport assets (i.e., a reservations center), to be funded by airport revenue bonds.

The FAA concluded,

> Unlike accumulated airport capital surpluses that are derived from airport revenues, bond proceeds themselves are not airport revenue. Rather, they are a fresh infusion of capital. As such, nothing prohibits an airport operator from issuing bonds to acquire assets that are not "airport capital"…so long as airport revenues…are not used to repay the bonds.[166]

The FAA found that to the extent that certain assets to be acquired were airport capital assets, the pro rata share of TWA's lease payments for those facilities would constitute airport revenue, but for the purchase of assets not qualifying as airport capital assets, the pro rata share of TWA's lease payments for those facilities would constitute something other than airport revenue.[167] With respect to the three properties to be acquired, the FAA concluded that the on-airport facilities were airport capital assets; because the city planned to incorporate the adjacent training center into the airport, it too would become an airport capital asset; and because the value of the leasehold interest in the off-airport training center was *de minimus,* its acquisition also did not appear to violate federal obligations.[168]

[165] 49 U.S.C. § 47107(a)(13). Letter from FAA Airports Law Branch Manager Barry Molar to Portland Int'l Jetport Manager Jeffrey Schultes (Oct. 21, 1995).

[166] Letter from FAA Ass't Chief Counsel David Bennett to Joseph Niemann (Dec. 2, 1993).

[167] *Id*.

[168] *Id*.

C. What Constitutes Unlawful Revenue Diversion?

The FAAA Act of 1994 gives the Transportation Secretary the authority to issue policies defining lawful vis-à-vis unlawful revenue diversion. The Act provides that revenue diversion shall consist, at minimum, of

> (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.[169]

Unlawful revenue diversion consists of 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, baggage, freight, or mail.

An exception exists for uses which are grandfathered, uses also known as "lawful revenue diversion." The grandfather exception permits revenue diversion if done pursuant to a law regulating airport financing enacted prior to September 2, 1982, or a covenant in a debt obligation entered into before that date.[170]

Under the FAA's policy statement, examples of unlawful revenue diversion include:

- Payments that exceed the fair value of services and facilities provided to the airport;[171]
- Payments based on a cost allocation formula inconsistent with FAA guidelines or not calculated consistently for the airport or other units or cost centers of government;
- Payments for general economic development;
- Marketing or promotional activities unrelated to the airport or airport systems;[172]
- Payments in lieu of taxes or assessments exceeding the value or services provided or not based on a cost allocation formula consistent with comparable governmental units or cost centers;

[169] 49 U.S.C. § 47107(l)(2).

[170] FAA, Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 16, 1999). The grandfathering provision is 49 U.S.C. § 47107(b)(2).

[171] The FAA "considers the cost of providing the services or facilities to the airport as a reliable indicator of value." Policy and Procedures Concerning the Use of Airport Revenue–Part II, 64 Fed. Reg. 7696 (Feb. 16, 1999) [hereinafter 1999 Policies].

[172] Examples include "participation in [a] 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." 1999 Policies, *supra*.

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• Payments to other governmental units for lost tax revenue exceeding the stated tax rates applicable to the airport;
• Loans or investment of funds in a governmental unit at less than prevailing interest rates;
• Land rented or used for nonaeronautical purposes at less than FMV;[173]
• Impact fees paid to a governmental unit exceeding the value of facilities or services provided;[174]
• Fees paid for certain community activities or events;[175] and
• Direct subsidies of airline operations, except waivers of fees or discounted landing or other fees for a promotional period.[176]

The FAA also has taken the position that proceeds from the sale or rental of surplus airport land should be used for airport operation maintenance or development. According to the FAA,

> each conveyance of revenue-producing property obligates the transferees to use the revenues derived from nonairport use of the property for operation, maintenance, or development of the airport. If the land has been identified and agreed upon by the FAA as revenue-producing property…then the revenue must be used on the airport or put into the airport fund.[177]

The FAA prohibits renting surplus property at a discount to support community nonprofit organizations or subsidize nonairport objectives. Specifically, the FAA insists that

> any lease or other rental arrangement covering the use of surplus property at an airport must assure that the fair rental value of the property will accrue to the airport and be available to meet airport expenses. Such property may not be rented at a discount to support community nonprofit organizations or to subsidize nonairport objectives.[178]

Airport real estate may not be released for sale without approval from the FAA. The FAA will not authorize the sale or disposal of airport real estate unless its FMV is sustained by an independent appraisal.[179]

D. What Are Lawful Uses of Airport Revenue?

Grandfathered airports, or private airports not receiving federal funds after October 1, 1996, are eligible to spend revenue in ways that other airports are not. Such expenditures by grandfathered airports are considered "lawful revenue diversion," while expenditures by private airports not receiving federal funds are not subject to the revenue-diversion prohibitions. The FAA also has identified other types of expenditures that, if reasonably related to the airport's financial situation, are considered legitimate:

• Capital or operating costs of the airport, the local airport system or other local facilities directly and substantially related to air transportation;[180]
• Promotional expenditures for the airport designed to increase air travel at the airport;[181]
• Expenditures to stimulate new air service and competition at the airport;
• Airport marketing expenses;

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[173] An exception exists "to the extent permitted by Section-VII.D of this policy." The DOT has taken the position that an airport proprietor need not charge fair market value for aeronautical uses of airport land. Instead, the proprietor has discretion "to weigh the volume of traffic, economy of collection, and other circumstances at the airport, with the use made of the airport's facilities and services, to arrive at a schedule of charges that will make the airport as self-sustaining as possible." Memorandum from DOT Acting General Counsel Rosalind Knapp to FAA Assistant Secretary Melissa Spillenkothen (Oct. 11, 1995).

[174]

> 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.
>
> 64 Fed. Reg. 7696.

[175] Such fees are prohibited, "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." 64 Fed. Reg. 7696.

[176]

> Direct subsidies are considered to be payments of airport funds to 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.
>
> 64 Fed. Reg. 7696.

[177] FAA Order 5190.6A, Airport Compliance Requirements (Oct. 2, 1989).

[178] *Id.* at 4-18(f). Memorandum from DOT General Counsel Stephen Kaplan to Particia Parrish (Sept. 26, 1994). However, the FAA has taken the position that the use of airport land for community purposes, such as parks and recreational areas, or the rent or lease of land at below fair market value rates, can maintain positive community relations and be a legitimate use of airport revenue. But the greater the gap between the lease or rental rate, on the one hand, and its fair market value, on the other, the greater the burden of demonstrating an airport-related benefit upon the airport proprietor. 61 Fed. Reg. 66735 (Dec. 18, 1996).

[179] FAA Order 5190.6A, Airport Compliance Requirements, Oct. 2, 1989 § 7-8(d).

[180] 64 Fed. Reg. 7696, 7718.

[181] *Id.*

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- Cooperative airline–airport marketing expenses promoting air service at the airport;[182]
- Reimbursements of certain sponsors of capital or operating costs;[183]
- Support of community activities or organizations so long as the expenditures are directly and substantially related to airport operations;[184]
- Certain mass transit airport access projects located entirely on airport property and designed and intended exclusively for use by airport passengers;[185]
- Costs incurred by government officials for services to the airport; and
- Lobbying and attorney fees used to support any activity or project consistent with these policies.[186]

E. What Payments May Be Made for Taxes?

Federal law prohibits states and subdivisions thereof from taxing airline passengers, as such taxes have been deemed an unreasonable burden on interstate commerce.[187] Specifically, they may not impose a tax upon: "(1) an individual traveling in air commerce; (2) the transportation of an individual traveling in air commerce; (3) the sale of air transportation; or (4) the gross receipts from that air commerce or transportation."[188]

They may, however, impose a tax on a flight taking off or landing within the state, although the application of this provision is generating some controversy.[189] But some local governments have sought to tax "around the edges" of the prohibition.

In *Susquehanna Area Regional Airport Authority v. Middletown Area School District*,[190] a regional airport authority challenged a tax imposed by a school board upon airport parking patrons. The airport alleged that the tax violated various federal statutes and the "Commerce Clause." Federal law prohibits a state or political subdivision thereof from imposing "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 utilized for airport or aeronautical purposes."[191] A lower Pennsylvania court concluded,

> Since we find that the Tax is levied against parking patrons and not parking lot owners, this money is not airport revenue. At no point does the money from this tax ever become the property of the Airport, and therefore it is not a violation [the Federal revenue-diversion prohibition] of § 47133 to use the money for the benefit of the School District.[192]

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[182] However, such expenses must be consistent with applicable grant assurances prohibiting unjust discrimination between carriers. Moreover,

> the direct payment of subsidies to airline involves the expenditure of airport funds and hence raises questions under the revenue-use requirements. The FAA continues to believe that the costs of operating aircraft, or payments to air carriers to operate certain flights, are not reasonably considered an operating cost of an airport. In addition, payment of subsidy for air service can be viewed as general regional economic development and promotion, rather than airport promotion. Use of airport revenue for these purposes is expressly prohibited under the terms of the 1994 FAA Authorization Act. The Final Policy does not preclude a sponsor from using funds other than airport revenue to pay airline subsidies for new service, and it does not preclude other community organizations—such as chambers of commerce or regional economic development agencies—from funding a program to support new air service. Therefore, the Final Policy maintains the distinction between direct subsidy of air carriers and the waiving of fees, and prohibits the former.

64 Fed. Reg. 7696, 7709-10.

[183] The claim must be made after Oct. 1, 1996, and within 6 years of the contribution or expenditure. Moreover, the direct and indirect reimbursements of airport capital and operating expenses must be supported by adequate documentary evidence.

> Adequate documentation consists of underlying accounting records and corroborating evidence, such as invoices, vouchers and cost allocation plans, to support all payments of airport revenues to other government entities. If this underlying accounting data is not available, the Final Policy allows reimbursement to a government entity based on audited financial statements, if such statements clearly identify the expenses as having been incurred for airport purposes consistent with the Final Policy statement. In addition, the Final Policy provides that budget estimates are not a sufficient basis for reimbursement of government entities.

64 Fed. Reg. 7696.

[184] An example would be an expenditure that enhances the airport's acceptance in local communities impacted by the airport. 64 Fed. Reg. 7696.

[185] 64 Fed. Reg. 7696, 7718-19. In its decision approving the use of airport revenue for the extension of the Bay Area Rapid Transit (BART) line to San Francisco International Airport,

> the FAA approved the use of airport revenues to pay for the actual costs incurred for structures and equipment associated with an airport terminal building station and a connector between the airport station and the BART line. The structures and equipment were located entirely on airport property, and were designed and intended exclusively for use of airport passengers. The BART extension was intended for the exclusive use of people traveling to or from the airport and included design features to discourage use by through passengers. Based on these considerations, the FAA determined that the possibility of incidental use by non-airport passengers did not preclude airport revenues from being used to finance 100 percent of the otherwise eligible cost items. For purposes of this analysis, the FAA considered "airport passengers" to include airport visitors and employees working at the airport.

64 Fed. Reg. 7696, 7704.

The project must be either considered an airport capital project, or part of a facility owned and operated by the airport, and directly and substantially related to air transportation. 49 U.S.C. § 47107(b). 64 Fed. Reg. 7696.

[186] 64 Fed. Reg. 7696, 7718.

[187] 49 U.S.C. § 40116.

[188] 49 U.S.C. § 40116(b). The DOT has taken the position that both interstate and intrastate transportation are subject to this prohibition. Letter from DOT General Counsel Jim Marquez to Karen Haley (Dec. 18, 1985).

[189] 49 U.S.C. § 40116(c).

[190] No. 2005 CV 2052, 2006 Pa. Dist & Cnty. Dec. Lexis 95 (June 13, 2006).

[191] 49 U.S.C. § 40116(d)(2)(A)(iv).

[192] *Id*. at 46. Said the court, "the tax is paid by the patrons and never becomes airport revenue." *Id*. at 76.

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Presumably then, had the tax been imposed upon parking lot companies holding an airport concession, rather than individuals, it would have been prohibited.

In *City of Syracuse v. Comerford*,[193] a lower New York court addressed a challenge brought by the City of Syracuse against the Town of Dewitt. For many years, Syracuse property in Dewitt had been exempt from taxation. Dewitt later imposed property tax assessments upon the Syracuse airport totaling more than $200 million. Syracuse argued that "the payment of such tax would represent impermissible diversion of airport revenue by payment of funds to the Town in excess of the value of services received from it; because it is alleged that no services are received from the Town, their value is claimed to be zero."[194] The court concluded that 49 U.S.C. § 47107 did not prohibit the imposition of real estate taxes, express authorization therefore being found in § 40116(e).[195]

The payment to a local municipality of lost taxes because of an airport's acquisition of land has also been an issue. The Burbank–Glendale–Pasadena Airport Authority sought an FAA opinion letter as to whether its payment to the City of Burbank of an amount equal to the lost tax revenue as a result of the airport's acquisition of land would constitute revenue diversion. The city was neither the airport owner nor the operator. The FAA identified three limitations on such payments: (1) they must be made to a nonsponsoring entity; (2) they must constitute compensation for lost tax revenue based on a preexisting tax rate; and (3) they must relate to property transfers occurring after promulgation of the FAAA Act or, more precisely, after August 23, 1994. The FAA found that the proposed payment in lieu of lost taxes by the airport authority was a proper use of airport revenue.[196]

Sales and use taxes of ancillary goods and services purchased by airlines, such as taxes on prepackaged meals purchased by airlines and served to passengers, or on aviation fuel, have been upheld.[197] The determination on sales taxes on fuel led to the 1987 amendments including fuel taxes within the scope of requirements on the use of revenue. However, taxes sought to be imposed upon air taxi, charter or scheduled interstate operations, or airline tickets have been deemed unlawful.[198]

F. How May Revenue Generated from Fuel Taxes Be Spent?

The Airport and Airway Safety and Capacity Expansion Act of 1987[199] required that local taxes on aviation fuel enacted after December 30, 1987, be spent on the airport, but allowed state taxes on aviation fuel to be spent on state aviation programs or noise mitigation at or near the airport.[200] Local aviation fuel taxes collected after December 30, 1987, may be spent only on the capital or operating costs of the airport, the local airport system, or other local facilities owned and operated by the airport owner and operator if the costs are directly and substantially related to the transport of persons or property.[201]

In 1989, the FAA was asked whether the imposition of an aviation fuel tax by a state or locality, the proceeds of which were to be used for nonaviation purposes such as human services, would be consistent with federal airport revenue requirements. The FAA noted that in 1987 Congress amended the law to make it clear that local fuel taxes were subject to airport revenue-use requirements. Congress also expanded the uses to which revenue generated from aviation fuel taxes could be spent to include aviation programs and noise mitigation efforts on or off the airport. The FAA concluded that "Congress, having expressly permitted two specific uses of aviation fuel tax monies, necessarily excluded other non-airport-related purposes."[202] Hence, the use of such proceeds for nonairport related human services would violate the statutory revenue use requirements.

In 1992, the State of Missouri enacted a new use tax on aviation fuel, the revenue of which was to be distributed to local governments under a local use tax fund, with no limitations on how the funds were to be spent. The FAA responded that "unless the tax revenue collected at the airport were used to fund the airport and airport related activities of the airport sponsor, a State aviation program, or a noise mitigation project, this tax plan could jeopardize the grant compliance status of federally-funded airports in the State of Missouri." The FAA urged the state to consider directing the tax proceeds away from the local use tax fund and restricting the use of such funds to those permitted under federal law.[203]

In 2000, the legislature of the State of Tennessee contemplated changing to general purposes its 4.5 percent state transportation fuel tax, the aviation portion of which was theretofore used to fund aviation programs within the State. The FAA took the position that even if the fuel tax were grandfathered in as promulgated prior to December 30, 1987, the Airway Safety and Capacity

[193] 2003 NY Slip. Op. 51356U, 2003 N.Y. Misc. Lexis 1336 (Sup. Ct. N.Y., Oct. 16, 2003).

[194] *Id*. at 11.

[195] *Id*. at 12.

[196] Letter from FAA Chief Counsel David Leitch to Richard Simon (July 9, 2001).

[197] 49 U.S.C. § 40116(e).

[198] Letter from DOT Deputy General Counsel Rosalind Knapp to Elizabeth Cuandra (Oct. 3, 1986).

[199] 100 Pub. L. No. 223, 101 Stat. 1486 (Dec. 30, 1987).

[200] 64 Fed. Reg. 7696-97.

[201] 49 U.S.C. § 47133. 64 Fed. Reg. at 7717.

[202] Letter from FAA Chief Counsel Gregory Walden to U.S. Senator Slade Gorton (Jan. 11, 1990).

[203] Letter from FAA Chief Counsel Kenneth Quinn to U.S. Senator Christopher Bond (Mar. 17, 1992).

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Expansion Act made it clear that all revenue generated by a public airport and any local taxes on airport fuel must be expended for airport purposes.[204] The FAA concluded that

> the State of Tennessee may not rely on the fact that its 1986 State aviation fuel tax may be grandfathered to enact new measures to divert, directly or indirectly, airport revenue. In other words, if a tax on aviation fuel was in effect prior to December 30, 1987, but proceeds were on that date limited to purposes permitted by 47107(b), the FAA will not treat that tax as grandfathered. Passage of the legislation to permit general use of the proceeds from the aviation fuel tax may jeopardize continued Federal funding of the airport and noise abatement projects at Federally-assisted airports throughout the State of Tennessee.[205]

Hence, a state acts at its peril if it amends a grandfathered tax to redirect its use for nonairport purposes.

G. Which Expenditures for Intermodal Transportation Infrastructure Are Authorized?

Among the aviation statutes is a declaration of national policy "to develop a national intermodal transportation system that transports passengers and property in an efficient manner."[206] The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century of 2000 amended this provision to provide for the encouragement and development "of intermodal connections on airport property between aeronautical and other transportation modes to serve air transportation passengers and cargo efficiently and effectively and promote economic development."[207] The FAA has implemented this policy in a series of decisions involving AIP grants, PFC authorizations, and local revenue expenditures.

As explained above, various federal statutes and regulations require that public airports accepting AIP funding agree that all revenue generated by the airport be used exclusively for the capital or operating costs of the airport, the local airport system, or facilities owned or operated by the airport directly and substantially related to the air transportation of persons or property.[208] One question that has arisen is whether airport funds spent on building or operating transit or rail lines or stations are to be owned or operated by the airport and directly and substantially related to the air transportation of passengers.[209]

Rail lines at Atlanta, Chicago, Cleveland, and Washington, D.C., airports have been financed by transit systems rather than airports. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) included a special appropriation for extension of a Bay Area Rapid Transit (BART) line to San Francisco International Airport (SFO). The Federal Transit Administration committed $750 million, or about 64 percent of the $1.2 billion project. The remaining $417 came from state and local funding sources.[210] But airport revenue funds were used to finance only the connector. The FAA approved airport funding for construction of a BART station at SFO, including the structures and equipment in the airport terminal building and a connector between that station and the BART line.[211] The FAA considered "airport passengers" to include the incidental use of the line by airport visitors and employees.[212] The 8.7-mile extension was the largest since BART was built in the early 1970s. About 68,000 riders a day were expected to use the line.[213]

Public transit terminals and rights of way may be made available at less than FMV rental so long as the facilities are directly related to air transportation, including the use by airport visitors and employees.[214] The FAA has taken the position that it believes "the use of airport property for a public transit terminal, transit right-of-way, or related facilities at less than fair rental value to be consistent with the self-sustaining assurance."[215] The transit system must be publicly owned and directly related to the transportation of passengers and airport visitors and employees to and from the airport.[216]

H. What Are the Requirements for a Self-Sustaining Airport Rate Structure?

To reduce the burden on federal and local tax resources, airports are required to adopt an airport fee and rental structure that is as self-sustaining as possible. Generally, airport sponsors must impose FMV commercial charges for nonaeronautical uses of airport property.[217] Aeronautical user charges are subject to the standard of reasonableness and nondiscrimination, but may be less than FMV.[218] An aeronautical charge is

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[204] 49 U.S.C. §§ 47107(b)(1), 47133(a).

[205] Letter from FAA Airports Division Manager Stephen Brill to Tenn. Ass't Att'y Gen. Winston Sitton (May 24, 2000).

[206] 49 U.S.C. § 47101(b)(1).

[207] 106 Pub. L. No. 181; 114 Stat. 61 (Apr. 5, 2000).

[208] 49 U.S.C. § 47107(b).

[209] 49 U.S.C. § 47107(b). 14 C.F.R. pt. 158. FAA Order 5100.3A ¶ 553(a), AIP Handbook (Oct. 24, 1989). U.S. DEP'T OF TRANSP., INTERMODAL GROUND ACCESS TO AIRPORTS: A PLANNING GUIDE 16, 202 (Dec. 1996). More recent interpretations by the FAA have liberalized this rather constricted view of the types of landside projects which are appropriate for federal airport funding. Federal funding of an airport with the surrounding highway, rail, or transit networks can come from the FAA, FHWA, or FTA.

[210] U.S. GENERAL ACCOUNTING OFFICE, SURFACE INFRASTRUCTURE: COSTS, FINANCING AND SCHEDULES FOR LARGE-DOLLAR TRANSPORTATION PROJECTS 18 (Feb. 1998).

[211] Letter from FAA Associate Administrator Susan Kurland to SFO Airport Director John Martin (Oct. 18, 1996).

[212] 64 Fed. Reg. 7696.

[213] Benjamin Pimentel, *BART's 4-Year Trip to SFO Starts Today,* SAN FRANCISCO EXAMINER, Nov. 3, 1997, at 1.

[214] 64 Fed. Reg. 7696, 7721.

[215] 61 Fed. Reg. 66735 (Dec. 18, 1996).

[216] *Id.*

[217] 64 Fed. Reg. 7696, 7721.

[218] *Id*. at 7720-21.

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defined by the FAA as "any 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 operations."[219]

Certain use of property for community services, such as parks, recreational facilities, or bike and jogging paths are acceptable. However, the purchase or operation of road maintenance equipment and services or police and fire services not directly in support of the airport are deemed impermissible.[220] Certain uses of property for nonprofit aviation organizations at reduced rental rates, such as aviation museums, educational programs, or Civil Air Patrol operations, are acceptable. Moreover, nominal lease rates may be imposed upon military units.[221]

VI. CONFLICT BETWEEN FEDERAL AND LOCAL GOVERNMENTS OVER REVENUE DIVERSION

A. Agency Application of Revenue-Diversion Policy

This section succinctly introduces the policies described above in specific factual contexts, relying on U.S. DOT IG reports,[222] GAO reports, and FAA and U.S. DOT orders.[223] Tracing the outcome of all allegations and investigations of revenue diversion is beyond the scope of this project. This discussion, however, provides examples of how and why the question of revenue diversion has been raised or asserted in particular cases.

B. Revenue Diversion Found

Probably the most notorious case of revenue diversion involved Los Angeles International Airport. In the wake of the Los Angeles riots, city officials began to seek financial resources to rebuild the city and enhance police and fire services. In 1988, the City of Los Angeles hired a consultant to assist it in identifying ways of lawfully diverting airport revenue to the city. The George H.W. Bush Administration favored selling LAX, a sale that could have generated more than $1 billion. But an outright sale was deemed politically problematic. Rather than sell the airport, the city proposed instead to amend the city charter to allow airport revenue to be placed in the city treasury. The airport's cash surplus was $25 million in 1991, money that would enable the city to hire 800 police officers, 108 paramedics, and 60 firefighters; airport surpluses were projected to grow to $70 million annually. The charter amendment (Amendment K) passed in 1992.[224] One source noted:

> The airline industry led the opposition to the diversion of revenue from the airport to the city treasury. Opponents argued that passage of Proposition K would drive up prices at the airport on everything from airline tickets to airport food concessions and would diminish airport maintenance and improvements. Roger Cohen, Vice President for Government Affairs of the Air Transportation Association, said "the airport is the one thing in the city that works…. It has been run like a business and at no taxpayer expense. Proposition K represents the final blow in politicization of the airport." Cohen feared that, under Proposition K, city officials would use their power to review Airport Commission decisions to increase terminal rents, concession fees, and airline landing charges in order to bolster the funds in the city treasury. These costs would, of course, have to be passed on to consumers, thereby possibly decreasing the number of airline patrons.[225]

In 1994, the U.S. Supreme Court handed down its decision in *Northwest Airlines v. County of Kent*, upholding a change in airport fee methodology from residual to compensatory. It held that an airport charge is reasonable "if it (1) is based on some fair approximation of the use of the facilities, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against interstate commerce."[226] Under this approach, airports were "given wide latitude in selecting a particular rate methodology and fee structure."[227]

Shortly after this decision, the City of Los Angeles changed its landing fee methodology from residual to compensatory. It imposed a FMV requirement in airfield valuation, based on the value of the land at the time it was ceded to the airport in 1928, adjusted for inflation. This resulted in a tripling of aircraft landing fees, from 51 cents per thousand pounds, first to $1.51, then to $2.06.[228] The airlines filed suit, but the courts held the applicable federal statutes (particularly the Anti-Head Tax Act) accorded no private right of ac-

[219] *Id*. at 7710. *See also* DOT Policy Statement on Airport Rates and Charges, 61 Fed. Reg. 31994, 32017 (June 21, 1996).

[220] 64 Fed. Reg. 7696, 7721.

[221] *Id*. at 7721.

[222] The role of the Department of Transportation Office of the Inspector General is to audit and investigate as necessary to promote effectiveness in departmental programs. See http://www.oig.dot.gov/about.jsp (Last visited Jan. 28, 2008).

[223] Many of the letters and memoranda cited were obtained by the researcher through his submission of a Freedom of Information Request to determine the outcome of cases and other information available.

[224] In 1992, the city passed Referendum K, which removed a prohibition in the city charter against taking airport revenue off the airport. Imes, *supra* note 79, at 1039, 1070–71 (1995).

[225] Imes, *supra* note 79, at 1039, 1071–72 [citations omitted].

[226] 510 U.S. 355, 368, 114 S. Ct. 855, 864, 127 L. Ed. 2d 183, 196 (1994).

[227] *Id*. For a comprehensive review of this decision, see Rise J. Peters, *Case Comment: Northwest Airlines v. County of Kent, Michigan: More Than You Ever Wanted to Know About Airport Ratesetting, Part One* (*Pricing in the Courts*), 22 TRANSP. L.J. 291 (1994).

[228] Airport Revenue Diversion, Hearings before the U.S. Sen. Subcomm. on Aviation of the Commerce Comm. (May 1, 1996), at 5-6 (statement of Sen. Wendell Ford), reproduced at http://books.google.com/books?id=nQEDkwETmdkC&dq=%22airport+revenue+diversion%22&printsec=frontcover&source=web&ots=f7QKBCZe8&sig=ZsilCY2rHH1ZSYysVMapyMALmMM#PPA46,M1 (Last visited Jan. 23, 2008).

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tion.[229] The U.S. DOT Secretary mediated a standstill agreement.

Congress responded with the FAAA Act, directing the U.S. DOT to promulgate policies and procedures within 90 days providing for the "prompt and effective enforcement" of the revenue-diversion prohibition and giving the U.S. DOT authority to determine fee reasonableness. (In fact, the FAA failed to promulgate the final policy until 1996.) Further, the 1994 legislation prohibited airport payment for city services unrelated to airport operations, imposed new reporting requirements on airports, and authorized civil penalties up to $50,000.[230]

Nevertheless, in February 1995, the City of Los Angeles transferred $52 million to its general fund from the airport, claiming this amount consisted of principal and interest on land condemned for the Century Freeway in 1988. In February 1995, the FAA issued an informal opinion letter reviewing the legality of the transfer and concluded that it would not block the transfer.[231] The following month, the airline industry trade association filed a formal challenge.[232] Subsequently, Los Angeles announced it intended to use airport revenue to cover various municipal operating expenses, including police protection for the city at large.[233] In response, in 1997, the FAA froze $60 million in federal grants for capital improvements at Los Angeles's four airports, including LAX, and insisted upon repayment to the Los Angeles Airport Department of $30 million that the city had transferred into the city's general fund.[234] Ultimately, the city agreed to repay $30 million to the Airport Department.[235]

Allegations of the use of airport revenue for nonairport purposes are abundant. Of the 47 airports it inspected between 1991 and 1995, the U.S. DOT IG estimated revenue diversion on the order of $55 million annually.[236] The IG alleged that Westchester County, New York, spent nearly $24 million on nonairport projects in the early 1990s,[237] while in Hawaii, $64 million was spent on a dog track next to the airport. In Denver, Colorado, $4.7 million in indirect costs were charged to the airport in 1992–1993 for such things as nonairport-related lobbying, costs of the mayor and city council, and defense of a lawsuit from a concrete contractor who had never done any airport work.[238] The only category of airports in which the IG alleged no revenue reversion

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[229] Air Transport Ass'n of America v. City of Los Angeles, 844 F. Supp. 550 (C.D. Cal. 1994).

[230] 49 U.S.C. § 47129.

[231] Letter from Cynthia Rich, Associate Administrator for Airports, to Theodore O. Stein, President, Board of Airport Commissioners (Feb. 28, 1995), cited in Air Transport Ass'n of America v. City of Los Angeles, 1995 DOT Av. Lexis 193 (Apr. 3, 1995). By 2004, the Air Transport Association noted, "we understand that the FAA is nearing conclusion of its investigation into the transfer of certain funds (eminent domain proceeds) from LAX to the City related to the acquisition of property and property rights used to construct the Century Freeway." Statement of James C. May, President and CEO, Air Transport Association of America, Inc., Before the Committee on House Transportation and Infrastructure Subcommittee on Aviation (Apr. 1, 2004).

[232] More than a year later, the FAA had failed to take formal action on the complaint. Airport Revenue Diversion, Hearings before the U.S. Sen. Subcomm. on Aviation of the Commerce Comm. (May 1, 1996), at 46–47 (statement of Edmund Merlis), reproduced at http://books.google.com/books?id=nQEDkwETmdkC&dq=%22airport+revenue+diversion%22&printsec=frontcover&source=web&ots=f7QKBCZe8&sig=ZsilCY2rHH1ZSYysVMapyMALmMM#PPA46,M1 (Last visited Jan. 23, 2008).

[233] The LAX conflict is discussed in Imes, *supra* note 79, at 1039, and Peters, *supra* note 227, at 22, and PAUL DEMPSEY & LAURENCE GESELL, AIR COMMERCE & THE LAW 474–75 (2004). The DOT Inspector General Report on Los Angeles' revenue diversion is available at http://www.oig.dot.gov/StreamFile?file=/data/pdfdocs/r9fa7005.pdf (Last visited Jan. 23, 2008).

[234] The city had transferred a total of over $31 million based on its contention that this sum represented the total with interest of prior unreimbursed general fund contributions to LAX by the city. The FAA found, "Of the $31,114,463 transferred from the Airport, the City provided documentation sufficient only to establish that the City provided contributions and services to the Airports Department in the amount of $1,159,674." The FAA concluded:

> The Determination finds that the City must return $30,287,835, with interest, to the Airport Revenue Fund in order to remain in compliance with its grant obligations, based on the finding that the City has not provided a legal basis or sufficient documentation to justify that amount. Until such time as this amount is returned, the FAA is suspending for 180 days, or until further notice, all payments of funds on FAA grants for projects at Los Angeles International (LAX), Ontario, Palmdale, and Van Nuys Airports, and considers the City and its airports ineligible to apply for new FAA grants.

In the Matter of Revenue Diversion by the City of Los Angeles at Los Angeles Int'l, Ontario, Van Nuys and Palmdale Airports, 1997 FAA Lexis 1535 (Mar. 17, 1997).

[235] *Rectrix Lawsuit Charges Barnstable Airport Commissioners Illegally Diverted Airport Funds in Violation of FAA Regulations; Suit Says Commissioners Conducted Illegal Racketeering Scheme to Monopolize Jet Fuel Sales*, PR NEWSWIRE (July 21, 2006).

[236] Airport Revenue Diversion, Hearings Before the U.S. Sen. Subcomm. on Aviation of the Commerce Comm. (May 1, 1996), at 49 (testimony of Edmund Merlis), reproduced at: http://books.google.com/books?id=nQEDkwETmdkC&dq=%22airport+revenue+diversion%22&printsec=frontcover&source=web&ots=f7QKBCZe8&sig=ZsilCY2rHH1ZSYysVMapyMALmMM#PPA30,M1 (Jan. 31, 2008).

[237] In 1997, the FAA concluded that the city owed the airport nearly $7 million in improperly diverted revenue. Letter from FAA Office of Airport Safety and Standards Director David Bennett to Weschester County Commissioner Joseph Petrocelli (Feb. 14, 1997).

[238] Airport Revenue Diversion, Hearings Before the U.S. Sen. Subcomm. on Aviation of the Commerce Comm. (May 1, 1996), at 50 (statement of Edmund Merlis), reproduced at: http://books.google.com/books?id=nQEDkwETmdkC&dq=%22airport+revenue+diversion%22&printsec=frontcover&source=web&ots=f7QKBCZe8&sig=ZsilCY2rHH1ZSYysVMapyMALmMM#PPA30,M1 (Jan. 31, 2008).

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was that of independent port authorities, not subjected to rule by mayors and city councils.[239]

In the mid-1990s, the IG asserted the existence of revenue diversion or failure to obtain fair rental value for airport property, or both, in 38 cases. In its audit of Los Angeles, the IG determined the donation of airport funds to nonprofit and community groups to constitute revenue diversion. In 2003, U.S. DOT IG Kenneth Mead testified before Congress that:

> ….Airports that receive Federal grants are required to put any revenue generated at the airport back into the airport operating or capital funds in order to minimize Federal assistance. Any other use of the revenue is considered a diversion. Examples of common revenue diversions include airport sponsors or local governments (1) charging the airport for property or services that were not provided, or (2) renting airport property at less than fair market value.
>
> At a time when airports are continuing to look for new ways to fund their operations, we continue to find cases of airport revenue diversion. For example, at a sample of five airport sponsors reviewed, we found approximately $40.9 million in potential revenue diversions that were not detected by FAA's primary oversight methods…[240]

The FAA does not agree with the IG's interpretation that renting at less than FMV is diversion, unless the sponsor is renting to itself for nonaeronautical purposes.

The IG initially determined that between 1998 and 2002, approximately $12.5 million of airport revenue was diverted from SFO to city and county uses.[241] The FAA and IG ultimately concluded that the City and County of San Francisco were required to repay SFO approximately $4.5 million dollars. The U.S. DOT also concluded that SFO's transfer of 15 percent of its concession revenue (about $20 million) to the City each year is authorized under the grandfather provisions of the statute.[242]

The U.S. DOT IG asserted the existence of a $4.3 million revenue diversion from Dade County, Florida, between 1989 and 1996.[243] A smaller amount was diverted at Imperial County, California,[244] and Augusta–Richmond, Georgia.[245]

The FAA has ordered refunds of fees paid by airports deemed to be excessive.[246] In 2007, U.S. DOT IG Calvin Scovel testified:

> Since the early 1990s, we have identified hundreds of millions of dollars in airport revenue diversions, revenues that should have been used for the capital or operating cost of an airport but were instead used for non-airport purposes. In the last 4 years, we reported on revenue diversions of more than $50 million at seven large airports, including one airport whose sponsor…diverted about $40 million to other projects not related to the airport.[247]

The U.S. DOT IG's Web site[248] contains a number of airport investigations and findings on revenue diversion. However, its web site does not provide a complete picture of the issue because it does not describe the FAA's resolution of the particular issues raised in the IG's reports. In many cases, following additional investigation, the FAA concluded that no unlawful revenue diversion occurred or that the amount of unlawfully diverted revenue was less than the IG found, and the IG concurred.

Several airport operators also have sought informal opinion letters from the FAA before making questionable expenditures. As an example, the Susquehanna Regional Airport Authority sought an opinion as to whether it could use airport revenue to make an annual payment in lieu of taxes to the local school district. The FAA concluded that the payment would exceed the value of services rendered to the airport, and therefore would constitute unlawful revenue diversion.[249]

C. Revenue Diversion Not Found

In the early 1990s, Albany County, New York, the owner of Albany Airport, proposed to lease its airport to a private joint venture. The county proposed an initial lease payment of $30 million to cover the capital and operating costs it incurred over the preceding three decades. The FAA took the position that the airport

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[239] MARY SCHIAVO, FLYING BLIND, FLYING SAFE 125–27 (1997).

[240] Statement of The Honorable Kenneth M. Mead, Inspector General, U.S. Department of Transportation, House Committee on Budget (July 9, 2003), http://www.oig.dot.gov/StreamFile?file=/data/pdfdocs/cc2003132.pdf (Last visited Jan. 28, 2008).

[241] http://www.oig.dot.gov/item.jsp?id=1283 (Jan. 23, 2008).

[242] Nisid Hajari, *A Walk in the Clouds*, TIME, June 22, 1998; George Raine, *What's Up at SFO?*, SAN FRANCISCO EXAMINER, Feb. 17, 1998, at A-1. Memorandum from Assistant DOT General Counsel Robert Gabel to James Brucia (Nov. 23, 1993).

[243] http://www.oig.dot.gov/StreamFile?file=/data/pdfdocs/r4fa7035.pdf (Last visited Jan. 28, 2008).

[244] http://www.oig.dot.gov/StreamFile?file=/data/pdfdocs/av1998196.pdf (Last visited Jan. 28, 2008).

[245] http://www.oig.dot.gov/StreamFile?file=/data/pdfdocs/av1998093.pdf (Last visited Jan. 28, 2008).

[246] *See, e.g.*, Second Los Angeles International Airport Rates Proceeding, DOT Order 96-1-18 (1996); Los Angeles International Airport Rates Proceeding; Second Los Angeles International Airport Rates Proceeding, Order 97-12-31 (1997).

[247] Testimony by Calvin L. Scovel III, DOT Inspector General, on Fiscal 2008 Appropriations: Federal Aviation Administration, Before the Subcomm. on Transportation, Housing And Urban Development, and Related Agencies of the U.S. Senate Appropriations Committee (May 10, 2007), available at http://www.oig.dot.gov/StreamFile?file=/data/pdfdocs/Final_Budget_Statement_w-508.pdf (Last visited Jan. 31, 2008).

[248] http://www.oig.dot.gov/Room?subject=26 (Jan. 28, 2008).

[249] Letter from FAA Airport Compliance Division Manager Charles Erhard to Timothy Edwards (Mar. 20, 2007).

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operator could not recoup its capital and operating costs long after it had made such investments. The U.S. DOT General Counsel put the question to the Justice Department, which took the opposite position, concluding that the use of airport revenue to reimburse prior capital or operating expenditures may fairly be characterized as a legitimate capital or operating expense within the meaning of the AAIA, irrespective of when such expenses were incurred.[250] Following issuance of this opinion, Congress in 1994 enacted the 6-year statute of limitations on use of airport revenue to reimburse sponsor for previous contributions to the airport.

When Hurricane Katrina hit New Orleans and the surrounding region, several airports sought to reimburse emergency costs incurred by sister airports in the region. Airports Council International sought an opinion as to whether such expenditures were consistent with the airport revenue-use requirements of 49 U.S.C. §§ 47107(b) and 47133. In an informal opinion letter, the FAA concluded that such relief was analogous to mutual aid agreements entered into by public airports with local governmental safety providers, and the expenditures were therefore lawful. However, the FAA took the position that this conclusion applied only to airport revenue and not to federal grants or PFC receipts.[251]

Many of the FAA revenue determinations are highly factually based and depend upon specific language in the grant agreements and action taken by FAA personnel in authorizing various transactions, including the disposal of airport land, for example. In many such cases, the FAA found no unlawful revenue diversion.[252]

VII. CONCLUSION

It is understandable that financially strapped local governments look to airports as "cash cows." Indirect taxes can be levied upon airlines and passengers who may have no vote in the local jurisdiction; hence there will be no political price for the local politician to pay for imposing unjust fees upon them for services they do not receive. Indeed, the local politician can be viewed as a hero among his constituents, who enjoy enhanced governmental services with no corresponding local financial burden.

Congress, however, has found this form of indirect taxation to constitute an impermissible burden on interstate commerce. Federal statutory prohibitions against revenue diversion are long-standing; they go back to 1982, with the promulgation of the AAIA that year, and have been reaffirmed and strengthened by Congress in successive legislation passed in 1987, 1994, and 1996. The FAA also has promulgated regulations and policy statements furthering the Congressional policies embraced in that legislation and has inserted language in federal grant agreements imposing contractual duties upon airport operators not to divert revenue.

Like most rules addressing complex issues, the revenue-diversion rules themselves are complex. There are areas of clarity and areas of ambiguity in the law and policy of airport revenue diversion. The basic principles are clear. Though there are exceptions, there can be no doubt of the general rule—local governments may not siphon off airport revenue for nonairport purposes. Airport revenue is to be spent on the capital and operating expenses of the airport. The devil, of course, lies in the details.

What an airport spends influences what it collects. Congress has decreed that funds derived from the federal government, as well as revenue derived from airlines and other users, are to be spent on the airport and related activities and are not to be diverted elsewhere. A review of FAA and U.S. DOT orders and opinion letters reveals that many determinations of whether individual expenditures fall on the lawful or unlawful side of revenue diversion are intensely factually based.

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[250] DOJ Memorandum from Ass't Att'y Gen. Michael Luttig to Acting DOT General Counsel C. Dean McGrath, Jr., (Feb. 12, 1991).

[251] Letter from FAA Chief Counsel Andrew Steinberg to ACI General Counsel Patricia Hahn (Sept. 23, 2005).

[252] *See, e.g.*, Rudy J. Clarke v. City of Alamogordo, NM, 2006 FAA Lexis 629 (Sept. 20, 2006); Boca Airport, Inc., d/b/a Boca Aviation v. Boca Raton Airport Auth., 2003 FAA Lexis 143 (Mar. 20, 2003); Wilson Air Center v. Memphis and Shelby County Airport Auth., FAA Docket No. 16-99-10, Final Agency Decision (Aug. 30, 2001), and Director's Determination (Aug. 2, 2000); Steere v. County of San Diego, FAA Docket No. 16-99-15, Final Agency Decision (Dec. 7, 2004) and Director's Determination (July 21, 2004).

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