



The Voice of Aviation Business

Guide to Minimum Standards for Airport Sponsors and Aeronautical Businesses

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1 Preface

This guidance document was produced by the National Air Transportation Association (NATA). The goal of this guidance is to inform public agencies and private owners of public-use airports and aeronautical businesses of the benefits of developing, implementing and enforcing airport minimum standards, as well as rules and regulations, and to provide key information and recommendations.

NATA, as the voice and leading global advocate for aviation businesses, offers expert resources, representation, guidance, and benefits that promote a safe and favorable environment in which all members of the industry can thrive and remain competitive. NATA's 2,600-plus member companies own, operate, and service aircraft and provide for the needs of the traveling public by offering services and products to aircraft operators and others. These products and services include aviation fuel, aircraft maintenance, parts, storage and rental, airline servicing, flight training, on-demand air charter, aircraft and flight department management, and scheduled commuter operations in smaller aircraft. NATA members are the aviation industry's vital link in the provision of services to airlines, general aviation, the general public, and the military.

Disclaimer

This guide is intended to be used for informational purposes only and is not a substitute for reference to Federal Aviation Administration orders, regulations, and advisory circulars. This guide is not legal advice.

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2 History of Federal Grant Assurances

The majority of federal funding for airport development and capital improvement projects comes from the Federal Aviation Administration's (FAA) Airport Improvement Program (AIP). AIP provides funds to public-use airports for such things as airport project planning and design, land acquisition, noise mitigation, and certain airport capital improvements that are deemed eligible for AIP funds.

Federal funding for airport development began in 1946 as the Federal-Aid Airport Program, which was authorized by Congress through provisions of the Federal Airport Act of 1946. This was the first peacetime program of financial assistance aimed exclusively at promoting the development of the nation's civil airports. In 1970, the Airport and Airway Development Act created a new airport aid program designed to provide funding grants for airport development. It also created the Airport and Airways Trust Fund which received funding from a special aviation trust fund. This trust fund received its revenue from the proceeds of multiple aviation excise taxes. The current federal airport funding program (AIP) came into existence with the passage of the Airport and Airway Improvement Act of 1982. It continues to provide funds from the Aviation Trust Fund for FAA general operations, facilities, and equipment (control towers, NAVAIDS, etc.), research and development, and to the AIP. The AIP provides grants to public agencies—and, in some cases, to private owners and entities—for the planning and development of public-use airports that are included in the National Plan of Integrated Airport systems (NPIAS).

3 Significant Federal Grant Assurances to Minimum Standards

Upon receiving funds through the AIP program, airport sponsors¹ are contractually obligated to ensure that the airport will be operated and maintained safely and efficiently, in accordance with contractual conditions known as the FAA grant assurances. There are a total of 39 total grant assurances—three are particularly important to the development and content of minimum standards. Excerpt portions are provided below, with the full text of each provided in Appendix B.

Grant Assurance 22 – Economic Nondiscrimination

This assurance requires, in pertinent part, that an airport sponsor of a federally obligated airport:

22.a. “. . . 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.”

22.f. “. . . 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

¹ As used in this guidance, the term “airport sponsor” is either the public agency or private owner of a public-use airport that applies for federal financial assistance, such as AIP grants, for the airport. FAA Advisory Circular 150/5190-7, Minimum Standards for Commercial Aeronautical Activities, at ¶ 1.1.d.

[including, but not limited to maintenance, repair, and fueling] that it may choose to perform.”

22.h. “. . . 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.”

22.i. “. . . 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.”

Subsection (h) is a qualification on subsection (a) that gives an airport sponsor the authority to create reasonable rules and regulations that allow for safe and efficient airport operations; and to create minimum conditions that are applied objectively and uniformly to similarly situated aeronautical service providers. See Section 4.1 below for more information on the meaning of similarly situated.

Subsection (i) is an exception to subsection (a) that gives an airport sponsor the authority to limit activities that are unsafe or are an inefficient use of navigable airspace and are thereby detrimental to civil aviation needs. Limitations or prohibitions of types of aeronautical activity based on safety or efficiency must be approved in advance by the FAA. The FAA is the final arbiter regarding aviation safety and will make the final determination as to the reasonableness of any proposed restriction, limitation, or denial of access to the airport.

“Aeronautical use” is defined 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.”²

Grant Assurance 23 – Exclusive Rights

This assurance requires, in pertinent part, that an airport sponsor of a federally obligated airport:

“. . . will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”

“. . . 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 . . . repair and maintenance of aircraft, sale of aircraft parts, and any other activities which . . . can be regarded as an aeronautical activity[.]”

The fact that an aeronautical activity is provided by only one entity does not necessarily mean that an improper exclusive rights violation has occurred. A violation may occur when an airport sponsor denies an otherwise qualified entity the opportunity to be an on-airport aeronautical service provider. Although airport sponsors may impose qualifications and minimum standards on entities who provide aeronautical services, those qualifications

² Airport Compliance Manual, FAA Order 150/5190-6, at ¶ 18.3.

and minimum standards may not be unreasonable and may not be applied in an unjustly discriminatory manner.

There are two limited exceptions to Grant Assurance 23. First, an airport sponsor may choose to be the sole provider of some or all services, a right which is known as a proprietary exclusive. If an airport sponsor exercises a proprietary exclusive right, it must do so with its own resources and its own personnel. It may not contract out the right to a third party. Second, space limitations at an airport may permit the airport sponsor to deny an otherwise-qualified applicant.

Grant Assurance 24 – Fee and Rental Structure

This assurance requires, in pertinent part, that an airport sponsor of a federally obligated airport:

“ . . . 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[.]”

These three grant assurances are intended to ensure that airports receiving federal funds are operated in a manner that benefits the public, are available on reasonable terms without unjust discrimination, and create a level playing field for similarly situated companies or individuals to provide commercial aeronautical services to the public. To an airport sponsor, these assurances alone can pose a daunting task. How can the needs of the public, surrounding community, and those wishing to provide services on the airport be met in a manner that is fair, economically viable, and limits liability? The time-tested answer to that question is the creation, implementation, and enforcement of minimum standards.

4 Minimum Standards

4.1 Overview

The purpose of minimum standards is to set the conditions an individual or entity must meet to provide commercial aeronautical services on the airport. A survey of airport sponsors and service providers indicated that the purposes of minimum standards are, in order of response frequency: (1) to create a level playing field and promote fair competition, (2) to protect consumers, (3) to require minimum levels of service, (4) to protect airports, and (5) to provide guidance for the development of the airport.³

Since airports are unique and distinctive, an airport develops its own minimum standards to reflect its unique operations, users, aeronautical service providers, and needs. In order to comply with the grant assurances, minimum standards are required to:

- Impose conditions that ensure safe and efficient operation of the airport in accordance with FAA rules, regulations, and applicable guidance.
- Be reasonable, not unjustly discriminatory, attainable, uniformly applied, and designed to reasonably protect the investment of providers of aeronautical services who meet minimum standards from competition not making a similar investment.

³ National Academies of Sciences, Engineering, and Medicine 2011. *Survey of Minimum Standards: Commercial Aeronautical Activities at Airports*, at Appendix C, pg. 36.

- Be relevant to the activity to which they apply.
- Provide the opportunity for new entrants who meet the minimum standards to offer their aeronautical services.

During the process of developing or updating minimum standards, the airport sponsor should inform and engage the aeronautical community of the project and timeline. The airport sponsor may hold group or individual meetings with stakeholders to discuss proposals and obtain suggestions and feedback. Objections and challenges to the minimum standards can often be avoided by giving interested stakeholders the opportunity to review the proposed minimum standards and provide comments or suggestions to the sponsor.

“Similarly situated” is a term commonly used and is important to understanding grant assurances and minimum standards. Airport providers are obligated to treat similarly situated aeronautical service providers in the same manner. Those who are not similarly situated can be treated differently. Factors that are considered are:

- Type of activities and services being provided
- Types of customers being served
- Location on the airport
- Age, size, and condition of the facilities that are leased
- Length of the lease term and date of execution of the lease
- Service provider’s investment in facilities

4.2 Benefits

Once established, minimum standards provide a host of benefits to the airport sponsor, aeronautical community, and current and future potential service providers:

- Safe operating environment
- High quality services available to the public
- Avoidance of conflicts and political entanglements
- Orderly and efficient development of the airport and its services
- Compliance with federal grant assurances
- Establishment of consistent requirements for service providers regarding insurance, indemnification, and other business issues
- Current service providers’ investments are protected from devaluation from new competing providers operating at a substantially lower initial investment.
- Potential service providers can accurately predict initial investment allowing a more thorough business plan to be developed.

4.3 Objectives

The FAA’s objective in recommending the development and use of minimum standards is 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 ensure efficiency of operations.”⁴

The airport sponsor’s objective is to meet or exceed its federal grant assurance obligations by developing minimum standards that are fair and reasonable to all aeronautical service providers, and appropriate and relevant to the respective aeronautical activities and to the unique airport environment.

The objective of commercial aeronautical service providers is to ensure a level playing field that allows for fair competition.

4.4 Contents of Minimum Standards

Effective minimum standards must be tailored to the specific operating environment and circumstances of an airport. Most minimum standards include some or all the following segments:

- Introduction
- Definitions
- Application process
- Types of commercial aeronautical activities
- Independent aeronautical service providers (not based at the airport)
- Self-service operations
- Through-the-fence operations policy
- Waiver and grandfather policy
- Minimum insurance based on risk and type of aeronautical activity
- Complaints and enforcement
- Review and update policy
- References

Introduction

The introduction section of an airport's minimum standards may provide the following basic information:

- Name and location of the airport
- Name and contact information for the airport sponsor
- Name and contact information for airport management
- Date that the standards take effect

In addition to the above information, it is helpful to state that the airport is federally obligated and that the purpose of the minimum standards is to assist in complying with grant assurances. An airport sponsor may want to note that all aeronautical service providers conducting business on the airport must abide by the standards – subject to waiver and grandfathering provisions, if applicable – and that the sponsor reserves the right to update the standards from time-to-time in order to adjust to airport growth, user and tenant needs, and in order to comply with grant assurances, and federal, state, and local ordinances.

⁴ FAA Advisory Circular 150/5190-7, Minimum Standards for Commercial Aeronautical Activities, at ¶ 1.2.a.

Definitions

The definitions section contains the definitions for any term or acronym used within the document that is not commonly known or understood in the industry. Aviation specific terms, such as Specialized Aeronautical Service Provider (SASO), or any terms whose meaning is unclear should be included.

Application Process

This section defines the requirements for applications by commercial aeronautical service providers and the process for submission, whether it is in response to a formal request or is an unsolicited proposal. Typical information that is asked of applicants includes:

- Name and contact information of applicant, including the name of the business entity and all parties who may appear on leases or other documents, as being a partner, director, or corporate officer
- Proposed nature of the business
- History of the entity and other airport locations, if applicable
- Current and projected financial statement
- Listing of major assets owned, purchased, or leased that will be used on the airport
- Credit reports of business owners
- Proposed airport location of the business entity, including site plans for existing and future required improvements.
- Proof of any required insurance or insurance company letter of intent
- Proof of ability to meet airport-related financial responsibilities
- Names and qualifications of individuals who will manage the business entity on a day-to-day basis

The application process should identify the approving authority and outline the review process, including timelines and criteria for approval or denial. Whether and under what conditions waivers, grandfathering, or appeals are considered should also be stated.

Types of Commercial Aeronautical Activities

Minimum standards generally vary depending on the type of aeronautical activity⁵ and the scope of the services and products provided. This section describes the specific standards based on the type of aeronautical activity, such as minimum facility, licensing, and operating requirements. Depending on the airport's unique situation, the types of commercial aeronautical activities may include:

- Aerial advertising
- Agricultural operations
- Aircraft component repair
- Aircraft refurbishment
- Aircraft sales
- Aircraft storage
- Air freight or cargo services

⁵ "Aeronautical activity" is "[a]ny 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." FAA Advisory Circular 150/5190-7, Minimum Standards for Commercial Aeronautical Activities, at Appendix 1, ¶ 1.1.a.

- Air taxi, air charter, and aircraft management
- Airframe and powerplant repair, to include repair stations and independent A&P technicians
- Avionics and instrument parts and services
- Commercial air tours
- FBO - aviation fuel sales and related products and services
- Flight training and aircraft rental
- Flying clubs
- Self-service fuel and other self-serve activities
- Skydiving and gliding
- Unmanned aerial systems (UAS)

At airports with scheduled air carrier service, it may be appropriate to include into-plane fueling, ground handling, and passenger/cargo services in the types of activities.

Independent Aeronautical Service Providers

Airport sponsors should make allowances for aeronautical service providers who are not based at the airport to provide services to based aircraft operators. One of the most commonly requested types of services by independent service providers is maintenance. Additional information is provided in Section 5.3 below.

Self-Service Operations

Aircraft owners and operators are granted the right under grant assurance 22 to self-service their aircraft, provided they do so with their own personnel and resources. Airport sponsors may set reasonable safety standards that are relevant to the type of self-service activity. The most common type of self-service is for fuel.

Through-the-Fence Operations

Of all the issues that confront airport sponsors, through-the-fence operations carry the greatest risk of grant assurance non-compliance. Airport sponsors are strongly encouraged to develop an enforceable through-the-fence policy that has been reviewed by the FAA. Additional information is provided in Section 5.5 below.

Waiver and Grandfather Policy

A waiver of minimum standard requirements may be appropriate in order to permit a new service provider to begin operations. A waiver should be granted only for a certain limited time and only for services that are ancillary to the primary service. In granting a waiver, the airport must not cause unjust economic discrimination between similarly situated service providers.

A grandfather provision allows for existing service providers to maintain the services required under an existing lease or prior minimum standards. Airports have limited contractual rights to impose new minimum standards on existing service providers operating under leases that do not provide for the imposition of new minimum standards. A grandfather provision may be appropriate in order to honor existing leases and to preserve the economic viability of existing service providers while transitioning to new standards.

Enforcement and Complaints

Minimum standards are only effective if enforced. Lack of, or uneven enforcement of, minimum standards can be destructive to an airport community, leading to conflict with service providers and tenants, and potential litigation. If temporary waivers are permitted or grandfather clauses are included, the conditions and timeframe should be set forth in lease and operating agreements, as well as the minimum standards.

Update and Revision Policy

Frequent changes to minimum standards may be viewed as a juggling of standards to benefit an individual service provider. However, updates may be appropriate as the size of existing leaseholds, type and scope of aeronautical activities, and services of service providers change over time. Both small updates or significant revisions should follow a process that is clearly defined.

5. Developing Minimum Standards

5.1 Evaluating the Airport Environment

Developing comprehensive minimum standards that help the airport best serve the public and the interests of service providers must begin with assessing the current airport environment and its operations. Many decisions about standards may need to be tied to the current state of the airport. Some important factors that should be studied are:

- Airport's federal designation and category within the NPIAS
- Traffic volume
- Type of traffic
 - Turbine vs. piston
 - Scheduled commercial operations vs. general aviation
 - Local vs. itinerant
- Available space for development
- Condition of the airport infrastructure
- Safety and security concerns
- Environmental concerns
- Airport and municipal insurance factors
- Future development plans

A valuable source of information is the Airport's Master Plan, if one is available. A comprehensive, current, and well-coordinated Master Plan acts as the airport sponsor's business plan.

Because minimum standards should be tailored to similarly situated service providers and their activities, the airport sponsor must understand the types and sizes of current commercial aeronautical service providers on the airport and consider their location and quality of facilities. When evaluating these providers, data should be gathered on:

- Types of aeronautical activities and service providers
- Size, condition, and capabilities of leaseholds; ramp size and layout; tie-down areas; capacity of vehicle parking for employees and customers
- Size, condition, and capabilities of aircraft storage hangars, passenger facilities, and repair and support facilities

- Capacity, condition, and type of bulk fuel storage facilities
- Location on airport and access to taxiways and runways
- Equipment, training, and tooling
- Types of FAA certifications and licenses held
- Number of employees and availability of vehicle parking
- Hours of operation and availability after-hours

5.2 Minimum Standards by Activity

Commercial aeronautical service providers can be broken down into two broad categories—fixed base operators (FBOs) and specialized aeronautical service providers (SASOs). An FBO is a commercial business that is granted the right by the airport sponsor to sell aviation fuel; the right is generally tied to the requirement to provide other aeronautical services.⁶ A SASO is a business that provides a single aeronautical service, such as maintenance, flight training, air charter, and avionics repair.⁷ Due to the vast difference in individual airport operations, sizes, and types of users, there are many different approaches to classifying and categorizing FBOs and SASOs. The airport sponsor should examine the services and qualifications of the existing FBOs and SASOs, as well as the anticipated future needs of the airport's aeronautical users in developing minimum standards that are reasonable and relevant to the particular aeronautical activity, apply to all similarly situated service providers, and are not unjustly discriminatory. The elements that are generally considered are:

- Leasehold square footage, including aircraft parking apron and ramp, aircraft tie-downs, parking space for refueling and non-refueling vehicles, and parking space for employees' and customers' vehicles
- Facility square footage, including passenger terminals, aircraft storage hangars, and support buildings
- Facility amenities for flight crew, customers, and passengers, such as meeting space, crew rest areas, public restrooms, passenger waiting areas, and flight planning
- Location and capacity of bulk fuel (Jet A and Avgas) storage facilities
- Number and capacity of refueling vehicles by type of fuel (Jet A and Avgas)
- Ground support equipment (GSE)
- Number of personnel and their function
- Hours of operation and after-hours availability
- Tooling and equipment
- Licensing, certification, and training
- Insurance and indemnification

⁶ FAA Advisory Circular 150/5190-7, Minimum Standards for Commercial Aeronautical Activities, at Appendix 1, ¶ 1.1.i.

⁷ Id., ¶ 1.1.o.

5.3 Independent Aeronautical Service Providers

Commercial aeronautical service providers without a lease or a physical base at the airport are permitted by grant assurance 22 and 23 to perform aeronautical services at the airport; provided they comply with the airport sponsor's reasonable requirements.

More and more, aircraft maintenance providers that are not based at the airport, including individual A&P mechanics, mobile repair units dispatched by a repair station, or other specialty maintenance providers, are asked by based aircraft operators to perform maintenance services on the airport. Different reasons are behind this: warranty periods on new aircraft limit customers to using OEM services; technically advanced and newer aircraft require specialized tooling, expertise, and training that is not widely available; the cost and downtime of relocating the aircraft; and a low number of technicians entering the industry has made it harder for independent maintenance businesses to hire and stay open. The airport sponsor should incorporate provisions in the minimum standards to allow independent aeronautical service providers to provide services to based aircraft. Common elements to be considered are

- Abide by the airport's rules and regulations
- Certification appropriate to the type of activity
- Compliance with safety and security requirements
- Obtaining a business permit issued by the airport
- Meeting minimum insurance and indemnification
- Payment of reasonable fees

An important consideration is the location and condition of the facilities where maintenance will be performed. Local ordinances, fire codes, and building codes may be applicable to the facility. Since these criteria generally apply to the facility's owner or lessee, but not directly to the independent service provider, evaluation and coordination of the facility lease, minimum standards, and the airport's rules and regulations should be undertaken.

5.4 Insurance

One of the requirements that an airport sponsor must consider when developing minimum standards is minimum insurance requirements for commercial aeronautical service providers. Due to the complexity of the various insurance products that an airport sponsor may require, it is recommended that airport sponsors consult with an insurance professional who is experienced in aviation insurance products early in the development process. The basic policy that most commercial aeronautical service providers hold is a Commercial General Liability (CGL) policy. A CGL policy typically provides specific coverage areas to service providers, such as:

- Business Automobile Liability – policy that protects vehicles driven by employees on and off the airport premises
- Contractual Liability – policy protections for the contractual agreements with tenants, contractors, and others, which often contain indemnification agreements.
- Hangar Keepers Liability – a hangar keeper's liability policy protects the insured from any damage they may cause to an aircraft under their care and control

- Premises Liability – a premises liability policy provides coverage for injury to persons or property
- Product and Completed Operations Liability – a product liability policy provides coverage on products, such as fuel and oil, which a service provider may sell
- Environmental Harms – a environmental harms policy may be appropriate depending on the service provider's unique type of activity.
- Worker's Compensation – most service providers must obtain a worker's compensation policy that qualifies for their respective state's statutory limits

An aviation insurance professional or the airport sponsor's risk manager will be able to assist in determining the proper types and amounts of coverage needed for the different types of commercial aeronautical services.

5.5 Through-the-Fence Operations

Through-the-fence operations occur when an aircraft on property adjoining the airport is provided access from the adjoining property to the airport facilities. Through-the-fence access has the potential to undermine the minimum standards and violate the grant assurances. Although the FAA advises against allowing through-the-fence operations and airport sponsors are under no obligation to allow new through-the-fence operations, the airport sponsor may allow it.

A through-the-fence operation should only be considered on a case-by-case basis and must permit the airport sponsor to continue to meet its grant assurance obligations. It requires a written airport access agreement that sets forth reasonable and clear terms and conditions which protect the reasonable needs and interests of the airport community and the flying public. A key requirement is that a through-the-fence user must pay for access on an equitable basis as compared with on-airport users. This agreement should give the airport sponsor the legal right to require the party granted access to conform to all applicable grant assurances and should specify:

- Specific rights of access
- Payment provisions for access to and use of airport
- Default and termination procedures
- Insurance and indemnification provisions
- Statement that the airport sponsor is under no obligation to accept transfer or assignment of the agreement
- Acknowledgement that the Federal grant assurances supersede the access agreement in all cases
- Effective start and expiration date

Before execution, airport sponsors should submit all proposed through-the-fence access agreements along with a statement of circumstances to the respective FAA Airport District Office for review.

5.6 Enforcement and Handling Complaints

Minimum standards provide the maximum benefit to the airport sponsor, aeronautical service providers, tenants, and the public only if enforced uniformly. Minimum standards that are not enforced or are enforced subjectively can create a myriad of problems.

Minimum standards are often incorporated by reference in leases and in conjunction with airport rules and regulations, thereby giving the sponsor a right to declare a default for failure to comply. However, state contract law principles generally prohibit the imposition of new minimum standards on a service provider if the existing lease predates the minimum standards and does not require or provide for compliance with minimum standards.

Occasionally, disputes and disagreements relating to the interpretation or application of minimum standards will occur. While the FAA has informal and formal processes to handle complaints, it is in the best interest of the airport sponsor and complaining party to work to resolve the issue locally. If the sponsor and complaining party are unable to reach an equitable agreement, then mediation may become an option. If mediation is unable to provide a remedy, the complaining party may choose to file a complaint with the FAA through part 13 (informal complaints) or part 16 (formal complaints). A finding of non-compliance does not necessarily mean that an airport sponsor will lose public funding or be required to pay back previous grants. The airport sponsor is first given an opportunity to correct the violation through a compliance plan. The FAA generally reserves the withholding of federal funds for situations where the airport sponsor refuses to rectify situations of non-compliance.

5.7 Updates and Revisions

From time to time, airport operational considerations and growth may require the airport sponsor to update its minimum standards.

Ideally, consideration of updates or revisions occurs regularly, rather than allowing a lengthy period to elapse during which existing service providers and the airport environment go through significant changes. It may also be appropriate to consider an update or revision when the airport sponsor is approached by an entity seeking to become a new FBO or SASO. If significant revisions are called for, an airport sponsor should follow a complete process like the one it used when its minimum standards were first developed.

Prior to revising minimum standards, the airport sponsor should notify existing commercial service providers and request their input on the proposed changes. Working cooperatively with the airport users and service providers may allow the sponsor to avoid disputes later.

While updating or revising minimum standards to adjust for a change in the airport's operations or traffic composition is reasonable, the airport sponsor should be careful to avoid constantly changing the standards. Juggling of standards could be interpreted by some as trying to provide an advantage to one particular service provider over another.

6 Balancing Grant Assurances and Minimum Standards

Economic Nondiscrimination

Minimum standards are a starting point for ensuring compliance with FAA Grant Assurance 22, Economic Nondiscrimination, which requires in part that uniform rates and charges be applied to similarly situated service providers. However, even if two similarly situated service providers meet the minimum standards, different rates and charges may be appropriate depending on factors unique to each service provider. For instance, the airport sponsor may be justified in charging higher rental rates to the lessee of a facility owned and maintained by the airport sponsor than the charges to a service provider who finances and builds their own facilities. Another example that may justify a higher rate is a superior location on the airport.

Additionally, if the airport has available space and an existing or prospective aeronautical service provider requests space in order to provide a service that is not provided by the airport sponsor, the airport is generally obligated to negotiate in good faith and on reasonable terms with the prospective service provider. A refusal of an existing provider's request for space to expand services may be improper unless there is justification, such as the airport sponsor's desire to increase competition for a certain type of service, or that such space will not be put to actual use within a reasonable amount of time.

It would be contrary to grant assurance 22 to refuse to negotiate with a prospective new service provider who has a solid business plan and also meets the minimum standards. If a prospective new provider proposes services that are needed at the airport, but it does not meet the minimum standards, it may be a sign that the minimum standards are not sufficiently reasonable, and therefore they should be reconsidered.

Fee and Rental Structure

Just as minimum standards should be reasonable and uniquely designed to fit the local aeronautical environment, rates and charges must also be reasonable and designed to allow the airport to be as financially self-sustaining as possible under its unique circumstances. Rates and charges by airports to aeronautical users should reflect the cost of services or facilities. Self-sustaining does not necessarily require the airport sponsor to charge fair market value rates to aeronautical users.

Prohibition of Exclusive Rights

Under FAA Grant Assurance 23, airport sponsors are prohibited from granting an exclusive right to provide commercial aeronautical services by way of lease, operating permit, or other restrictions, including by design of minimum standards. When designing, implementing, and enforcing minimum standards, airport sponsors must take particular care to ensure that none of their actions create an inadvertent exclusive right for any aeronautical service providers, with several exceptions discussed below. The FAA defines an exclusive right as:

A power, privilege, or other right excluding or debarring another from enjoying or exercising like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable minimum 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.⁸

Exclusive rights are prohibited because they limit the usefulness of the airport and deprive the public of the benefits of competition between service providers. It is important to note that an exclusive right can be created either intentionally or unintentionally. Some examples of exclusive rights violations could be:

- Unreasonable minimum standards
- Denial of an aeronautical service provider's application to provide services on the airport with the intent to protect an existing service provider
- Airports' management agent exercising the sponsor's proprietary exclusive to provide aeronautical services

Another area that may cause an exclusive rights violation is the area of self-servicing of aircraft. Self-servicing is defined as the servicing of an aircraft by its owner or operator or the owner or operator's employees using the owner or operator's own equipment and resources. By this definition, self-servicing does not include the use of a self-service fuel pump owned or operated by someone else. An airport sponsor is prohibited from preventing an owner or operator from performing services on their own aircraft with their resources and employees, but the sponsor may impose reasonable rules and regulations to ensure that this servicing is performed in a safe and secure manner. This may include requiring compliance with local ordinances and fire and building codes if those are applicable to the facility and proposed activity.

7 Exceptions to the Grant Assurances

Safety and Efficiency Exception

An airport sponsor may deny the right to perform a specific type of aeronautical activity if it will adversely affect safety or efficiency of other aeronautical activities. It is important to understand that this determination must be made using demonstrated evidence of detrimental effect on safety or efficiency. Safety concerns may include fire safety standards, building codes, and OSHA standards. Any such determination should be reviewed and approved by the FAA before being implemented. A common, reasonable restriction is the handling of fuel and other flammable products.

Proprietary Right

The sponsor of a federally obligated airport is the only entity entitled to hold an exclusive right to perform aeronautical services. For the sponsor to exercise this right, commercial aeronautical services must be performed by the sponsor's employees, using the sponsor's own equipment and resources—it may not subcontract out such exclusive right services. Additionally, a sponsor may not grant an exclusive right to perform these services on its behalf to any other private individual or entity.

⁸ Airport Compliance Manual, FAA Order 150/5190-6, at ¶ 8.2.

Space Limitations

An airport sponsor is not penalized for permitting the continued existence of a single aeronautical service provider where 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 order to deny additional qualified providers, the sponsor must have adequate justification and documentation of the facts supporting its decision acceptable to the FAA.

A single commercial aeronautical service provider may expand as needed, even if its growth ultimately results in the occupancy of all available space. In that case, an application from a new third party to provide commercial aeronautical services may be denied if the airport lacks the appropriate amount of available space. However, an exclusive rights violation may occur if an airport leases all available space to an entity that cannot or does not put that space to productive use in a reasonable time frame, and then denies another entity's application to provide commercial aeronautical services based on lack of space. An airport sponsor may refuse to allow an existing entity to expand out of the sponsor's desire to open the airport to competition. A sponsor may also prohibit a current service provider from participation in a competitive solicitation process in order to promote competition.

Monopolies Beyond the Sponsors' Control

Certain monopolies, sanctioned by local or federal law, can exist on a federally obligated airport without creating an exclusive rights violation. One example of this is Unicom frequencies. The Federal Communications Commission, which regulates Unicom licensing and use, will only license one Unicom frequency for each airport. Therefore, the existing service provider holding the license is exercising a monopoly that is beyond the airport sponsors' control.

7.1 Airport Sponsors' Rights

An airport sponsor may exercise the proprietary right to provide any or all aeronautical services at an airport. If the sponsor exercises the right to be the sole provider of a service, then it must do so with its own employees and resources—it may not outsource or subcontract the services out to a third party. In the Airport Compliance Manual, FAA Order 150/5190-6, the FAA notes that most airport sponsors recognize that “profit-motivated, private enterprise can best provide fuel, storage, and aircraft service.”⁹ One situation where an airport sponsor may wish to be a sole provider is when revenue potential is not enough to attract private enterprise. Aircraft fueling is the most common type of service which airports elect to exercise the proprietary exclusive. Even where the airport sponsor is the sole commercial fuel provider, individual aircraft operators retain the right to obtain their own fuel and self-fuel their aircraft. However, airports may require that self-fuelers comply with reasonable safety and operations regulations for fuel storage and self-fueling.

In some situations, an airport sponsor may contract the management of the airport to a management agent. If the sponsor does so, that agent becomes the “de facto” representative of the airport sponsor and must abide by all grant assurances. The agent

⁹ Airport Compliance Manual, FAA Order 150/5190-6, at ¶ 9.4.

does not possess any proprietary right to provide services, and if it does provide aeronautical services, it must allow competing service providers who meet the minimum standards to operate. If the airport sponsor and its agent choose to provide an aeronautical service in direct competition with a private service provider, the airport sponsor and its agent must meet the same minimum standards as other service providers.

Airport sponsors must permit use of the airport by all types, kinds, and classes of aeronautical activity, as well as by the general public. However, airport sponsors may restrict access if doing so is reasonable and necessary for the safe operation of the airport or in order to serve civil aviation needs to the public. Such prohibitions of use must also be consistent with the grant assurances and not unjustly discriminatory. Prohibitions of a type, kind, or class of aeronautical activity (skydiving, for instance) must be based on demonstrated evidence that the proposed aeronautical activity will adversely affect safety or efficiency. The Airport Compliance Manual explains that “the FAA is the final authority in determining what, in fact, constitutes a compromise of safety. 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 Office.”

8 Airport Rules & Regulations

While minimum standards address the basic threshold and ongoing requirements to provide commercial aeronautical services, airport rules and regulations govern the ongoing day-to-day activities of commercial aeronautical service providers and others using the airport. The following are some basic topics that an airport sponsor should consider when developing airport rules and regulations:

- Proper conduct within the AOA and elsewhere on airport property
- Security procedures
- Fire safety
- Removal of disabled aircraft
- Aircraft and vehicle registration
- Hazardous materials use and storage and spill reporting procedures
- Storage and transport of aviation fuels
- Self-fueling
- Environmental restrictions and protections
- Hours of operation
- Motor vehicle operation requirements and parking restrictions
- Licenses and permits

Appendix A

References for Airport Sponsors and Aeronautical Businesses

FAA Advisory Circulars

- AC 150/5190-6 Exclusive Rights at Federally Obligated Airports, available at http://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_150_5190-6.pdf
- AC 150/5190-7 Minimum Standards for Commercial Aeronautical Activities, available at http://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_150_5190-7.pdf

Other References

- Airport Sponsor Assurances, https://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip.pdf
- FAA Order 5190.6B, Airport Compliance Manual, Chapter 8 Exclusive Rights, available at https://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/media/5190_6b_chap8.pdf
- FAA Order 5190.6B, Airport Compliance Manual, Chapter 10 Reasonable Commercial Minimum Standards, available at https://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/media/5190_6b_chap10.pdf
- Airport Cooperative Research Program (ACRP) Legal Research Digest 11: Survey of Minimum Standards: Commercial Aeronautical Activities at Airports (2011), Washington, DC: The National Academies Press, available at <https://doi.org/10.17226/14491>.
- Residential Through-the-Fence Access Toolkit, available at https://www.faa.gov/airports/airport_compliance/residential_through_the_fence/

Appendix B

Grant Assurances – Airport Sponsors

The full text of selected grant assurances is provided below:

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.