



The Voice of Aviation Business

# **Airport Sponsors Guide to Minimum Standards & Airport Rules and Regulations**

2009

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# 1 Preface

This document was produced by the National Air Transportation Association (NATA). It is the goal of this document to inform airport sponsors of the benefits of developing, implementing and enforcing airport minimum standards and rules and regulations, and to give the sponsors the basic information needed to begin the development process.

NATA, the voice of aviation business, is the public policy group representing the interests of aviation businesses before the Congress, federal agencies and state governments. NATA's over 2,000 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 such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

## Disclaimer

This guide is intended to be used for informational purposes only and is not a substitute for reference to FAA advisory circulars. This guide is not intended to be legal advice.

## 2 Background

Currently the majority of federal funding for airports comes from the Federal Aviation Administration's (FAA) Airport Improvement Program (AIP). The AIP is designed to provide funds for planning and development at public-use airports. Federal funding for airport development began in 1946 as the Federal-Aid Airport Program, which was authorized by the Federal Airport Act of 1946. In 1970, the Airport and Airway Development Act provided grants for airport development through the Airport Development Aid Program (ADAP) and also created the Airport and Airways Trust Fund. This trust fund was funded from the proceeds of multiple aviation user taxes and in turn funded the ADAP. The current federal airport funding program, AIP, came into existence with the passage of the Airport and Airway Improvement Act of 1982 and continued to provide funds, from the Airport and Airways Trust Fund, for the development of public-use airports. AIP grants can be received by government agencies operating airports and in some instances private owners or entities. Once receiving federal grants, the entity operating the airport can be referred to as the airport sponsor.

As part of receiving funds through the AIP program, airport sponsors are required to sign documents that ensure the airport will be used for the public good. These documents are known as grant assurances. Of the grant assurances, two are of particular importance to the issue of minimum standards:

- **Grant Assurance 22 – Economic Non-Discrimination<sup>1</sup>**
  - a. (The airport 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
  - 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-
    - furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
    - 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.

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<sup>1</sup> Statutory Reference: 49 U.S.C. 47107 / Regulatory Reference 14 CFR Parts 150 - 169

- 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 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 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, 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. (The airport 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.
- 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.

- **Grant Assurance 23 – Exclusive Rights<sup>2</sup>**

(The airport sponsor) 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:

- It would be unreasonably costly, burdensome, or impractical for more than one fixed base operator to provide such services, and
- 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.

(The airport sponsor) 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.

These two grant assurances are intended to ensure that airports receiving federal funds are operated in a manner that benefits the public and to guarantee that a level playing field exists for companies or individuals wishing to provide commercial aeronautical services to the public. To an airport sponsor, these two 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 and airport rules and regulations.

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<sup>2</sup> Statutory Reference: 49 U.S.C. 47107 / Regulatory Reference 14 CFR Parts 150 - 169

### 3 Minimum Standards

Airport minimum standards set forth the minimum requirements an individual or entity wishing to provide aeronautical services to the public on a public-use airport must meet in order to provide those services, such as minimum leasehold size, required equipment, hours of operation, and fees. Minimum standards should be imposed to ensure that an adequate level of safe and efficient service is available to the public. Once established the minimum standards provide a host of benefits to the airport sponsor:

1. Safe operating environment
2. Higher quality services to the public
3. Airport sponsors can avoid conflicts and political entanglements
4. Orderly and efficient development of the airport and its services
5. Helps maintain compliance with Federal Grant Assurances
6. Protects the Airport Sponsor by ensuring service providers maintain a minimum level of insurance coverage.

In addition, minimum standards provide benefits to existing and potential service providers

1. Current service providers investment is protected from devaluation from new competing providers operating at a substantially lower initial investment
2. Potential aeronautical service providers can accurately predict initial investment allowing a more thorough business plan to be developed

#### 3.1 General Contents of Minimum Standards

Effective minimum standards must be tailored to the specific operating environment and circumstances of an airport; however, most minimum standards include some or all of the following segments.

- I. Introduction
- II. Definitions
- III. Application Procedures
- IV. Minimum Standards
- V. Through-The-Fence Operations Policy
- VI. Enforcement
- VII. Review & Update Policy
- VIII. References

## Introduction

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

- Name & location of the airport
- Name & contact information of the airport sponsor

In addition to the above information, it may be valuable to establish that the airport is federally obligated and that the purpose of the minimum standards is to assist in complying with Federal Grant Assurances. An airport sponsor may want to note that all aeronautical service providers conducting business on the airport must abide by these standards.

## Definitions

This section of a minimum standards document contains the definitions for any term or acronym used within the document that is not of standard definition. Any aviation specific term, such as Specialized Aeronautical Service Provider, or terms whose meaning is unclear should be included.

## Application Procedure

This section begins to lay out the minimum level of standards that an entity wishing to provide a service on the airport must meet. Whether an application to provide a service on the airport is received from a request for proposal or unsolicited, this section should include the information that is required from all applicants. Some typical information that is asked of applicants includes:

- Proposed nature of the business
- Name & Contact Information of Applicant
  - Including all parties who may appear on leases, or other documents as being a partner, director or corporate officer
- Current financial statement
- Listing of all assets owned, being purchased or leased that will be used on the airport
- Credit reports of business owners
- Proposed location of business, including plans for any required improvements.
- Proof of any required insurance (copy of insurance company letter of intent)
- Names and qualifications of individuals who will manage the business

The application procedure should then outline the procedure for approval of the request, including reasons why an application may be denied.

## Minimum Standards

This section will lay out the specific standards that must be met by an applicant desiring to provide commercial service at the airport and will usually include the following minimums:

- Required Leasehold Size
- Required Building and/or Hangar size
- Personnel Requirements
- Hours of Operation Requirements
- Equipment requirements
- Insurance Requirements



**Through-the-Fence Operations**

Because of the issues that can occur with through-the-fence operations, all airports are strongly encouraged to develop a through-the-fence operations policy.

**Enforcement**

A minimum standards document is only as effective as its enforcement. Lax enforcement of approved minimum standards can be destructive to an airport, leading to conflict with tenants, even expensive litigation.

**Review & Update Policy**

Because frequent changes to minimum standards may be viewed as a juggling of standards to benefit a particular service provider, any changes to the standards should follow a procedure that is clearly defined in the document.

## 4 Developing Minimum Standards

The purpose of minimum standards is to set the required conditions an operator must meet to provide a commercial service on the airport. These standards are required to:

- Impose conditions that ensure safe and efficient operation of the airport in accordance with FAA rules, regulations, and guidance
- Be reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect the investment of providers of aeronautical services who meet minimum standards from competition not making a similar investment.
- Be relevant to the activity to which they apply
- Provide the opportunity for newcomers who meet the minimum standards to offer their aeronautical services within the market demand for such services

Before beginning the process of developing or updating minimum standards it may be in the airport sponsors best interest to inform the airport community of the proposed procedure and timeline. Objections and challenges to the minimum standards can often be avoided by giving interested individuals the opportunity to review the proposed minimum standards and provide comments or suggestions to the sponsor.

## 4.1 Evaluating the Airport Environment

Developing comprehensive minimum standards that help the airport best serve the public must begin with assessing the current airport environment. Because of the requirement that minimum standards be tailored to similarly situated service providers and activities, the airport sponsor must understand the types and sizes of current commercial services providers on the airport.

When evaluating these providers, data should be gathered on:

- Type of aeronautical activity
- Size of leasehold
- Hangar and building space
- Equipment
- Number of employees
- Hours of operation

In addition to current commercial aeronautical service providers, the present operating situation of the airport should be evaluated. Many decisions about standards may need to be tied to the current state of the airport. Some important factors that should be studied are:

- Traffic volume
- Traffic content
  - Turbine vs. piston
  - Airline operations vs. general aviation
- Available space for development
- Environmental concerns
- Airport insurance situation

## 4.2 Airport Goals

The purpose of instituting minimum standards is to ensure that a minimum level of safe and efficient service is available to the public; therefore, any effort to create or update those standards should be based on definable goals or development plans. Many sponsors tie their minimum standards to the airport's master plan. By using minimum standards as a development tool to help ensure that the airport is addressing the needs of the aviation community, the sponsor can reduce the likelihood of a standard being unjustly discriminatory.

### 4.3 Standards by Activity

Commercial aeronautical service providers can be broken down into two broad categories, fixed base operators (FBO) and specialized aeronautical service provider (SASO). An FBO is usually defined as a service provider that provides two or more aeronautical services, normally including the sale of aviation fuel. An SASO is an entity that usually provides a single aeronautical service, such as airframe & powerplant maintenance. Because of the vast difference in individual airport operations and size there are many different approaches to classifying and categorizing aeronautical service providers. The ultimate goal, however, is to ensure that minimum standards are relevant to the activity to which they are applied, apply to all similarly situated service providers and are not unjustly discriminatory.

### 4.4 Insurance Requirements

One of the many important 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 want to require, it is strongly recommended that sponsors consult with an insurance professional, who is experienced in aviation insurance products, early in the minimum standards development process. The basic policy that most commercial aeronautical service providers will need to hold is a Commercial General Liability (CGL) policy. A CGL policy typically provides three specific coverage areas to service providers:

- **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 will provide coverage for injury to persons or property.
- **Product Liability**  
Product Liability provides coverage on products, such as fuel and oil, which an airport service provider may sell.

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

## 4.5 Airport Sponsors Rights

An airport sponsor of a federally obligated airport may:

- Exercise their proprietary right to provide aeronautical service. In Advisory Circular 150/5190-6 the FAA notes that “most airport sponsors recognize that aeronautical services are best provided by profit motivated, private enterprises.” However, there may be situations when, such as when revenue potential is not sufficient to attract private enterprise, the airport sponsor wishes to exercise their proprietary right to be the exclusive provider of any or all aeronautical services at the airport. To exercise this right the sponsor must use its own employees and resources. In some situations, an airport sponsor may contract the management of the airport to a management agent. If the sponsor does use a management agent, that agent becomes the “de facto” airport sponsor<sup>3</sup> and must abide by all grant assurance, with the exception that the agent does not possess any proprietary right to provide services, and must allow competing service providers, who meet the minimum standards, to operate. In the event that the airport sponsor decides to provide an aeronautical service in direct competition with tenant service provider, the airport sponsor must meet the same minimum standards as other similarly situated service providers.
- Deny airport users the opportunity to conduct specific aeronautical activities because of safety or efficiency. The denial of the opportunity to conduct an aeronautical activity should be based on demonstrated evidence that the proposed aeronautical activity will adversely affect safety or efficiency<sup>4</sup>

*“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. Those offices will then seek assistance from FAA Flight Standards (FS) and Air Traffic (AT) to assess the reasonableness of the proposed action.” AC 150/5190-6 Section 1.3, a, 1*

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<sup>3</sup> In the matter of the complaints of Everett Aviation, Inc against the City of Youngstown, Ohio, GL-1978-3, the FAA held that the City of Youngstown, by relinquishing control of a large portion of its airport to its sole FBO, made the FBO which effectively managed the airport the “surrogate landlord” of the airport and its facilities. While this decision was dated prior to the 1982 statute, this case has been used as precedent for its findings that a private company, by managing a portion of an airport, becomes a de facto Sponsor. The relevance for an Airport Operator and Sublessors is that it is held to the same standards as a Sponsor under the Sponsor Assurances

<sup>4</sup> AC 150/5190-6 – The word efficiency refers to the efficient use of navigable airspace. It is not meant to be interpreted as protecting the “efficient” operation of an existing service provider

- Increase minimum standards, from time to time, for the purpose of increasing the level of service available to the public. It would, however, be a violation of grant assurances to manipulate minimum standards to protect or benefit existing service providers.
- Use fair-market pricing in determining lease rates.

## 4.6 Exclusive Rights

Grant assurance 23 states; “(The airport sponsor) will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.” When designing, implementing and enforcing minimum standards, airport sponsors must take particular care to ensure that none of their actions create an exclusive right for any aeronautical service providers, with several exceptions. 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.<sup>5</sup>*

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 to protect existing service provider(s).
- Airport 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. The sponsor may, however, impose reasonable rules and regulations to ensure that this servicing is performed in a safe manner

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<sup>5</sup> FAA Advisory Circular 150/5190-6 [Exclusive Rights at Federally Obligated Airports](#)

## Exclusive Rights Exceptions

### 1. Safety and Efficiency Exception

As stated in the Sponsor's rights section of this document, an airport sponsor may deny the right to perform a specific aeronautical activity if it will adversely affect safety or efficiency. It is important to understand that this determination must be made using demonstrated evidence of detrimental effect on safety or efficiency.

*"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. Those offices will then seek assistance from FAA Flight Standards (FS) and Air Traffic (AT) to assess the reasonableness of the proposed action."*  
AC 150/5190-6 Section 1.3, a, 1

### 2. Proprietary Right

The sponsor of a federally obligated airport is the only entity entitled to hold an exclusive right to performing aeronautical services. For the sponsor to exercise this right, commercial aeronautical services must be performed by the sponsor's employee's, using the sponsor's own equipment and resources. A sponsor may not grant an exclusive right to perform these services to any other individual or entity.

### 3. Space Limitations

"A single [commercial aeronautical service provider] may expand as needed, even if its growth ultimately results in the occupancy of all available space" (AC 150/5190-6). Therefore, an application to provide commercial aeronautical services may be denied if the airport lacks the appropriate amount of available space.<sup>6</sup> However, it may be an exclusive rights violation if an airport leases all available space on an airport to an entity that cannot or does not put that space to productive use in a reasonable time frame then denies another entity's application to provide commercial aeronautical services based on lack of space. It is not an exclusive rights violation for an airport sponsor to 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 commercial aeronautical service provide from participation in a competitive solicitation process to promote competition.<sup>7</sup>

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<sup>6</sup> A white paper prepared for the National Air Transportation Association by McBreen & Kopko Law Offices states that "The FAA has informed us that no airport sponsor has ever been found to have had a lack of space".

<sup>7</sup> AC 150/5190-6 Section 1.3 (b) (1)

#### 4. 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 sponsor's control.<sup>8</sup>

#### 4.7 Through-the-Fence Operations

Through-the-fence operations are when an entity on property adjoining the airport is provided direct access for aircraft from the adjoining property to the airport facilities. The FAA advises against allowing through the fence operations and states the airport sponsor is under no obligation to allow through-the-fence operations<sup>9</sup>. Through-the-fence operations have the potential to undermine the minimum standards and create a situation where the sponsor is unable to meet their federal grant assurances. If, however, an airport sponsor decides to allow a through-the-fence operation, it is highly recommended that they require a signed airport access agreement. 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 use of airport
  - Should be equitable with similarly situated on-airport tenants
- Default and termination procedures
- Insurance and Indemnity provisions
- The airport sponsor is under no obligation to accept sale or assignment of the agreement
- Federal grant assurances supersede the access agreement in all cases
- Expiration date

## 5 Enforcement of Minimum Standards

A minimum standards document will only provide the maximum benefit to the airport sponsor, airport tenants and the public if it is enforce uniformly. In reality, a minimum standards document that is not enforced or is enforced subjectively can create a myriad of problems for the sponsor, tenants and the public. Enforcement of minimum standards is often carried out by their reference in leases and airport Rules & Regulations.

<sup>8</sup> "In cases such as this, the FAA recommends that the airport sponsor obtain the [UNICOM] license in its own name. Using drop lines, the airport sponsor can then make the facility available to all fixed base operators on an as needed basis." AC 150 5190-6

<sup>9</sup> AC 150 5190-7 Section 1.4

## 6 Revision and Updates to Minimum Standards

From time to time, airport operational considerations and growth may require the airport sponsor to consider updating minimum standards. A smaller airport's minimum standards may become insufficient if regional economic growth begins to cause an increase in demand for more and efficient services. In a situation such as this, the airport sponsor would be acting in the public's interest by revising the airport minimum standards upward to require that more basic services be offered.

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 community 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. This "juggling" of standards could be interpreted by some as trying to provide an advantage to one particular operator over another.

## 7 Disputes

Occasionally, disputes and disagreements relating to the interpretation or application of minimum standards will occur. While the FAA does have a process set up to handle formal complaints of unjust discrimination, it is in the best interest of the airport sponsor and tenant to work to resolve the issue locally. If the sponsor and complaining parties are unable to reach an equitable agreement, then mediation may become an option. If mediation is unable to provide a remedy the complaining parties may choose to file a complaint with the FAA through Part 13 (Informal Complaint Procedure) or Part 16 (Formal Complaint Procedure). It should be noted that, contrary to what some complainants may allege, a letter of non-compliance usually does not mean that an Airport Sponsor will lose public funding or be required to pay back previous grants. The FAA usually reserves the withholding of federal funds for situations where the airport sponsor refuses to rectify situations of non-compliance.



## 8 Airport Rules & Regulations

While minimum standards govern the basic requirements to provide a commercial aeronautical service on a public-use airport, rules and regulations govern the ongoing activities of 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
- Security procedures
- Fire Safety
- Removal of disabled aircraft
- Aircraft registration
- The use and storage of paints, dopes, and thinners
- Storage and transport of aviation fuels
- Self-Fueling regulations
- Procedures for the clearing of non-airworthy aircraft, wreckage, or unsightly major components
- Environmental restrictions and protections
- Motor vehicle operation requirements and parking

## Appendix A

### References for Airport Sponsors

- FAA Advisory Circulars

Available at: [http://www.faa.gov/airports\\_airtraffic/airports/resources/advisory\\_circulars](http://www.faa.gov/airports_airtraffic/airports/resources/advisory_circulars)

AC 150/5190-6 Exclusive Rights at Federally Obligated Airports

AC 150/5190-7 Minimum Standards for Commercial Aeronautical Activities

- Sample Minimum Standards

*The following links are provided as a reference only. The FAA specifically advises against copying and implementing minimum standards from other airports. NATA provides these links only as a courtesy.*

**Manassas Regional Airport** – Manassas, Va.

Available at: <http://www.manassascity.org/index.aspx?NID=382>

**Snohomish County Airport Paine Field** – Everett, WA.

Available at: [http://www.painefield.com/minimum\\_standards.html](http://www.painefield.com/minimum_standards.html)

## Appendix B

### **How Many FBOs Are Enough? Guidelines for Evaluating Airport Competition**

An opinion from the NATA Airports Committee

#### ***Introduction***

In the United States, competition is the very lifeblood of a healthy operation. Conventional thinking says a robust head-to-head rivalry is the best way to deliver the greatest value to airport users with lower fuel and service prices often heading the list of benefits. The Federal Aviation Administration (FAA) is on record as supporting hearty competition, to the point that some airport sponsors believe that compliance with airport minimum standards automatically signifies a deal no one can refuse. Just as an airport sponsor has the fiduciary responsibility to the airport's strategic financial security to consider all proposals, they also have the duty to ensure that giving the nod to a new business will not unduly harm the current or future airport environment.

There is no simple mathematical formula to determine the appropriate number of *fixed base operations* (FBOs) or *specialized aviation service operations* (SASOs) at an airport. Current guidelines used by airport sponsors during the competitive decision process consist of little more than anecdotes. But there are reasonable steps that can be taken to determine whether an airport sponsor should accept or deny a new business proposal or accept a portion of a proposal and whether those proposals should be formally solicited. This paper is designed to offer visionary thinking from aviation-industry professionals that, while certainly not regulatory in nature, can well serve as the comprehensive genesis of the thought processes necessary to more effectively promote and protect the economic health of any airport.

Trying to understand whether competition at an airport represents an opportunity or a threat to existing businesses should start with a look at the airport environment itself.

#### ***The Airport Operating Environment***

An FBO faces many of the same challenges found in any sort of retail operation. However, an airport service business differs from the typical retail store in at least two significant ways:

- In the continental United States, it is common practice that retail operations do not actually own property on the airport. In fact, through commonplace reversion clauses, the facilities constructed on-airport actually revert to ownership by the airport sponsor at the expiration of the leasehold; and
- While a local auto repair store or restaurant, for example, might only interact with the local municipality or county government for the authority to operate, the petition to launch a new FBO requires a solid understanding of airport competition guidelines from the FAA as well as the local airport sponsor long before the first customer sets foot on the property. Advisory Circular 5190-5 essentially holds an airport sponsor accountable for ensuring that on-field competition is fair and open to all who have the resources to

respond to an airport opportunity [such as by way of a Request for Proposal (RFP)], or who may see the airport as a possible growth opportunity for their business.

The FAA, in fact, specifically ties an airport's ability to garner Airport Improvement Program (AIP) funds to an airport sponsor's responsibility to maintain a level playing field, whereby interested parties can engage in commercial aeronautical activities by meeting reasonable requirements commonly referred to as *minimum standards*. Minimum standards mean just that, *minimum* standards established by the airport that any operator must meet in order to conduct business of a certain type on the field. The type, level, and quality of products, services, and facilities offered can and often will exceed the minimum standards established by the airport. As the discussion about the application of minimum standards takes place, airport sponsors and service businesses are regularly confronted with challenging questions such as whether or not a single FBO already constitutes a violation of grant assurances, or whether the marketplace should decide how many FBOs an airport can successfully support, or even what the criteria could or should be for an airport sponsor to consider when rejecting an applicant.

### ***Initial Analysis***

Before an airport sponsor entertains or solicits proposals from prospective operators, it is incumbent upon the airport sponsor and the airport management team to provide existing and prospective operators with the "opportunity to be successful." This does not mean the airport sponsor has an obligation to "guarantee success." It does, however, put the impetus on the airport sponsor to create an operating environment that is conducive to success, which, in turn, if successfully achieved, maximizes the benefit of the facility and level of services to the community.

This can be accomplished by ensuring that the airport has a current Airport Business Plan, a current Airport Master Plan (and Airport Layout Plan), current Primary Guiding Documents, and a current schedule of rates and charges – all of which must be uniformly applied and consistently enforced.

### ***Key Attributes***

Some key airport attributes to consider during a proposal evaluation include, but are not limited to:

- the availability of land as depicted in the current Airport Layout Plan;
- the existence of Primary Guiding Documents such as Lease/Rates and Charges Policy, Minimum Standards, Rules and Regulations, and Development Guidelines;
- Airport Rates and Charges, including land rents, improvement rents, commercial fees, landing fees, and fuel flowage fees;
- the number of FBOs and SASOs;
- the number and type of based aircraft;
- general aviation fuel volumes; air carrier fuel volumes,
- aircraft operations; and
- a multitude of other local, regional, and national market and economic factors and trends.

### *A Regulatory Checklist*

One of the most important elements to effectively evaluating a new FBO business proposal is a thorough understanding of regulatory measures including those promulgated by federal, state, and local government agencies having jurisdiction over the airport and its users. The federal government has had the language on the books about competitive airport issues since 1938. Most frequently quoted as it relates to the number of FBOs at an airport is FAA Airport Assurance 23. In short, it states: “(The airport sponsor) will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.” Despite the brevity of the statement, this assurance is frequently misinterpreted. Many airport sponsors believe they will violate the assurance if there is only one FBO at the airport.

The FAA’s Airport Compliance Handbook, Order 5190.6A, says a single activity on an airport does not necessarily translate into an exclusive right. “The presence on an airport of only one enterprise engaged in any aeronautical activity will not be considered a violation of this policy if there is no understanding, commitment, express agreement, or apparent intent to exclude other reasonably qualified enterprises.” The agency clarifies its concerns by stating, “In many instances, the volume of business may not be sufficient to attract more than one such enterprise. As long as the opportunity to engage in an aeronautical activity is available to those meeting reasonable qualification and standards relevant to such activity, the fact that only one enterprise takes advantage of the opportunity does not constitute the grant of an exclusive right.”

Interestingly, some airport sponsors believe that once they have more than one FBO established, they can no longer be found in violation of Airport Assurance 23. That is also not true. FAA Advisory Circular 150/5190-5 defines Exclusive Rights: “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.”

This same FAA document outlines the purpose and the process for developing minimum standards as “the minimum requirements to be met as a condition for the right to conduct an aeronautical activity at an airport.” According to the FAA, minimum standards must “promote safety in all airport activities, maintaining a higher quality of service for airport users, protecting airport users from unlicensed and unauthorized products and services, enhancing the availability of adequate services for all airport users, and promoting the orderly development of airport land.” That said, it is not the role, per se, of the FAA to make a final decision about a new FBO on any airport.

One of the keys to maintaining compliance with Airport Assurance 23 is the development, implementation, and consistent enforcement of the minimum standards. Minimum standards need to be objectively and uniformly applied to all FBOs and SASOs. The FAA recommends

[AC 150/5190-5] that minimum standards be tailored for a specific airport and not simply be a copy of another airport's document using a "fill in the blank" approach. While the FAA does not specifically approve minimum standards, the agency encourages airport operators to show them to their FAA regional office personnel for comment.

Airport Assurance 22, Economic Nondiscrimination, states: "(The airport sponsor) will make the airport available 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." Further, it states, "The sponsor may establish 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 FAA is often quoted as saying, "Every FBO has the right to go broke." This does not imply that the airport sponsor must lease land and/or improvements to a company that will, based upon the sponsor's due diligence analysis, most likely be unsuccessful, as in being unable to fulfill the company's lease obligations. In addition, it does not mean that an airport sponsor must lease land and/or improvements to entities that seek to engage in activities that will have a detrimental impact on safe airport operations, even if the company is willing to meet the airport's minimum standards.

### ***Some Basic Documentation***

To ensure the provision related to uninterrupted quality of aviation products, services, and facilities to airport users, the airport sponsor must also decide whether it should solicit new business proposals through an RFP process, or simply wait for companies to take notice and inquire on their own.

For airports focused on proactively developing new business opportunities, an RFP may be the most effective approach, since strategic results can be extremely difficult to project when an airport sponsor takes a wait-and-see attitude. [One caveat: The U.S. has a number of well-designed airports on the verge of economic failure because sponsors thought simply building the facility would be enough to entice tenants and, in turn, customers.]

The airport sponsor also needs a variety of tactical information about the facility; at a minimum, three separate analyses are recommended: a demand/capacity analysis; a Return on Investment/Internal Rate of Return analysis; and an airport financial impact analysis.

- ***Demand/Capacity Analysis*** – A demand/capacity analysis identifies and quantifies the type, level, and quality of FBO or SASO products, services, and facilities provided at an airport and compares it to the level of "demand" being driven by existing customers and anticipated demand from future ones. The primary objective is to identify any service deficiencies on the field.

- **Return on Investment (ROI) and Internal Rate of Return (IRR) Analysis** – An ROI analysis will determine the feasibility and/or viability of a prospective operator to add, or expand existing products, services, and/or facilities. This analysis can also be used to ascertain the financial impact of adding capacity to the existing airport operators. The first step in conducting an ROI / IRR analysis is to estimate the present capital investment, cash flows, and net profit of the existing operator(s). The next step is an estimate of the prospective operator’s capital investment needed in order to deliver some minimum level of products and services that meet the airport’s goals, while also addressing the deficiencies identified in the demand/capacity analysis. Finally, the cash flow and net profit of the existing and prospective operator should be estimated by projecting the revenue stream for each operator based upon the level of demand that exists or can be reasonably anticipated in the future. Once existing and forecasted investments, cash flows, and net profits are estimated for each operator predicated upon the underlying market share assumptions, the ROI and the more complex IRR analysis can be calculated.
- **Airport Financial Impact Analysis** – It is critical for the airport sponsor to fully quantify the impact of any expansion of products or services prior to soliciting new business proposals. Positive financial impacts may include increased rents and fees generated by the new operator, increased rents and fees generated by new based and/or transient aircraft owners/operators, and increased investment in leasehold improvements that may revert to the airport sponsor in the future. Negative financial impacts might require an improvement or enhancement of the airport infrastructure, increased maintenance or labor requirements of that infrastructure, decreased rents and fees from potential overcapacity issues as could be the case where operators pay a percentage of gross receipts or gross margin. In an overcapacity regime, the fees paid to the airport sponsor will typically decline.
- **Airport Business/Marketing Plan** – Although a well-designed airport business plan should clearly outline the goals of the facility, it is often not clear about precisely what action the airport sponsors should take in order to achieve their goals. Hence, there is a need for a marketing plan to develop and focus a distinct set of tactics necessary to achieve the airport objectives, whether they are financial or operational. Even a simple marketing plan should include strategic directions to issues and crisis management, community and media relations, advertising and trade show management, as well as specific financial objectives. A good marketing plan should also be sophisticated enough to segment customers by behavior, rather than demographics.

### ***Working the Numbers***

Regardless of whether a proposal is solicited or unsolicited, the evaluation process is the same. If the application was solicited, it is assumed that each of the three analyses and a marketing plan outlining a strategic direction for the airport has already been completed. If the proposal was not solicited, it would be highly beneficial for the airport sponsor to complete these items to gain a better understanding of the feasibility and/or viability of the proposal, as well as the potential impacts of a new business upon existing operators. While the discussion prior to selection or rejection of a proposal need not necessarily be long, it should be comprehensive.

A negative conclusion in itself may not appear as sufficient grounds to deny an unsolicited proposal. On the other hand, if the outcome of the Airport Financial Impact Analysis indicates that the proposal will have an adverse financial impact on the airport, there may indeed be reasonable grounds to deny a proposal.

Minimum standards that are current, reasonable, and appropriate for the airport are one of the most valuable tools that can be used to evaluate any proposal. The minimum requirements that should be identified in the document include, but are not limited to: qualifications and experience; scope of activity; land and improvements; facilities; certification; licensing; personnel; equipment; hours of activity; and insurance for each type of commercial aeronautical activity. If a proposal does not meet the airport's minimum requirements, the airport sponsor can readily reject the proposal.

To ensure the consistent delivery of quality products and services, it is highly recommended that any prospect be required to submit a business plan to the airport sponsor describing how it will develop, operate, manage, and market the new operation. An inability to develop a solid business plan should be an immediate red flag and possibly offer enough evidence to reject the proposal.

The airport sponsor has a fiduciary responsibility to establish and collect market-based rents and cost-based fees. It is imperative that the financial credibility of the prospective tenant be ascertained, potentially through an analysis of current and future capacity to acquire and/or develop the required and proposed improvements and facilities, and to acquire and/or lease the required or proposed vehicles and equipment. An in-depth study of the prospect's financial capacity through careful analysis of current financial statements, identification, and confirmation of available and committed funding sources is also critical.

Although deposits, bonds, and guarantees can be utilized to ensure that future lease obligations can be met, these items alone should not be the only basis for an airport sponsor's positive decision. The evaluation should be based on the ability of the new company to generate sufficient revenue to cover costs and expenses, sustain on-going operations, and realize a reasonable return on investment. Besides financial considerations and obligations, the airport sponsor must evaluate the prospective tenant's capabilities as they relate to operational safety and levels of service.