CHAPTER 4. OBLIGATIONS OF AIRPORT OWNERS

SECTION 1. GENERAL

4–1. PURPOSE. This Chapter contains basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. It does not cover the standards to be met by those airports certificated under FAR Part 139. Generally, it does not apply to special conditions incorporated in a grant agreement since these usually reflect specific actions to be accomplished before a project can be closed out.

4–2. ASSIGNMENT OF OBLIGATIONS. The airport obligations discussed in this Chapter apply to the recipients including private owners of public use airports that are signatory parties to an agreement with the Federal Government. The actual release of these parties from any such obligations is treated in Chapter 7. However, the various agreements contemplate that under certain conditions there may be a transfer of the obligations to another eligible party.

a. Transfer to Another Eligible Recipient

(1) Grant agreements provide that the owner/sponsor will not enter into any transaction which would deprive it of any of the rights and powers necessary to perform all of the conditions in the agreement unless the obligation to perform all such conditions is assumed by another recipient. In the case of grant agreements, the recipient must specifically be found eligible by the FAA.

(2) Surplus property instruments of disposal permit conveyance of the property but only to another transferee who assumes all of the obligations imposed on the original grantee. The airport owner must obtain FAA approval of all such transfers of obligations.

(3) Deeds of Conveyance under Section 16, 23, or 516 are made to public agencies only, but do not specifically restrict reassignments or retransfers of the property conveyed. The original donor (Federal agency) may reassign or retransfer the property to another public agency for continued airport use. The FAA should assume the lead in coordination between the affected parties.

b. Transfer to the United States.

(1) The FAA cannot legally prohibit an airport owner from conveying to a Federal agency any airport property which was transferred under the Surplus Property Act of 1944, as amended. The Chief Counsel has indicated that such a conveyance, whether voluntary or otherwise, does not place the conveying airport owner in default of any obligation to the United States. Such a conveyance has the effect of a complete release of the conveying owner. The procedures applicable to such transfers are covered in Chapter 7.

(2) When such a conveyance is proposed, or has been accomplished without prior notice to the FAA, and it is determined there would be or is an adverse effect on civil aviation, FAA objections should immediately be made known to both the airport owner and the Federal agency involved. If a satisfactory solution to an adverse effect on civil aviation cannot be obtained at the field office level, a full and complete report should be submitted to the Office of Airport Safety and Standards (AAS–1) without delay. The FAA shall make appropriate objection and take timely action with the Federal agency involved.

c. Delegation of Obligations. Airport owners subject to continuing obligations to the Federal Government may enter into arrangements which have the effect of delegating certain of these obligations to other parties. For example, an airport authority may arrange with the Public Works Department of a local municipality to meet certain of its maintenance commitments, or an airport owner may contract with a utility company to maintain airfield lighting equipment. More prevalent at small airports are arrangements in which the owner relies upon a commercial tenant or franchised operator to cover a broad range of airport operating, maintenance and management responsibilities. None of these contractual delegations of responsibility absolve or relieve the airport owner from the primary obligations to the Government. As principal party to the agreement the owner alone is accountable for conformity to its terms and conditions. Particular attention should be directed to ensure that such delegations to a proprietary enterprise do not result in a conflict of interest or a violation of the statute prohibiting certain exclusive rights. The airport owner shall not delegate its authority to one FBO to negotiate an operating agreement (lease) with another FBO. (See paragraph 6–5.)

d. Subordination of Title.

(1) The subordination of airport property by mortgage, easement, or other encumbrance will normally be considered as a transaction which would de-

prive the owner of the rights and powers necessary to perform the covenants in the agreement with the Government. However, the prior existence of such an encumbrance may under certain circumstances be considered as not inconsistent with the eligibility requirement for land interest in connection with the development of airport facilities under the grant program.

The Secretary is authorized to determine whether a specific encumbrance might create an undue risk of depriving the potential sponsor of the rights and powers otherwise required. Wherever it is proposed to subsequently encumber obligated airport property, a complete summary of the pertinent facts, together with recommendations of the appropriate regional Airports office, should be forwarded to the regional Airports division for determination on a case–by–case basis. The determination should be consistent with criteria for determining good land title set forth in appropriate FAA directives (see Order 5100.38, Airport Improvement Program (AIP) Handbook). A legal review of the case may be appropriate.

(2) FAA concurrence as to any such lien, mortgage or other encumbrance of airport obligated property should be predicated on a factually based and thoroughly documented determination. The possibility of foreclosure or other action adverse to the airport should be so remote to reasonably preclude the possibility that such lien, mortgage or other encumbrance will prevent the owner from fulfilling its assurances and obligations under applicable airport instruments.

4–3.–4–4. RESERVED.

SECTION 2. MAINTENANCE AND OPERATION

4–5. SCOPE OF MAINTENANCE OBLIGATION.

a. Agreements Involved. Most airport agreements impose on the airport owner a continuing obligation to preserve and maintain airport facilities in a safe and serviceable condition. An exception is the transfer document conveying Federal lands under the authority of Section 16, 23, or 516. These transfers normally contemplate further development of the property involving a grant agreement imposing maintenance obligations. It is preferred that such obligations be imposed as a contractual commitment rather than a covenant running with the land. However, where a Section 516 conveyance is made under circumstances that do not involve a follow–on development agreement, the maintenance and operation assurances should be incorporated into the transfer document.

b. Facilities to be Maintained. This Section applies to all airport facilities shown on a current Airport Layout Plan (ALP) which were initially dedicated to aviation use (see definition in Appendix 5) by an instrument of transfer or agreement with the United States. This means that the airport owner cannot discontinue maintenance of a taxiway stub or any part of the airport until formally relieved of the maintenance obligation. The obligations of the owner under a grant agreement remain in force throughout the useful life of the facility but no longer than 20 years, except for land which is obligated for the life of the airport. When a facility is no longer needed for the purpose for which it was developed, the regional Airports division may make the determination that its useful life has expired in less than 20 years and authorize its abandonment or conversion to another compatible purpose. For private airports, the obligation extends for a minimum of 10 years. (The procedure for obtaining release from these maintenance obligations is explained in Chapter 7.)

4–6. PHYSICAL MAINTENANCE.

a. Maintenance Procedures. Generally, airport agreements require the owner or grantee to carry out a continuing program of preventive maintenance and minor repair activities which will ensure that the airport facilities are at all times in a good and serviceable condition for use in the way they were designed to be used. Such requirements may be expressed or implied in the agreement and include such things as:

(1) All structures should be checked frequently for deteriorations. Where necessary, repairs should be made.

(2) Runways, taxiways, and other common–use paved areas should be inspected at regular intervals for compliance with operational and maintenance standards. Routine repairs including crack filling and sealing shall be made to prevent progressive deterioration of the pavement.

(3) Gravel runways, taxiways, and other common–use paved areas should be inspected at regular intervals for compliance with operational and maintenance standards. Routine repairs including hole filling and grading shall be performed to prevent progressive deterioration of the operational areas.

(4) All turfed areas should be preserved through clearing, seeding, fertilizing and mowing. Turfed landing areas which are used for aircraft oper-

ations should be inspected at regular intervals to assure that there are no holes or depressions.

(5) Field lighting and VASI's must be maintained in a safe and operable condition at all times. The VASI's must be aligned on a regular basis and at times when conditions dictate.

(6) Segmented circles and wind cones should be inspected on a regular basis to ensure proper serviceability.

(7) All drainage structures should be inspected, particularly sub–drain outlets, to ensure unobstructed drainage.

(8) All approaches must be checked to assure conformance with the approach obligations incurred.

b. Criteria for Satisfactory Compliance.

(1) What constitutes an acceptable level of maintenance is difficult to express in measurable units. A standard yardstick of satisfactory maintenance effort will not apply in all circumstances. Grass cut to a height of 8 inches may be acceptable at some airports but it could impair safety and efficiency at others. A one–half inch crack in runway paving may be inconsequential under certain circumstances. Depending on its location, the volume of traffic, the age of the pavement, climatic and other conditions, it could be the forerunner of serious pavement failure implying an obligation to apply immediate corrective measures. The degree of maintenance effort required of an airport owner is a matter of professional judgment.

(2) Compliance with this maintenance obligation is considered satisfactory when the airport owner:

(a) Fully understands that airport facilities must be kept in a safe and serviceable condition;

(b) Has adopted and implemented a sufficiently detailed program of cyclical preventive maintenance that in the judgment of FAA is adequate to carry out this commitment; and

(c) Has available the equipment, personnel, funds and other resources including contract arrangements to effectively implement such a program.

c. Major Repair.

(1) The obligation to maintain the airport does not extend to major rehabilitation of a facility that has become unusable due to normal and unpreventable deterioration or through acts of God. Therefore, the restoration of a building destroyed by fire or windstorm or a major rehabilitation of a portion of the landing area inundated by floods is not included in the sponsor's maintenance obligations. Likewise, the complete resurfacing of a runway, unless it is the result of obvious neglect of routine maintenance, is not included in the sponsor's obligations. Failure to perform day–to–day maintenance may have a cumulative effect resulting in major repairs and reconstruction.

(2) The airport owner has a commitment to prevent gross overstressing of the airport pavement. If the owner is not prepared to strengthen the pavement, then its use must be limited to aircraft operations which will preclude overstressing the pavement. Should pavement failure occur because the sponsor failed to take timely corrective action after being advised of the pavement limitations, any cost required to restore the failed pavement to a satisfactory condition will not be eligible for AIP funding. Strengthening of the pavement, after correction of the failure, would be eligible for consideration for AIP funding.

4–7. REQUIREMENT TO OPERATE THE AIRPORT.

a. General. The owner of an airport developed with Federal assistance is more than a passive landlord of specialized real estate. The obligation to maintain the airport includes the responsibility to operate the aeronautical facilities and common use areas for the benefit of the public. This means, for example, that:

(1) If field lighting is installed, the owner is responsible for making arrangements for it and the associated airport beacon and lighted wind and landing direction indicators to be operated throughout each night of the year or when needed in accordance with subparagraph 4–7e below.

(2) If any part of the airport is closed or hazardous to use, the owner is responsible for providing warning to users, such as adequate marking and issuing a Notice to Airmen (NOTAM) to advise pilots of the condition.

(3) The owner should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure safety and efficiency of flight operations and to protect the public using the airport.

b. Local Regulations. The prime requirement for local regulations is to control the use of the airport in a manner that will eliminate hazards to aircraft and to people on the ground. For example, aircraft themselves become a hazard to other aircraft if allowed to park too close to an active runway. There should be adequate controls such as fencing and other facilities to keep motorists, cyclists, pedestrians, and animals from inadvertently wandering onto the landing area or areas designated for aircraft maneuvering. Frequently local air traffic patterns are needed to establish uniform and orderly approaches and departures from the airport. As in the operation of any public service facil-

ity, there should be adequate rules covering vehicular traffic, sanitation, security, crowd control, access to certain areas and fire protection. The fueling of aircraft, storing of hazardous materials, spray painting, etc., at a public airport should be controlled by the airport owner in the interests of protecting the public.

c. Operations in Inclement Weather. The obligation to maintain the airport does not impose any specific responsibility to remove snow or slush, or to provide sanding of icy pavements. The owner is responsible for providing a safe, usable facility, and where climatic conditions render airport unsafe, the owner will promptly notify airman by proper notices and, if necessary, to close all or a part of the airport until the conditions are corrected. However, the conditions should be corrected within a reasonable amount of time.

d. Aircraft Rescue and Firefighting Responsibility. The agreements under which airports are acquired or developed with Federal assistance do not specifically impose a responsibility to provide rescue or firefighting capabilities. Beginning in 1988 aircraft rescue and firefighting (ARFF) equipment became eligible under AIP for airports being served by air carriers using aircraft designed for more than 20 passenger seats and not certificated under FAR Part 139. Such an airport owner acquiring ARFF equipment under AIP must assure that it will maintain sufficiently trained personnel to operate the equipment; have the equipment available during scheduled operations of the air carrier; and to notify the air carriers using the airport when the equipment is not available due to being out of service for maintenance or repair.

e. Part-Time Operation of Airport Lighting.

(1) As noted in subparagraph 4-7a above, field lights must be operated whenever needed. This means that the lights must be on during the hours of darkness (dusk to dawn) every night, or be available for use upon demand. One effective arrangement is an attendant with authority and capability to turn on the proper lights when requested to do so by the radio or other signal. An acceptable alternative is the installation of an electronic device which permits remote activation of field lighting by radio equipment in an aircraft. (See AC 150/5340-14, Economy Approach Lighting Aids, and AC 150/5340-27, Air to Ground Radio Control of Airport Lighting Systems.)

(2) At some locations it may not be necessary to operate the lights all night. This might occur where the aeronautical demand is seasonal, or where it ceases after a certain hour each night because the airport's off airway location is not likely to be needed for emergency use. In very rare cases it may be undesirable to permit use of an airport during certain hours of darkness. An example might be where air traffic control is suspended during some part of the night and the local environment (such as obstructions or heavy enroute traffic) makes use of the airport hazardous during that period. Under such circumstance FAA may consent to a part-time operation of field lights.

4-8. RESTRICTIONS ON AERONAUTICAL USE OF AIRPORT.

a. Safety and Efficiency.

(1) While the airport owner must allow its use by all types, kinds, and classes of aeronautical activity as well as by the general public (passengers, visitors, etc.), the obligation agreements do provide for exceptions as discussed in this paragraph. When complaints are filed with FAA regarding restrictions imposed by the airport owner in the interest of safety and/or efficiency, assistance of the appropriate local Flight Standards and Air Traffic representatives should be obtained in determining the reasonableness of the restrictions. It may be appropriate to initiate an FAA airspace study to determine the efficiency and utility of the airport when considering the proposed restriction. In all cases the FAA will make the final determination of the reasonableness of the airport owner's restrictions which denied or restricted use of the airport.

(2) In the interest of safety, the airport owner 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. This allows the imposition of reasonable rules or regulations (see paragraph 4-7b) to restrict use of the airport. For example, they may prohibit aircraft not equipped with a reasonable minimum of communications equipment from using the airport. They may restrict or deny use of the airport for student training, for taking off with towed objects, or for some other purpose deemed to be incompatible with safety under the local conditions peculiar to that airport. Agricultural operations may be excluded due to conflict with other types of operations or lack of facilities to safely handle the pesticides used in this specialized operation. (The regional enforcement office of the Environmental Protection Agency (EPA) should be contacted in cases pesticide use and control problems.) Also, designated runways, taxiways, and other paved areas may be restricted to aircraft of a specified maximum gross weight or wheel loading. Likewise, use of airport facilities by the general public may be restricted by vehicular, security, and crowd control regulations. In cases where complaints are filed with FAA, Flight Standards and Air Traffic should be consulted to help determine the reasonableness of the

airport owner's restrictions. It may be appropriate to initiate an FAA airspace study to determine the efficiency and utility of the airport when considering the proposed restriction. In all cases the FAA will make the final determination of the reasonableness of the airport owner's restrictions which denied or restricted use of the airport.

b. Parachute Jumping. Parachute jumping is an aeronautical use and requests to airport owners from parachute jumping clubs, organizations, or individuals to establish a drop zone within the boundaries of an airport should be evaluated on the same basis as other aeronautical uses of the airport. Any restriction, limitation, or ban against parachute jumping on the airport must be based on the grant assurance which provides that the sponsor may prohibit or limit an aeronautical use "for the safe operation of the airport or when necessary to serve the civil aviation needs of the public" (see paragraph 4–8a). Among the reasonable limitations on parachute jumping that an airport owner might require are:

(1) The airport owner designate reasonable time periods for jumping and specific areas for drop zones.

(2) Jumpers (or requesting organization) agree to pay a reasonable fee that is not unjustly discriminatory.

(3) Jumpers hold a general liability insurance policy that names the airport owner as an additional ensured party, with the amount of insurance to be reasonable and not unjustly discriminatory. The airport owner is not required to permit this activity if, in his judgment, it creates a safety hazard to the normal operations of aircraft arriving or departing from the airport, nor is the airport owner required to close the airport to provide a safe environment for the parachute jumpers. In cases where complaints are filed with FAA, Flight Standards and Air Traffic should be consulted to help determine the reasonableness of the airport owner's restrictions. It may be appropriate to initiate an FAA airspace study to determine the efficiency and utility of the airport when considering the proposed restriction. In all cases the FAA will make the final determination of the reasonableness of the airport owner's restrictions which denied or restricted use of the airport.

c. Ultralight Vehicles. Ultralight vehicle operations are considered an aeronautical activity (FAR Part 103) and, as such, must be normally accommodated on airports which have been developed with Federal assistance. This doesn't necessarily mean that they must be operated on conventional runways if ultralight operations can be safely accomplished at a designated ultralight operations area on the airport. An airport operator may make the determination that proposed ultralight operations are unsafe and not allow them to conduct flight operations on the airport. In cases where complaints are filed with FAA, Flight Standards and Air Traffic should be consulted to help determine the reasonableness of the airport owner's restrictions. It may be appropriate to initiate an FAA airspace study to determine the efficiency and utility of the airport when considering the proposed restriction. In all cases the FAA will make the final determination of the reasonableness of the airport owner's restrictions which denied or restricted use of the airport.

Another obligation of the airport operator is to ensure that users of the airport contribute a fair share towards the operation of the airport. The operator of an obligated airport should impose a fee for the use of airport facilities by ultralight vehicle operators. This is consistent with FAA policy provided the charges and fees are not discriminatory.

d. Congestion. Where the volume of air traffic is approaching or exceeding the maximum practical capacity of an airport, an airport owner may designate a certain airport in a multiple airport system (under the same ownership and serving the same community) for use by a particular class or classes of aircraft. The owner must be in a position to assure that all classes of aeronautical needs can be fully accommodated within the system of airports under the owner's control and without unreasonable penalties to any class and that the restriction is fully supportable as being beneficial to overall aviation system capacity. For example, a reliever general aviation airport in a community where the same airport sponsor owns and operates another full–service airport could restrict regularly scheduled air carrier services from the general aviation reliever airport. This might be justifiable as a means of ensuring the reliever airport's attractiveness as a general aviation facility.

However, in no case may an airport receiving air carrier service use this concept to support a total ban or prohibition on general aviation access to primary air carrier airport(s). The right for general aviation access at an air carrier airport is a long established interpretation of the assurance relating to the prohibition against discrimination of classes or types of aeronautical activities.

Any application of this specific provision should be coordinated with the Assistant Chief Counsel in the region for applicability, given a specific case under review.

Additionally, an airport does have the right to designate certain runways or other aviation use areas at the

airport to a particular class or classes of aircraft as a means of enhancing airport capacity or ensuring safety. Any such restrictions should be clearly supportable based on operational considerations and not instituted as a means of deliberately discriminating against a particular class.

e. Temporary Closing of an Airport.

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

(2) Closing for Special Events. Section 511 (a) (3) of the AAIA requires that any proposal to temporarily close the airport for nonaeronautical purposes must be approved by the FAA. For example, an airport developed or improved with Federal funds may not be closed for the purpose of using the airport facilities for special outdoor events, such as sports car races, county fairs, parades, etc., without FAA approval. However, in certain circumstances where promoting aviation awareness through such activities as model airplane flying, etc., the FAA does support the limited use of airport facilities so long as there is not total closure of the airport. In these cases safeguards need to be established to protect the aeronautical use of the airport while the nonaeronautical activities are in progress. There will be occasions when airports may be closed for brief periods of time for aeronautical purposes. Examples are: an air show designed to promote a particular segment of aviation; to celebrate an official occasion held in connection with an aviation activity such as exhibits; or annual fly–ins and aviation conventions. In such cases, airport management should be encouraged to limit the period the airport will be closed to the minimum time consistent with the activity. Such closing should be well publicized in advance including issuance of NOTAM to minimize any inconvenience to the flying public.

(3) Closing of a Part of an Airport. In some instances, reasons may be presented to justify the temporary use of a part of an airport for an unusual event of local significance which does not involve closing the entire airport. In such cases, all the following conditions must be met:

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

(b) Adequate facilities for the landing and takeoff of aircraft will remain open to air traffic and satisfactory arrangements are made by the owner to ensure the safe use of the facilities remaining open.

(c) Proper NOTAMS are issued in advance.

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

(e) The airport owner notifies in advance the appropriate Flight Standards office and any air carrier using the airport.

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

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

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

f. Noise and Environmental Restrictions. Proposed airport use restrictions are becoming more common as airports respond to community concern over environmental issues and noise problems. Airport owners often propose such restrictions as a means of reducing noise impacts when they are considering alternatives to improve compatibility. This is generally done as part of an FAR Part 150, Airport Noise Compatibility Program study, or in some cases as part of an environmental impact assessment report.

Airport use restrictions: (1) must be reasonably consistent with reducing noncompatibility of land uses around the airport; (2) must not create an undue burden on interstate or foreign commerce; (3) must not be unjustly discriminatory; (4) must not derogate safety or adversely affect the safe and efficient use of airspace; (5) meet both local needs and the needs of the national air transportation system to the extent practicable; and (6) must not adversely affect any other powers or responsibilities of the FAA Administrator prescribed by the law or any other program established in accordance with the law.

Proposed Part 150 airport use restrictions will be reviewed by FAA in Washington for consistency with Federal agreements. Where there is a potential for inconsistency with a Federal agreement, the Community and Environmental Needs Division, APP–600, will coordinate the proposed restriction with AAS–300 for input. A determination on compatibility with Federal agreements will be made by AAS–300 and the Chief Counsel's office.

The airport operator is expected to analyze fully in a Part 150 program the anticipated burden on commerce of a proposed airport use restriction. FAA will make the determination on whether the burden is undue. Similar restrictions may have little impact at one airport and a great deal of impact at others, such as occurs when a restriction adversely affects airport capacity and/or excludes or limits certain users from the airport. The magnitude of both impacts must be clearly presented. An airport owner for certain justifiable environmental reasons may designate a certain airport in a multiple airport system under the same ownership and serving the same community for use by a particular class or classes of aircraft. The same concepts as discussed in subparagraph 4–8d will apply. If this is being contemplated, it must be considered on a case–by–case basis in coordination with APP–600 and AAS–300.

If Airports offices are confronted with a proposed environmental or noise restriction outside of the FAR Part 150 process where those restrictions have the potential to be contrary to a Federal agreement, the proposed restriction must be fully reviewed to determine its compatibility with Federal agreements. If there is any concern about potential incompatibility, coordination with AAS–300 and APP–600 is necessary.

An airport owner subject to Federal agreements cannot simply use environmental or noise reasons as a means not to comply with specific Federal grant agreements.

SECTION 3. APPROACH PROTECTION AND COMPATIBLE LAND USE

4–9. PROTECTION OF APPROACHES.

a. Obstructions/Airport Hazard. The airports developed by or improved with Federal funds are obligated to prevent the growth or establishment of obstructions in the aerial approaches to the airport. The term "obstruction" refers to natural or man made objects which actually penetrate that surfaces defined in FAR Part 77, Objects Affecting Navigable Airspace, or other appropriate citation applicable to the agreement as applied to the particular airport. In agreements issued prior to December 31, 1987, airport owners agreed that insofar as it is within their power and reasonably possible, to prevent the construction, erection, alteration or growth of an obstruction. This was to be done either by obtaining the control of the land involved through the acquisition and retention of easements or other land interests or by the adoption and the enforcement of zoning regulations. Effective with the Airport and Airway Safety and Capacity Expansion Act of 1987 (P. L. 100–223) the standard approach protection assurance was changed to read:

"It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removal, lowering, relocating, marking, or lighting or otherwise mitigation of existing airport hazards and by preventing the establishing or creation of future airport hazards." (See Appendix 5 for "Airport Hazard.")

The airspace allocated will vary from airport to airport. The Regional Air Traffic, Airspace and Procedures Branch, should be contacted for guidance on application of this provision when an issue is raised.

b. Preexisting Obstructions.

(1) Historically, some airports were developed at locations where preexisting structures or natural terrain (for example, hill tops) would constitute an obstruction by currently applicable standards. If such obstructions were not required to be removed as a condition for a grant agreement, the execution of the agreement by the Government constitutes a recognition that the removal was not reasonably within the power of the sponsor.

(2) Also, there are many former military airports that were acquired as public airports under the Surplus Property Act, where the existence of obstructions at the time of development was considered acceptable. At such airports where obstructions in the approach cannot feasibly be removed, relocated, or lowered, and where FAA has determined them to be a hazard, consideration may be given to the displacement or relocation of the threshold.

c. Zoning Ordinances. One method of meeting the obligation to protect airport approaches involves appropriate height restriction zoning. Any airport owner who has the authority to adopt an ordinance restricting the height of structures in the ap-

proaches according to the standards prescribed in FAR Part 77 as applied to the particular airport should do so.

4–10. COMPATIBLE USE OF ADJACENT LAND. All grants issued after the enactment of P.L. 80–289 (78 Stat. 161), an amendment to the Surplus Property Act of 1944, contain an assurance that, to the extent reasonable, appropriate action including zoning will be taken to restrict the use of lands in the vicinity of the airport to activities and purposes compatible with normal airport operations.

4–11.–4–12. RESERVED.

SECTION 4. AVAILABILITY ON FAIR AND REASONABLE TERMS

4–13. GENERAL.

a. The owner of any airport developed with Federal grant assistance is required to operate it for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination. A parallel obligation is implicit in the terms of conveyance of Federal property for airport purposes under the Surplus Property Act. Land transfers under Section 16, Section 23, or Section 516 are authorized by the same statutes and for the same purposes as grants under FAAP, ADAP, and AIP and the same obligations will apply.

b. Grant obligations involve several distinct requirements. First, the airport and its facilities must be available for public use. The terms imposed on those who use the airport and its services, including rates and charges, must be fair, reasonable, and applied without unjust discrimination, whether by the owner or by a licensee or tenant who has been granted rights to offer services or commodities normally required at the airport. The terms and conditions which the owner imposes on those offering services and commodities to the public which are related to aeronautical activity must be fair and reasonable and applied without unjust discrimination. (See paragraph 4–15d.)

4–14. TERMS APPLIED TO AIRPORT USERS.

a. Rentals Fees and Charges. The obligation of airport management to make an airport available for public use does not preclude the owner from recovering the cost of providing the facility through fair and reasonable fees, rentals or other user charges "...which will make the airport as self–sustaining as possible under the circumstances existing at the particular airport...."

(1) Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rates, fees, rentals, and charges with respect to facilities directly and substantially related to providing air transportation and other such nondiscriminatory and substantially comparable rules, regulations, and conditions as are applicable to all such air carriers which make similar use of such airport and which utilize similar facilities, subject to reasonable classifications such as tenant or nontenant, and signatory carriers and nonsignatory carriers. Such 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.

(2) Each FBO at any airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBO's making the same or similar uses of such airport utilizing the same or similar facilities.

(3) Each air carrier using such airport shall have the right to service itself or to use any FBO that is authorized by the airport or permitted by the airport to serve any air carrier at such airport.

(4) Normally, the FAA will not question the fairness of rates and charges established by the owner or the comparability of the rates, fees, rentals and other charges as applied to and among air carriers, FBO's and other tenants for the same or similar space and/or services unless complaints have been made alleging that specific practices are unfair or unreasonable. Before an investigation is initiated by the FAA, the charge should be supported by factual evidence produced by the complainant.

(5) The basis for rates and charges is usually related to costs incurred by the airport owner. Rarely can it be established that an actual or proposed rate is so high that it would recover to the owner an amount unreasonable and in excess of costs. More often the FAA will be required to determine whether the rate structure, as applied, will result in discrimination.

(6) In evaluating established fees, rates, and charges for users of an airport no part of the Federal share of an airport development project for which a grant is made shall be included in the rate base.

b. Methods of Assessing User Charges. The collection of a fee or charge for public use of a runway, tiedown area, or other facility may be accomplished through a direct toll or landing fee imposed on individual users or through indirect means. The airport owner may find it practical to grant use privileges simultaneously by contract, permit, or the direct assessment of fees. In most instances, an indirect recovery of fair use charges in the form of fuel flowage, hangar rentals, percentages of gross volume of business, or through other arrangements may be the most practical method for many collections. A locally based aviation enterprise may have a lease, or contract, under which it will pay an agreed rental for the hangars and other premises it occupies plus a variable payment (related to fuel gallonage, volume of business, flight operations, etc.) for the use of the landing area by its own aircraft and those of its customers. Other visiting aircraft, such as scheduled or unscheduled air taxis, which are not covered by such a contract may be required to pay a fee or charge to cover their use of public facilities.

c. Charges Made by Airport Tenants and Concessionaires. At most airports the provision of fuel, storage, aircraft service, etc., is best accomplished by profit motivated private enterprise. It is the responsibility of the airport owner, in negotiating the privilege to offer these services and commodities at the airport, to retain sufficient control over the operation to guarantee that the patrons will be treated fairly. The owner may not have this control if, by contract or otherwise, he/she surrenders the right to approve rates, fees, and charges imposed for essential aeronautical services. In this connection, note the discussion of leasing principles in Section 1, Chapter 6. It should be understood that the obligation of the airport owner to ensure availability of services to the public on fair and reasonable terms is limited to aeronautical activities. There is no commitment in a grant agreement or deed with the United States that the prices charged by taxis, limousines, restaurants, motels, and other terminal area nonaeronautical concessions will be controlled.

d. Terms and Conditions Applied to Tenants Offering Aeronautical Services. Apart from the Civil Rights Assurances and the assurances relating to the offering of aeronautical services to the public, the FAA is not normally involved with the establishment of rates and fees to be paid by a tenant or concessionaire to an airport owner. However, in overseeing the airport owner's implementation of the assurance in subparagraph a. above, the FAA shall ensure that:

(1) At air carrier airports:

(a) As a tenant, the air carrier shall enjoy the same classification and status as any other tenant air carrier serving that airport as to rates, fees, charges, rules, regulations, and conditions covering all aeronautical activities at that airport provided the air carrier assumes obligations similar to those already imposed on the other tenant air carriers.

(b) An air carrier who is willing to sign a contract (signatory carrier) with the airport and assume appropriate financial obligations may be granted a lower fee schedule. If an air carrier is unwilling or if it is infeasible because of infrequent operations or other reasons to sign such a contract, the air carrier may then be charged the higher noncontract rates.

(c) In respect to a contractual commitment, a sponsor may charge different rates to similar users of the airport if the differences can be justified as nondiscriminatory and such charges are substantially comparable. These conclusions must be based upon the facts and circumstances involved in every case.

(d) Differences in values of properties involved and the extent of use made of the common use facilities are factors to be considered. Seldom will each user have properties of the same value nor will their use of the common facilities be the same. However, the airport in order to justify noncomparable rates must show that the differences are substantial.

(e) All leases with a term of 5 years or more should contain an escalation provision for periodic adjustments based on a recognized economic index. Future lessees may expect like treatment in that their leases will have a built–in escalation provision. This is in accordance with the sponsor assurance "...to make the airport as self–sustaining as possible under the circumstances ...."

(f) Each air carrier using the airport shall have the right to service itself or to use any FBO that is authorized by the airport or permitted by the airport to serve any air carrier at the airport.

(2) At general aviation airports:

(a) If one operator rents office and/or hangar space and another builds its own facilities, this would provide justification for different rental and fee structures. These two operators would not be considered essentially similar as to rates and charges even though they offer the same services to the public.

(b) If one FBO is in what is considered a prime location and another FBO is in a less advantageous area, there could logically be a differential in the fees and charges to reflect this advantage of location. This factor would also influence the rental value of the property.

(c) If one FBO is providing primary commercial services (sale of aviation fuel and oil, providing tiedown and aircraft parking facilities, ramp services and some capability for minor aircraft repairs) and another FBO is conducting a flight training program, or aircraft sales, or a specialty such as avionics repair and service, these FBO's may not be considered essentially similar. They may have dissimilar requirements, i.e., space requirements, building construction, or location. Therefore, different rates may be acceptable, although the rates must be equitable.

(d) If the FAA determines that the FBOs at an airport are making the same or similar uses of such airport facilities, then such FBO leases or contracts entered into by an airport owner (subsequent to July 1, 1975) shall be subject to the same rates, fees, rentals and other charges.

(e) As an aid to uniformity in rates and charges applicable to aeronautical activities on the airport, management should establish minimum standards to be met as a condition for the right to conduct an aeronautical activity on the airport (Chapter 3, Section 3).

(f) All leases with a term exceeding 5 years shall provide for periodic review of the rates and charges for the purpose of any adjustments to reflect the then current values, based on an acceptable index. This periodic lease review procedure will facilitate parity of rates and charges between new FBO services coming on the airport and long–standing operators. It will also assist in making the airport as self–sustaining as possible under the circumstances existing at that particular airport.

(g) In the case of a new general aviation airport, it is frequently necessary for the airport owner to offer reduced rental rates and other inducements to obtain an FBO recognizing that it may well be a nonprofit venture during the pioneering period. To avoid a depressed rate scale for the future, the airport owner should be encouraged to provide the "incentive rate" only during the pioneer period. The pioneer period should be established for a specific period of time and ending on a specified date. Future operators coming on the airport following the pioneer period may be expected to pay the comparable standard rates and charges based on then current value.

(h) Except for exercise of the proprietary rights by the airport owner, any terms or conditions in an agreement between an airport owner and an aeronautical activity requiring the activity to procure fuel or other supplies and services from a specific source would be an unreasonable restraint on the use of the airport and, in certain cases, could be viewed as a grant of an exclusive right. Where an airport owner retains for itself the proprietary right to operate the fuel farm, all FBOs may be required to obtain fuel from the airport owner. However, if an FBO is running the fuel farm for the airport owner, another FBO cannot be required to obtain fuel from the airport owner's agent. In neither of these cases is the airport operator or the FBO obligated to sell fuel to an individual, corporate or other type operator performing self–fueling.

4–15. AVAILABILITY OF LEASED SPACE. The prime obligation of the owner of a federally–assisted airport is to operate it for the use and benefit of the public. The public benefit is not assured merely by keeping the runways open to all classes of users. While the owner is not required to construct hangars and terminal facilities, it has the obligation to make available suitable areas or space on reasonable terms to those who are willing and otherwise qualified to offer flight services to the public (i.e., air carrier, air taxi, charter, flight training, crop dusting, etc.) or support services (i.e., fuel, storage, tie down, flight line maintenance, etc.) to aircraft operators. This means that unless it undertakes to provide these services itself, the airport owner has a duty to negotiate in good faith for the lease of such premises as may be available for the conduct of aeronautical activities. Since the scope of this obligation is frequently misunderstood the following guidance is offered:

a. Servicing of Aircraft. All grant agreements contain an assurance that the sponsor will not exercise or grant any right or privilege which would have the effect of preventing the operator of an aircraft from performing any services on its own aircraft with its own employees. This is not to be interpreted as a positive obligation on the sponsor to lease space to every aircraft operator using the airport. It means simply that an aircraft operator, otherwise entitled to use the landing area, may tiedown, adjust, repair, refuel, clean and otherwise service its own aircraft, provided it does so with its own employees in accordance with reasonable rules or standards of the sponsor relating to such work. The assurance establishes a privilege (to service one's own aircraft) but does not, by itself, compel the sponsor to lease such facilities which may be necessary to exercise that right. (See paragraph 3–9e for additional details regarding restrictions on self–service.)

b. Facilities Not Providing Service to the Public. Most airport owners are anxious to lease available property to those willing to construct their own hangars and aircraft support facilities. However, the airport owner is not obligated by agreements with the Government to provide space unless the activity offers services to the public or support services actually needed by those aircraft operators otherwise entitled

to use the public landing areas. Thus, a local company operating its own aircraft for business purposes, a private flying club, or an aircraft manufacturing company seeking a site for a production plant may be a desirable and compatible tenant. However, the airport owner is not obligated to lease airport premises for these purposes if adequate facilities are otherwise available. This problem is rare and usually arises when an aircraft operator, unable to arrange satisfactory terms for hangar space and service with an existing fixed base operator, seeks to construct its own facilities. The obligation to operate an airport for the use and benefit of the public requires that reasonable provision be made for essential support services for those who use it. Therefore, when neither the airport owner nor the tenant FBOs can provide adequate storage, fueling, and other basic services to an airport user, the user may not be denied the right to lease space, if available, on reasonable terms to install such facilities at its own expense.

c. Activities Offering Services to the Public. If adequate space is available on the airport, and if the airport owner is not providing the service, it is obligated to negotiate on reasonable terms for the lease of space needed by those activities offering flight services to the public, or support services to other flight operators, to the extent that there may be a public need for such services. A willingness by the tenant to lease the space and invest in the facilities required by reasonable standards shall be construed as establishing the need of the public for the services proposed to be offered.

d. Air Carrier Airport Access. Since the passage of the Airline Deregulation Act of 1978, there has been an influx of air carriers into airports. Many of these airports were operating at capacity prior to passage of the Act insofar as counter, gate, and ramp space were concerned. New carriers wishing to serve the airport were faced with the prospect of no facilities being available. In some instances, space was made available from carriers established on the airport. However, in other cases, no space was made available and the carrier was denied access to the airport.

It was determined by the Office of Chief Counsel that a carrier may not be denied access to an airport solely based on the nonavailability of currently existing facilities and that some arrangements for accommodation must be made if reasonably possible. This can result in a complex situation which may not be easily resolved.

If an airport refuses to apply for a FAR Part 139 Airport Operating Certificate when there is clear evidence that an air carrier desires to serve the location, this fact alone does not indicate a violation of the grant agreement assurances. The regional Airports and Legal offices should determine the basis and justification for exclusion of the air carrier in the same manner as they would in other potential violation issue.

In some cases, a recommendation to the airport operator to provide temporary facilities, such as a mobile ticket office and gate facilities might relieve the situation. If it appears that the airport operator cannot possibly provide space, then the FAA in concert with the airport operator must develop a solution to the problem.

Should air carrier access situations develop at airports and where no solution developed at the region is feasible, AAS–300 should be notified. AAS–300 will coordinate with the regional Airports division and Chief Counsel for a viable solution to the problem.

4–16. CIVIL RIGHTS. The regional and headquarters Offices of Civil Rights are responsible for matters pertaining to the enforcement of the Civil Rights assurances and provisions included in the all grant agreements. For additional information see AC 150/5100–15, Civil Rights Requirements for the Airport Improvement Program (AIP).

SECTION 5. USE OF AIRPORT PROPERTY

4–17. ADHERENCE TO AIRPORT LAYOUT PLAN AND AIRPORT PROPERTY MAP

a. Airport Layout Plan (ALP). An ALP, which is required by statute (previously required by assurance) depicts the entire property and identifies the present facility and the plans for future development. The FAA requires an approved ALP as a prerequisite to the grant of AIP funds for airport development or the modification of the terms and conditions of a surplus property instrument transfer. The approval must be by the FAA and represents the concurrence of the FAA in the conformity of the plan to all applicable design standards and criteria. It also reflects the agreement between FAA and the airport owner as to the proposed allocation of areas of the airport to specific operational and support functional usage. The approved ALP thus becomes an important instrument for controlling the subsequent development of airport facilities. Any construction, modification, or improvement that is inconsistent with such a plan requires FAA approval of a revision to the ALP.

b. Airport Property Map (Exhibit A). The airport property map, also called the Exhibit A to the grant agreement, is a required document to be submitted with the application for a grant and delineates all the property owned or to be acquired by the airport owner. Whether or not the Federal Government participates in the cost of acquiring any or all such land, it relies on this map in any subsequent grant of funds. Any land identified on the Exhibit A may not thereafter be disposed of or used for other than those purposes without FAA consent.

c. Land Inventory Map. There is a need to track land acquired with Federal funds for accountability purposes for compliance matters. If any grant acquired land is found to be excess to airport needs, present and future, the sponsor is required to dispose of the excess land and return the Federal share of the FMV to the Trust Fund. This land identification should show how and under what Federal grant or other Federal assistance program the land was acquired. The inventory will satisfy the FAA's requirement to maintain an inventory of land acquired with Federal assistance. (Appendix 7 is a suggested procedure for maintaining such inventory.) In disposing of such land the requirements of paragraph 7–19b apply. If the Exhibit A discussed above satisfies the land accountability requirement, there is no need for a separate land inventory map. Airport noise compatibility land acquisitions should be identified separately (see paragraph 4–17e).

d. Grant Land No Longer Needed for Airport Purposes. With the passage of The Airport and Airway Safety and Capacity Expansion Act of 1987, P.L. 100–223, Section 511a(14) provides: If the airport operator or owner receives a grant before, on, or after December 30, 1987, for the purchase of land for airport purposes (other than noise compatibility purposes).

(1) the owner or operator will, when the land is no longer needed for airport purposes, dispose of such land at FMV;

(2) the owner or operator may trade land no longer needed for airport purposes for land to be used for airport purposes. If the difference in FMV in the two parcels results in a cash difference paid to the airport owner or operator, then that portion of the proceeds of such trade which is proportionate to the United States share of the cost of acquisition of such land will be paid to the Secretary for deposit in the Trust Fund. If additional cost results from the trade it may be eligible under AIP;

(3) such disposition will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport;

(4) that portion of the proceeds of such disposition which is proportionate to the United States share of the cost of acquisition of such land will be paid to the Secretary for deposit in the Trust Fund; and

(5) if the old airport is being disposed of as a result the construction of a new airport, the sale land of the old airport will be treated as a "trade–in" on the cost of the new airport. (See paragraph 7–20b.)

Once an airport sponsor accepts any grant containing this assurance, it becomes obligated to this requirement for all grant acquired land, regardless of when it was acquired.

When reviewing the sponsor's request for Federal assistance, or when conducting periodic compliance oversight reviews, the FAA must review the current ALP and the Land Inventory Map (paragraph c above) to determine whether any land acquired with Federal assistance is no longer needed for airport purposes. Airport purposes could include land that, with documentation, can be justified for noise compatibility purposes. The land need not be required for the same aeronautical purpose for which it was originally acquired.

Additionally, land that was acquired for airport development in conjunction with a larger purchase may now be serving related airport support uses (such as a hotel or aviation related commercial uses which have a direct need to be located on the airport) and therefore need not be disposed of. If the land continues to provide aeronautical benefit through noise compatibility (such as within a projected 75Ldn) or where the land is contained within a larger property boundary that clearly is justified for airport purposes, disposition of such land will not be required. Judgment may determine that it is inappropriate to carve small specific parcels out of an airport property that for all reasonable purposes is already functioning as an airport unit.

In all cases the long–term future aeronautical need always must be considered. If the ALP does not reflect a future airport need for the grant acquired land, the airport sponsor should be advised in writing by FAA that the current ALP does not establish an airport purpose (existing or future) for the land acquired by Federal grant funds and reminded of the subject assurance. Before giving notice to dispose of the land the airport owner will be given 90 days to provide sufficient documentation to FAA to justify retention of the land for airport purposes. If such justification (including a revised ALP) is not provided to the FAA within the prescribed 90–day period, the airport owner should be no-

tified in writing of the necessity to dispose of such land at FMV (subject to the provisions contained in the language stated above). There may be compelling reasons such as a depressed real estate market that would justify FAA's concurrence in a delayed disposal. In these cases FAA should obtain a marketing analysis and plan from the sponsor. Subsequent review may be required. (See paragraph 7–19 for disposal procedures.) In complex situations, the airport owner may be given a reasonable extension (up to an additional 90 days) to provide the required justification.

e. Airport Noise Compatibility Land. With the passage of The Airport and Airway Safety and Capacity Expansion Act of 1987, P.L. 100–223, Section 511a(13) provides: If the airport operator or owner receives a grant before, on, or after December 30, 1987, for the purchase of land for airport noise compatibility purposes.

(1) the owner or operator will, when the land is no longer needed for such purposes, dispose of such land at FMV at the earliest practicable time;

(2) such disposition will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport and any height restrictions that are necessary to protect the airport; and

(3) that portion of the proceeds of such disposition which is proportionate to the United States share of the cost of acquisition of such land will, at the discretion of the Secretary.

(a) be paid to the Secretary for deposit in the Trust Fund; or

(b) be reinvested in an approved noise compatibility project as prescribed by the Secretary. Any airport accepting a grant containing this assurance obligates the airport to this requirement for *all* grant land acquired for noise compatibility regardless of when it was acquired.

When reviewing the airport sponsor's request for Federal assistance, or when conducting periodic compliance oversight reviews, the FAA must review the current ALP, the Land Inventory Map, and any Part 150 study or supporting noise compatibility information to determine whether any grant acquired noise land is no longer needed for such purposes. Land within an existing or projected 75 Ldn noise contour that has been acquired for noise compatibility purposes need not be required for disposal. Generally, because of the high level of noise associated with the contour, there is justification for it to remain under control of the airport as noise land. Land within a 65 Ldn can be retained only if it can be justified as land need for airport development.

Before giving notice to dispose of the land in accordance with the provisions of the Act (cited above), the airport owner will be advised in writing that the justification is insufficient to support the noise compatible use for the land and be given 90 days to provide sufficient documentation to FAA to justify retention of the land for noise compatibility and sufficient time to complete any Part 150 noise study that is in progress. There may be cases where the land is no longer needed for noise compatibility purposes but is needed for other airport purposes consistent with Order 5100.38 or the guidance provided in paragraph d. above. The FAA may allow retention for these purposes.

Where FAA has determined the land should be disposed of because there is no continuing need to retain fee title ownership, the airport owner should be notified in writing of the necessity to dispose of such land at FMV at the earliest practicable time. See Chapter 7, Section 5 for disposal procedures.

There may be compelling reasons, such as a depressed real estate market, that would justify FAA's concurrence in a delayed disposal. In these cases FAA should obtain a marketing analysis and plan from the sponsor. Subsequent review may be required.

f. Compliance Requirements. Continued adherence to an ALP is a compliance obligation of the airport owner. The erection of any structure or any alteration in conflict with the plan as approved by the FAA may constitute a violation of these obligations. With the passage of the Airport and Airway Safety and Capacity Expansion Act of 1987 (December 30, 1987), the ALP assurance language was strengthened. If the airport owner makes a change in the airport or its facilities which FAA has determined will adversely affect safety, utility or efficiency of any federally–owned or leased or funded property on or off the airport, and which is not in conformity with the FAA approved ALP, FAA may require:

(1) the airport eliminate the adverse effect; or

(2) bear the cost of rectifying the situation.

The airport owner may not abandon or suspend maintenance on any operational facility currently reflected on an approved plan as being available for operational use. The conversion of any area of airport land to a substantially different use than that shown in an approved layout plan could adversely affect the safety, utility, or efficiency of the airport and constitute a violation of the obligation assumed. For example, the con-

struction of a corporate hangar on a site identified on the ALP for future apron and taxiway would be considered as a departure from the controlling ALP which impairs the utility of the airport and a violation of sponsor obligations. When making a periodic compliance review of an ALP, consider whether grant–acquired land is still needed for airport purposes, particularly when it is separated from the airport property by a highway or railway.

g. Authorization for Interim Use.

(1) The FAA may approve the interim use of aeronautical property for nonaviation purposes until such time as it is needed for its primary purpose. Such approval shall not have the effect of releasing the property from any term, condition, reservation, restriction or covenant of the applicable compliance agreement. To avoid any misunderstanding, the document issued by the FAA approving interim use must so indicate.

(2) FAA approval for an interim use should be granted only if it is determined that such property will not be needed for any aviation use during the short–term period contemplated. Any option to renew an interim–use lease/agreement should be conditioned on obtaining a new FAA determination that the property will not be needed for any aviation use during the proposed renewal period. Investment by the interim user is at its risk and shall not be a factor in considering any renewal of a lease or use agreement.

(3) FAA shall condition its consent to an interim use on an agreement from the airport owner to apply the income from such use to the development, operation, and maintenance of airport facilities.

h. Concurrent Use. Aeronautical property may be used for a compatible nonaviation purpose while at the same time serving the primary purpose for which it was acquired, such as the concurrent use of runway clear zone land for low growing crops. Care must be taken when considering recreational use so as not to create a future 4(f) environmental problem. This is clearly beneficial to the airport. The primary purpose is served and the concurrent use should generate FMV revenue to be used for airport purposes.

i. Excess Odd Parcels. Section 16/23/516 deeds as well as grant funded land acquisition may include land in excess of that requested by the airport owner or recommended by the FAA for airport purposes. This usually happens because of property descriptions and title requirements of the controlling agency to avoid severance of odd parcels or areas that would have limited value or use by themselves. Use of such excess areas for nonaviation purposes may be approved as specified in a. and b. above.

j. Conformance to FAA Criteria and Standards. Any facilities developed with grant funds must be constructed to the then current applicable FAA design standards and must conform to the approved ALP in effect at the time of the grant. Improvements, alterations or additions to an airport which are accomplished without Federal aid should be designed to FAA standards, but this is not mandatory. However, any improvement or modification, regardless of how it is financed, must conform to the ALP unless the FAA can determine that it does not adversely affect the safety, utility or efficiency of an airport.

k. LEASING GENERAL AVIATION APRON CONSTRUCTED WITH FEDERAL ASSISTANCE. The airport owner has the responsibility for the management and operation of the airport and ultimately must assure that it is operated in accordance with all aspects of the grant assurances. The airport owner can not abrogate these responsibilities. Therefore, the airport owner should not enter into unconditional leasing of apron areas constructed with Federal airport grant assistance because this could result in reducing the airport owners ability to carry out their obligations under their agreements with the Federal Government.

(1) **Management Agreements.** The airport owner may in reality only want an FBO to manage tie–down spaces, maintain the apron area, remove snow, and similar functions. Since the relationship between the airport owner and anyone conducting management duties should be that of principal/agent, a management agreement rather than a lease is the appropriate means of accomplishing what the airport owner wants accomplished. Such an agreement should clearly specify the responsibilities and provide for acceptable practices such as nondiscriminatory waiting lists for tie–down spaces and a designated itinerant tie–down area to protect public availability. The tie–down fee schedule should be established by or approved by the airport owner.

(2) **Lease Agreements.** Tie–downs or spaces on the apron can be leased by the airport owner to individual aircraft owners and/or to the FBO for space necessary to serve the needs of their aircraft in their business. Also, the apron area in the immediate vicinity of an FBO can be leased to the FBO to permit the exercise of a propriatorship over the public–use ramp area. Apron areas can be leased provided the terms of the lease will not restrict the airport owner from carrying out their grant obligations. In general the lease should contain provisions which will ensure that the public will be served by the lessee in a manner equal to that which the airport owner is required to provide under the grant agreement. A demonstrated immediate need for the space to be leased

shall be documented by the FBO to preclude attempts to limit competition or to create an exclusive right. Any area to be placed under lease shall not result in an activity or use contrary to the approved airport layout plan (ALP).

(a) Public–use areas such as airport taxiways and self–fueling areas must not be included in the lease area. However, apron taxilanes used only for maneuvering on the leased apron may be included in the lease area. If airport fueling or self–fueling facilities are included within the area to be leased, provisions must be made for the right of public access to both..

(b) The lease shall provide conditions to assure that the area will be suitably maintained in a safe and serviceable condition; that snow or ice will be promptly removed; that services will be provided on a fair, equal and not unjustly discriminatory basis; and that charges for services will be fair, reasonable, and not unjustly discriminatory.

(c) Any lease arrangement shall protect availability for the public use, including nondiscriminatory practices for assignment of tie–down space and provide for the accommodation of itinerant users.

(d) The lease shall preclude the lessee from requiring that users of the leased area must secure goods and services only from that FBO. However, the lease need not require that a competitor must be allowed to enter the leased area to perform a service, including fueling, provided that there is adequate capability for the user to freely secure that service at another location on the airport. The competitor, however, must be allowed to assist the user of a disabled aircraft in placing the aircraft in a condition so as it can be taxied or towed away from the leased area.

(e) In no case shall an FBO be leased more apron space than that for which an immediate demonstrated need has been shown. Where there is only one FBO on an airport and there is more apron space than required for that operation, just that space actually required should be leased to the existing fixed base operator. This will ensure that apron space will be available for a future tenant, if requested.

(f) The person leasing the apron will not prohibit or restrict those using the area for tie–down from servicing their own aircraft. (Assurance 22f reference only.)

l. Installation of Portable Hangars and Sun Shades on Federally–Funded Aprons. At some locations around the country, airport sponsors have permitted the installation of portable hangars (i.e., hangars which can be readily removed and which do not require a foundation or footings) and sun shades on aprons constructed with airport grant–in–aid funds. Accordingly, FAA policy is as follows:

(1) The installation of portable hangars and sun shades on an existing federally–funded apron is not permissible except in the instances where, in the judgment of the Airports field office, changes in airport use patterns since construction of the apron are such that the apron or that portion of it proposed for the portable hangar and sun shade location is no longer needed for its original purpose. The approved ALP must show the apron area as being appropriately converted to portable hangar and/or sun shade use without having an adverse impact on the safety and efficiency of the airport.

(2) The FAA determination to permit installation of portable hangars and sun shades in exceptional instances will be conditioned on the requirement that any hangar or sun shade installed be removed within 30 days written notice from the FAA and will be based on the following considerations:

(a) The sponsor's proposal should be supported by a use plan for the installation of the portable hangars and/or sun shades.

(b) The proposed portable hangar and/or sun shade area must be in accordance with the approved ALP.

(c) Hangars and/or sun shades will be located so as not to constrain the flow of aircraft traffic any more than would exist in an aircraft tie–down area.

(d) Prior notice on FAA Form 7460–1, Notice of Proposed Construction, or through other similar notice procedure, must be given to the appropriate Airports field office of the intent to erect each structure or group of structures being installed concurrently and FAA concurrence must be received.

(e) Hangars and/or sun shades must be specifically designed for ready removal (no foundation or footings required).

(f) Hangars and/or sun shades will not cause damage to the apron. Any damage beyond normal wear and tear must be repaired by the sponsor at its expense.

(g) Hangar is designed to accommodate one aircraft.

(h) Hangar and/or sun shade design must meet local building codes.

(3) Where portable hangars and/or sun shades have been installed on federally–funded aprons without prior FAA concurrence, Airports field offices, at their

discretion, may either make an after–the–fact determination on the present utility of the affected apron as in paragraph (2) above, or may seek a remedy including:

(a) Requiring the sponsor to have portable hangars and/or sun shades removed from the apron;

(b) Seeking reimbursement for the Federal share of apron construction costs; (i.e., cost of apron replacement); or

(c) Recovering the Federal share of apron construction costs in a future project.

4–18. USE OF SURPLUS PROPERTY.

a. General. Surplus airport properties conveyed under the authority of the Surplus Property Act, as amended by P.L. 80–289, impose upon the grantee certain continuing obligations that are generally more comprehensive than the covenants and conditions discussed in previous parts of this section. Most of the surplus properties were developed as military installations and comprise a physical plant that frequently exceeds, or at least differs from, the type of development that would be undertaken to meet the demonstrable civil aviation needs of a typical community. P.L. 80–289 authorizes the conveyance of property over and above the required aeronautical facilities in order to permit the grantees to have a source of continuing airport revenue. To assure that this is accomplished, the FAA insists that surplus properties associated with a public airport including revenue generated therefrom be used to support the development, maintenance and operation of the aeronautical facilities. (See paragraph f. below.)

b. Obligations Run with the Land. There is a further distinction between the obligations assumed under a grant project and those assumed by the recipient of a surplus airport. Grant agreements are contracts with the Government relating to airport facilities. These run for a maximum specified term of years, or for the time the land is used for an airport, whereas the covenants of a surplus airport conveyance are in fact restrictions and encumbrances which condition the title to the land. Thus, every acre of a surplus airport is held in trust for a specific purpose and usage. The Surplus Property Act provides that property shall not be used, leased, sold, salvaged or disposed of for other than airport purposes without the consent of the Administrator. This reflects a degree of administrative flexibility to adjust the usage in a surplus property deed for specific areas of a surplus airport within the spirit, intent and objectives of the law.

c. Authorized Land Use. The FAA is required to assure itself that surplus land conveyed for aeronautical purposes is so used and that land conveyed for revenue purposes is actually used or available to produce revenue for the continued development, maintenance and operation of the aeronautical facilities. With the passage of time the aeronautical needs of any community will change. Therefore, the FAA is authorized to approve changes in the use of surplus airport property, including the conversion of aeronautical to revenue production and vice versa. It may relieve the recipient of its obligation to maintain parts of the airport that are no longer required for aeronautical usage within the foreseeable future. Under certain circumstances, it may grant a complete release for sale or disposal if the resulting proceeds are applied to further develop, maintain and operate the airport or other NPIAS airports which it owns as approved by the FAA. Conditions and procedures governing the release of surplus property from any of the terms and conditions of the deed are contained in Chapter 7.

d. Reduction or Change in Aviation Use Property. Changes in aviation needs may make it desirable to convert dedicated aviation use property to revenue–production property. The conversion may receive FAA approval provided the present/future civil aviation needs are met or assured and the public benefit in civil aviation is enhanced. In all such conversions, FAA shall require assurance that all such converted property will be used to produce FMV for civil airport purposes consistent with the original conveyance and in support of the owner's endeavor to make the airport as self–sustaining as possible.

e. Land Use Plans. In order to determine that all property on a surplus airport is being used as intended by the applicable law, it is necessary for the recipient to have inventory accountability. The most effective means for maintaining such a current inventory is the "land–use plan." This is a scaled layout of the entire property indicating the current use approved for each identifiable segment or area including that land which FAA has approved for revenue production. If this plan is to serve as the land inventory plan it should indicate the acquisition source of all airport land (i.e., surplus, grant purchase, etc.). For ease, it may be incorporated on an Exhibit A or on an ALP or developed as a separate document.

f. Leasing of Surplus Airport Properties. Section 1, Chapter 6 contains guidance on evaluating leases or use agreement covering aeronautical facilities at a public airport. It assists FAA personnel in advising airport owners about contracts or agreements which could affect the owner's prime responsibility to control public facilities and to make them available on fair and reasonable terms without discrimination.

(1) At airports which include Federal surplus property acquired for airport purposes, there is a further obligation to ensure that such property, if not needed to directly support an aviation use, is available for use to produce income for the airport. There is no violation of the covenants in the conveyance document (or deed) if the airport owner is unable to arrange for productive use of such property. However, when used, it must produce income for the airport. This means that any lease or other rental arrangement covering the use of surplus property at an airport must assure that the fair rental value of the property will accrue to the airport and be available to meet airport expenses. Such property may not be rented at a discount to support community nonprofit organizations or to subsidize nonairport objectives.

(2) Where revenue production land has remained undeveloped while comparable off airport land is being developed, reasonable market incentives should be considered to promote interest in developing the property. This would include a reduction in fair rental value for a limited time period or the use of a property development firm to share in the development costs or similar development incentives. In these cases, it is acceptable for the development firm to realize a reasonable share of the revenue. This method should only be used so long as it is necessary to establish the viability of the development.

(3) In determining what is the FMV, consideration should be given to the current market value of the property and to the going rate for rental of equivalent premises. The obligation to obtain fair rental income from the nonaviation use of surplus airport property relates to the property as acquired from the Government. It does not apply to the income producing potential from buildings and improvements constructed thereon without Federal assistance. Fair rental value may need to be reevaluated if airport land remains vacant while other comparable off airport property is being leased. In small communities, a faulty comparable may have been used. Fair rental/market value is clearly tied to demand and in these cases, consideration should be given to doing a market survey.

(4) Provisions should be made for periodic adjustments of the rental terms based on economic conditions.

g. Leases Contemplating Substantial Investment. Where prospective nonaviation tenants plan extensive improvements to leased surplus airport property they will normally seek long-term lease agreements, frequently in excess of 20 years. A fixed rental rate for Federal surplus property may over a period of years become unreasonably less than a fair rental value. FAA should require that leases with a term in excess of 5 years contain a reasonable escalation clause or periodic renegotiation provision to assure that the land is still producing for the airport the income for which it has a potential. The effect of such long-term commitments on defense mobilization requirements for the airport should be considered and, if appropriate, a total release from the NEUP should be obtained. (See Chapter 13, Order 5190.2). In certain circumstances where the land will never be aviation developed a complete release to permit sale of the land may be appropriate.

h. Subordination of Reversionary Interest of the United States. The existence of the contingent right of the United States to revert title for default by the airport owner has in some instances discouraged the leasing of revenue-producing surplus property to an income-producing tenant planning to invest substantial sums in construction on the property. If thoroughly justified on the record, the FAA may approve a lease which would protect the lessee's interests in the event of default and reversion of the airport to the Government.

(1) The FAA may, by letter or other written means, assure the grantee/owner and the prospective lessee that the lease will be honored in accordance with its terms for a period long enough to amortize or retire the invested amount but not for the useful life of the improvements. This assurance may not be given in connection with a lease of any property which may, in the foreseeable future, be required for aeronautical purposes or which is still subject to the NEUP provision.

(2) Whenever such action is contemplated it should be coordinated with the regional Assistant Chief Counsel.

i. Personal Property. All surplus personal property must be used, or continuously available for use, for airport purposes, during its useful life (not to exceed 1 year). To facilitate accountability the equipment should be clearly marked for identification. FAA provides decals for this purpose. When the personal property is not actually needed at the airport, FAA may consent to its use for another public purpose. It must always be available when needed for the airport. For donable property and related personal property, accountability will terminate 1 year after the transfer or earlier upon determination by FAA that items have outlived their useful life.

4-19. USE OF LANDS TRANSFERRED FROM THE UNITED STATES.

a. As compared to surplus property, much more stringent use restrictions apply to properties acquired for airport purposes under Section 16/23/516. The appli-

cable regulation defines airport purposes as uses of the property directly related to the actual operation or the foreseeable aeronautical development of a public airport. There is no authority under this legislation to convey property for the purpose of generating income from nonaviation use. Moreover, there is no authority for the FAA to modify the conditions of a conveyance or to grant release from any of its terms and conditions. A grantee who fails to develop a useful and useable airport or unit thereof on the property conveyed by the United States, within a time specified in the instrument or at the option of the FAA, is not in compliance with the terms of the conveyance. Unless the violation can be cured by granting a reasonable extension of time based upon a written and fully supported request of the grantee, the FAA shall declare a default and exercise the Government's option to revert the property. (See Chapter 8 for information on reversion.)

b. In some instances, Federal lands may be conveyed in standardized units or sections which could result in the transfer of small parcels of land in excess of that requested, or justified under the applicable regulation. Also, Section 23 and Section 516 authorize the transfer of lands for future airport development. In such instances the FAA may consent to the interim use of land acquired from Federal sources for a nonaviation purpose subject to such restrictions and conditions as may protect the national interest. This would include a requirement that any such nonaviation use must produce revenue for the airport and such proceeds shall be used only for airport purposes. This same policy does not apply in consenting to a concurrent use of Section 16, Section 23, or Section 516 land where such use is subordinate to and compatible with the purpose for which the land was conveyed and where the land continues to be used for aeronautical purpose. Other than interim or concurrent use, the FAA cannot allow the use of any of this property for generating income from nonaviation activities.

4–20. INCOME ACCOUNTABILITY.

a. Basic Policy. In its administration of airport agreements, the FAA is not normally concerned with the internal management or accounting procedures used by airport owners. While all grant agreements contain a provision obligating the sponsor to furnish the FAA with such annual or special airport financial and operational reports as may be reasonably requested, it is the policy of the FAA not to require such reports unless there is a genuine need for the information sought, a capability to effectively use the information, and the information requested can be reported without superimposing on the airport owner a requirement for additional accounting records over those normally required to operate the airport. However, there are several situations in which the FAA, to carry out its responsibilities under law, may solicit and review certain basic financial data on airport administration and operation.

(1) Property Acquired Under the Surplus Property Act. Where an airport includes property acquired from the Federal Government under the Surplus Property Act, the law, and frequently the conveyance document itself, authorize use by nonaviation business activity (see paragraphs 4–18a and 4–18d). Such use is justified only when it produces an income which is applied to any airport operation, maintenance and development. This income can also be used to improve and develop the infrastructure (utilities, roads, basic site preparation, etc.) for airport revenue producing land when a determination is made by FAA that all operational and safety needs of the airport are being adequately met and that near term future aeronautical needs can be achieved. The airport owner should be advised that their decision to use these funds for other than direct aeronautical needs may affect the airports' ability to compete for discretionary grant money under the Airport Grant Program. To ensure that such properties are used as intended, the FAA should periodically review the financial transactions of the airport to the extent necessary to make this determination.

(2) Section 511(a)(12) of the Airport and Airway Improvement Act of 1982. To ensure that all revenue generated by a public airport is used as intended (including revenue received as a result of the interim use of land acquired for future airport development), the FAA should periodically review the financial transactions of the airport to the extent necessary to make this determination.

(a) Grants Issued Before December 30, 1987. Section 511(a)(12) of the AAIA requires that all revenue generated by the airport, if it is a public airport, be used for the capital or operating costs of the airport, the local airport system, or other local transportation facilities owned or operated by the airport owner or operator and directly related to the actual transportation of passengers or property.

(b) Grants Issued After December 30, 1987. Section 511(a)(12) of the AAIA, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, requires that all revenue generated by the airport, if it is a public airport, be used for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the airport owner or operator and directly and substantially related to the actual air transportation of passengers or property. In addition to limiting such facilities to those related to air transporta-

tion, the 1987 Act also included any local taxes on aviation fuel (other than taxes in effect on or before December 30, 1987 the date of the enactment of the Act).

(c) **Exception.**

(i) If the governing statutes controlling the owner or operator's financing in effect before September 3, 1982, provided for the use of any revenue from the airport to support not only the airport but the airport owner's general debt obligations or other facilities, then the limitation on the use of revenue generated by the airport shall not apply.

(ii) Clearly supportable and documented charges made by a governmental entity to reimburse that entity for payments of capital or operating cost of the airport may be allowed. Any charge must be supported by documented evidence. A flat payment "in lieu of taxes" without such documentation is not acceptable. If an indirect charge is levied against the airport in support of capital or operating expenses, the indirect charge must also be levied against other governmental cost centers in accordance with generally accepted accounting procedures and practices.

(iii) The Chief Counsel has determined based on legal history that revenue generated by the airport does not include revenue generating facilities which are unrelated to air operations or services which support or facilitate air transportation. This has been interpreted by the Chief Counsel to include royalties and related revenue from natural gas and would also apply to other similar natural resources. It would also apply to revenues generated by a convention center; however, the land rental paid to the airport by the convention center would be airport revenue if the convention center is located on land acquired with Federal funds or under the Surplus Property Program or land acquired without Federal assistance if shown on the Exhibit A as airport land. This would not be applicable if the revenues were generated from Federal surplus property land where the deed restrictions take precedent.

(3) As noted in paragraph 2–11, Section 16, Section 23, or Section 516 do not permit the conveyance of land for the express purpose of generating revenue. However, if conveyed, they may with FAA consent be used for a nonaviation purpose which is completely subordinate to their prime purpose. As a condition for FAA consent, all income from such use must be applied to airport development and operation and there must be a periodic review of income and expenditure records to confirm that the revenues have been so applied.

(4) Under the guidelines in Chapter 7, the FAA may grant a release from the airport obligations of surplus properties in order to permit their sale and conversion to operational assets which better serve the purpose for which they were initially obligated. As a consequence of such a release, and until the determined fair value of the released property has been fully expended on approved items of airport development, there must be a continuing accountability to FAA of the proceeds of sale or the amounts obligated for reinvestment in airport development.

(5) Section 18a(8) of the Airport and Airway Development Act and Section 511(a)(19) of the AAIA require an assurance that sponsors will maintain a fee and rental structure for facilities and services being provided to airport users which will make the airport as self–sustaining as possible. An opinion from Chief Counsel advises that Section 18a(8) of the Airport and Airway Development Act of 1970 does not require periodic statements indicating the degree to which an airport is or is not self–sufficient. The opinion goes on to say that in cases of noncompliance such statements will be required. Airports field offices shall accept at face value a sponsor's assurance that it will strive for financial self–sufficiency and shall not concern themselves in this matter except in cases of a complaint.

b. Questionable Financial Data. When the data provided does not clearly lead to a conclusion or in special circumstances needing audit expertise, the Airports office should request that the Office of the Inspector General (OIG) perform an audit of the airport's books and records or the FAA can contract with an independent Certified Public Accountant (CPA) to perform the audit.

c. Disposition of Excess Revenues. The progressive accumulation of substantial amounts of airport revenues may suggest an inquiry as to the reasonableness of user charges and fees. It may also indicate that the aeronautical facilities available to the public are not being expanded commensurate with the growth of aviation. Unless the sustained accumulation of airport revenues can be viewed as building a reserve for periodic renewal of facilities (seal coating, re–roofing, etc.), the community should be urged to convert a reasonable amount of the airport revenues into improvements that would enhance the value of the airport to the community (T–hangars, aircraft parking areas, terminal buildings, etc.). Such improvements may include types of development that are not eligible for grants of funds under the AIP.

d. Diversion of Funds. FAA consent to use or lease for nonairport purposes any land at surplus property airports (including property conveyed for revenue

production) does not constitute authority to apply the resulting income other than to maintain, operate, and further develop the airport. Even where the proceeds of such use of airport properties exceed the reasonable costs of meeting the owner's maintenance and operating commitment, any diversion of excess airport revenues to a nonairport purpose constitutes a breach of the terms and conditions of the deed of conveyance, unless specifically approved by the FAA. This approval will not be given at surplus property airports that have received a grant since the enactment of the AAIA of 1982 when the revenue assurance first appeared (except as specified in Section 511(a)(12) of the Act). When a surplus property airport has not received a grant under AAIA of 1982, approval will not be given unless:

(1) Maintenance and operation of the airport is and has been at an acceptable level and fully conforms to all established safety and certification requirements,

(2) There are no violations or defaults of the transfer deed or of subsequent agreements with the Government applicable to the airport,

(3) There are no foreseeable improvements, extensions, rehabilitations or additions to the capital plant that would be desirable to improve aeronautical services to the public or improvements to enhance the nonaeronautical use revenue production capabilities of the airport, and

(4) The airport owner is advised that such action may affect their ability to compete for grant funds other than airport entitlements under the Airport Grant Program.

4–21. MANAGEMENT OF GRANT ACQUIRED PERSONAL PROPERTY. Under the ADAP and AIP grant programs various items of personal property were eligible for acquisition. Examples of eligible items are ARFF vehicles and auxiliary equipment, security equipment and radios. The airport owner is required to maintain property records of this equipment and reconcile these records at least every 2 years by physical inventory for the first 6 years after the property was acquired.

a. Requirements of 49 CFR 18.32. 49 CFR 18.32 sets forth standards governing the use and disposition of federally–financed personal property. The sponsor's property management procedures must provide for accurate records, biannual inventories, adequate maintenance and control, and proper sales procedures.

b. Sponsor Inventory System. 49 CFR 18.32 requires sponsors to maintain property records of equipment during its useful life. The inventory should include:

(1) Description of the property;

(2) Manufacturer's serial number;

(3) Other identification numbers;

(4) Acquisition data and cost;

(5) Source of the property;

(6) Percentage of Federal funds used in the purchase of the property;

(7) Location, use, and condition of the property; and

(8) Ultimate disposition data including sales price, or the method used to determine current FMV if the grantee reimburses the grantor agency for its share.

c. Determine Sponsor's Equipment Usage. When a field compliance inspection is made, it should be determined if the sponsor is using the property for the purpose for which it was acquired. The primary means for this review will be the airport owner's inventory system. If the equipment is not being so used, action should be taken for disposition or transfer of the equipment. If the equipment is being used for unauthorized purposes, action should be taken to stop such use.

d. Methods of Disposition. 49 CFR 18.32 provides for the disposition of personal property acquired under grant agreement when such property is no longer needed. Disposition will be made as follows:

(1) Any personal property with a current per unit FMV of less than $5,000 can be retained, sold or otherwise disposed of. Any proceeds may be retained by the sponsor. The sponsor must inform FAA of disposition.

(2) Personal property with a current per unit FMV in excess of $5,000 may be retained or sold. If the property is sold, any proceeds, less the cost of selling, shall be applied to eligible project and related development in accordance with Order 5100.38.

(3) Personal property may be used as trade–in for other eligible property. No future accountability is required.

SECTION 6. USE BY THE GOVERNMENT

4–22. JOINT USE BY FEDERAL GOVERNMENT AIRCRAFT. There are three types of agreements under which the Government has the right to joint use of airport facilities, either with or without charges.

a. Grant Agreements. The sponsor's assurances, which accompany the project application, provide that all facilities of the airport developed with Federal aid and all those usable for the landing and taking off of aircraft will be available to the United States at all times without charge for use by Government aircraft, in common with others. However, the assurances provide that if such use is deemed substantial, a reasonable share of the cost of operating and maintaining the facilities used, in proportion to the use may be charged. Substantial use is defined in the assurances as:

(1) Five or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

(2) The total number of calendar month operations (counting each landing and each takeoff as a separate operation) of Government aircraft is 300 or more; or

(3) The gross accumulative weight of Government aircraft using the airport in a calendar month (the total operations of Government aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

b. P.L. 80–289. Surplus Airport Property Instruments of Transfer issued under P.L. 80–289 provide that "The United States shall at all times have the right to make nonexclusive use of the landing area (runways, taxiways and aprons) of the airport without charge, except that such use may be limited as may be determined at any time by the Administrator of FAA to be necessary to prevent undue interference with use by other authorized aircraft and provide further that the United States shall be obligated to pay for any damage caused by its use, and if the use is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area, in proportion to such use." For guidance on substantial use, see a. above.

c. Regulation 16 Transfer. Surplus Airport Property Instruments of Transfer issued under WAA Regulation 16 (i.e., prior to the effective date of P.L. 80–289) provide that the Government shall at all times have the right to use the airport in common with others provided that such use may be limited as may be determined by the Administrator of FAA to be necessary to prevent interference with use by other authorized aircraft, so long as such limitation does not restrict Government use to less than 25 percent of the capacity of the airport. They further provide that Government use of the airport to this extent shall be without charge of any nature other than payment for any damage caused.

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

4–23. SPACE FOR AIR TRAFFIC CONTROL ACTIVITIES, COMMUNICATIONS, WEATHER AND NAVAIDS. Other than the rights reserved to the Government for joint–use of airport facilities (paragraph 4–22), the only express obligation to provide space for Government activities is contained in grant agreements. The project application incorporates in the sponsor's assurances certain obligations with respect to providing facilities for air traffic control, weather and communication activities. There are subtle differences in the terms of this assurances under the various grant programs. Therefore, when questions arise regarding the use of space, refer to the most current grant agreement.

a. Under ADAP and AIP space is not required to be furnished rent free. However, the sponsor is required to furnish to the Federal Government without cost such area of land as may be necessary for the construction at Federal expense of facilities to house any air traffic control activities, or weather–reporting activities and communication activities related to air traffic control. This may include utility easements. The airport owner is not required to furnish cost–free–land for parking or roads to serve the facility. (G.C. Opinion dated March 27, 1962)

b. Under AIP grant agreements, FAA has the right to identify needed land area at any time during the life of the grant. Under ADAP, the grant agreement must identify the needed space.

c. There is no specific obligation to provide space for other Government activities such as Post Office, Customs, Immigration, etc. However, the leasing of space at nominal rental rate to such activities which complement or support aeronautical operations will not be viewed as a misuse of surplus property conveyed for revenue purposes.

4-24. GOVERNMENT USE DURING A NATIONAL EMERGENCY OR WAR.

a. Airports Subject to Surplus Property Instruments of Transfer. The primary purpose of each transfer of surplus airport property under Section 13 of the Surplus Property Act of 1944 was to make the property available for public or civil airport needs. However, it also was intended to ensure availability of the property transferred and of the entire airport for use by the United States during a war or national emergency. Most instruments of disposal of surplus airport property reserved or granted to the United States a right of exclusive possession and control of the airport during a war or national emergency.

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

c. Negotiation Regarding Charges. Any negotiations by the Government for the right of use of an airport under the national emergency use provision of a surplus airport property instrument of transfer should be between the Government agency requiring such use and the airport owner. The only compliance responsibility FAA has with regard to this provision is that of releasing the property from its application when such action is appropriate. (See Chapter 7.)

CHAPTER 5. THE AIRPORT COMPLIANCE PROGRAM

5–1. BASIS AND OBJECTIVES. The FAA's compliance program has as its base the enforcement of contractual obligations which an airport accepted when receiving Federal grant funds or the transfer of Federal property. These contractual obligations were levied in an effort to protect the public's interest in civil aviation or to achieve compliance with other national laws. Given the magnitude of the number of obligated airports and the variety of obligations applicable at each airport, our compliance program must primarily be centered on assisting airport owners to be knowledgeable about their Federal obligations in an effort to achieve voluntary compliance. This educational approach to achieve voluntary compliance will be supplemented with periodic or "spot" monitoring of obligated airports and a program to vigorously investigate and pursue resolution when complaints about potential violations are registered. Ultimately, when mutual resolution cannot be obtained voluntarily, we must be prepared to resort to enforcement procedures described in Section 2 of Chapter 6.

a. Basis. The various grant, land transfer, and surplus property transfer agreements discussed in previous sections, together with the numerous statutes cited form the basis for the continuing obligations of airport owners to the United States. The responsibility to monitor and enforce compliance with these many obligations rests with FAA.

b. Objectives. The basic objective of the compliance program is to assure a system of safe and properly maintained airports that are operated in a manner which protects the public's interest and investment in aviation. This can best be achieved by a positive, continuing educational program to assist sponsors in knowing what their obligations are and promoting their voluntary compliance with the many obligations.

(1) Voluntary Compliance. Most violations of sponsor obligations are not a deliberate intent to circumvent the terms of deeds or agreements with the Government. Generally, they occur because of a lack of understanding on the part of local officials as to the specific requirements involved or their applicability. Therefore, the basis of this compliance program is an educational effort to ensure that airport sponsors are fully informed of their obligations and their specific applicability to the sponsor's airport.

(2) Advisory Services. While the FAA will not substitute its judgment for that of the airport owner in matters of administration and management of airport facilities, it is in a unique position to assist airport owners in achieving voluntary compliance through prudent advice and counsel. This will be primarily directed in assisting airports to understand the nature and applicability of compliance obligations affecting their airport.

(3) Compliance Oversight. Given the approximately 2800 obligated airports, compliance oversight by an annual visit or review at each airport is not practicable. However, annual periodic or "spot" monitoring of a portion of obligated airports to ascertain individual problems and to track problems which may be indications of system deficiencies is necessary. Similarly, the Airports staff must be vigilant to potential compliance problems at obligated airports, be prepared to actively pursue compliance problems discovered or brought to their attention through a complaint process, and be prepared to take the necessary enforcement action if the issue is not voluntarily resolved to the satisfaction of FAA.

(4) Uniform Application of Remedies. In pursuing resolution through remedial or enforcement action, every effort should be made to obtain voluntary correction of the condition. Only when all appropriate measures of persuasion have been exhausted should the enforcement actions outlined in Section 2 of Chapter 6 be applied. When these are deemed necessary, FAA personnel should act swiftly and in a manner that is fair and uniform.

5–2. PROGRAM ELEMENTS. To be effective, a program for carrying out the FAA's continuing responsibilities for airport compliance must rely primarily on an ongoing education program. This will enhance the airport owner's knowledge of Federal compliance obligations and promote an understanding as to how these relate to the airport.

Program efforts to achieve the education of the federally–obligated airport owner will be the primary thrust of the program. Limited surveillance activities designed to detect recurring deficiencies, system weaknesses, or individual abuses need to be accomplished annually to maintain program integrity. To achieve maximum benefit, the findings of these periodic or "spot monitoring" activities need to receive maximum exposure among owners of federally–obligated airports. The investigation of complaints constitutes the third primary program element. Complaint investigation and resolution will continue to be a reasonable way for FAA Airports employees to monitor and achieve compliance with Federal obligations. When efforts to obtain voluntary compliance fail, a program of

remedial and enforcement actions shall be available as a means of obtaining compliance.

a. Education. Education of obligated airport owners may take many forms. Education begins when the owner receives the first Federal grant or transfer of Federal property. Airports personnel should discuss with first–time sponsors the impact of specific grant assurances and/or land transfer obligations. Continuing to let them know that FAA personnel are available to discuss their problems (advisory services) is also an important part of their ongoing education. At least once every 3 years, obligated airport owners should be advised in writing to review their grant or land transfer obligations, advised to contact Airports personnel to obtain further information, and should be provided with information or material to aid their understanding of the impact of these obligations. Airports personnel should take opportunities to conduct or participate in periodic seminars or courses for federally–obligated airport owners to further enhance their understanding of Federal obligations.

b. Surveillance. Surveillance is the process of gathering data on the condition or operation of an airport to determine what the airport owner is doing to achieve and maintain compliance with Federal obligations. This kind of information is available in total or in part from many sources, including: site visits by Airports personnel; site visits by FAA personnel from other offices/services; and site visits by others outside of FAA, but knowledgeable about some aspects of airport compliance (for example, state inspectors performing FAA Form 5010, Airport Master Record, inspections). Surveillance may also be achieved through the conduct of telephone discussions or written correspondence with appropriate airport personnel to ascertain if potential problems exist. Further follow up through on–site surveillance may or may not be necessary depending upon information obtained during the telephone conversation or written response. In all cases, the files should be documented to show the items discussed and the FAA's action taken or conclusions reached.

An alternate acceptable means of surveillance is to provide obligated owners with printed material which identifies and explains the obligations accepted by that airport owner. A duly authorized official of the airport would be required to certify that this individual has read and understands the material and that the airport is being operated in accordance with all obligations. In order to accept the airport owners certification, the airport official should be required to provide an explanation of what procedures or actions are in effect to assure that the airport is operated in accordance with the applicable assurances and obligations. The airport official must note any discrepancies and, if appropriate, further follow–up surveillance such as telephone calls or an on–site visit will be initiated. Use of this sponsor "self–certification" method should not be used where Airports personnel have any reason to believe that the owner is not complying with any aspect of the airport's Federal obligations. In those cases, one of the more direct forms of surveillance shall be used.

Airports personnel shall annually use one or a combination of these methods to conduct spot surveillance of at least 25 percent of their obligated airports. A rotation schedule should be established to ensure that each obligated airport is subject to a surveillance inspection once every 4 years. Generalized findings from these surveillance inspections (not noting specific airports affected) should receive maximum publicity among other obligated airports as an additional means of educating federally–obligated airport owners and in an effort to emphasize the presence of an ongoing spot surveillance program to monitor compliance.

c. Investigations of Complaints. Airports personnel must be available to investigate complaints from the aviation community that an airport is not living up to any aspect of its compliance obligations. The investigation should be completed in a timely manner with the complainant notified in writing of the outcome of the investigation. In certain circumstances, where several complainants allege the same violation of a grant or land obligation and where no new facts have been provided which indicate another review or investigation is warranted, FAA need not investigate the complaint. However, the complaint should be acknowledged and the complainant provided with a summary of our finding from the previous investigation. When an investigation discovers that a violation of a Federal obligation does exist, Airports personnel will immediately initiate dialogue with the affected airport and attempt to achieve voluntary compliance with the pertinent obligation(s).

d. Remedial and Enforcement Actions. When a violation of a Federal obligation has been discovered and all reasonable efforts by Airports personnel have failed to achieve voluntary compliance on the part of the airport owner, Airports personnel must initiate remedial and enforcement action in accordance with Chapter 6, Section 2.

5–3. PRIORITIES AND EMPHASIS. All Federal airport obligations are considered equally important when pursuing remedial or enforcement actions. However, consistent with the FAA mission the most important objective in FAA's oversight of the compliance program is to ensure and preserve safety at obligated airports. This includes maintaining runways, taxiways,

and other operational areas in a safe and usable condition, keeping the approaches cleared, providing operable and well maintained marking and lighting, etc. In developing priorities for regional administration of the surveillance portion of the compliance program, it is reasonable to direct priority emphasis to those airports with the largest potential for abuse.

5–4. RESPONSIBILITIES.

a. AAS–300 will provide overall guidance and direction for the conduct of the Airports Compliance Program and conduct regional evaluations to determine compliance with this Order and look for opportunities to improve the quality of the program. AAS–300 will be available to assist Airports offices in the interpretation of policy, the applicability of conditions or assurances to a particular airport, and for guidance and assistance, as needed, in pursuing enforcement. AAS–300 will also be responsible for preparing generalized educational material to be used by Airports offices in the conduct of their compliance program.

b. Regional and field Airports offices will be directly responsible for the day–to–day conduct of the Compliance Program in accordance with the direction provided in this Order. This guidance establishes the basic requirements to be achieved in the Compliance Program. However, regions are encouraged to take a more aggressive education and surveillance program as regional resources permit.

5–5. TYPES OF COMPLIANCE STATUS. The following types of Compliance status will be used to describe the airport owner's efforts in meeting its Federal obligations:

a. **Compliance.** The airport owner is meeting its commitments under the Federal obligations.

b. **Conditional Compliance.** The airport owner has been notified of compliance deficiencies on the airport and is willing to correct the deficiencies within a specified period of time.

c. **Pending Noncompliance.** The airport owner has not taken or agree to take corrective action on the compliance deficiencies noted above and is now being notified of its rights to a hearing. (See Chapter 6, Section 2.)

d. **Noncompliance and Default.** As a result of the hearing noted above or if no hearing is requested or if the airport owner has no right to a hearing, a determination will be made by the Airports Division Manager that the airport owner is in a status of noncompliance and default with its Federal obligations and appropriate sanctions or civil penalties will be taken. (See Chapter 6, Section 2.)

5–6. ANALYZING COMPLIANCE STATUS.

a. **Data Analysis.**

(1) Data accumulated for compliance purposes must be carefully analyzed to evaluate the airport owner's actual compliance performance and to identify appropriate actions to correct any deficiencies noted. More often than not an airport owner, when apprised of a deficiency, will ask for recommendations on how to correct the problem.

(2) Some confusion and lack of uniformity results from the basic problem of what constitutes noncompliance. Certainly, the height of obstructions in an approach and the condition of airfield paving and drainage may be adequate evidence of the airport owner's performance. They are, however, merely evidence. The judgment to be made in all cases is whether the airport owner is reasonably meeting the Federal commitments. It is the FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating regulations, etc.) is in place which in FAA's judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out.

b. **Follow–up.**

(1) Each Airports field office should develop a system of procedures to ensure continuing follow–up action on any identified compliance deficiencies until compliance with obligations to the Government can be accomplished.

(2) Action must be initiated at those airports that are not being maintained or operated in accordance with their owners' commitments. An effort should be made to help the owner voluntarily meet these commitments. When the owner has demonstrated an unwillingness to correct deficient conditions necessary to obtain compliance with the Federal obligations, the Airports office must pursue corrective enforcement action. (See Chapter 6, Section 2.)

(3) A formal compliance inspection may be undertaken as part of a routine compliance surveillance inspection or initiated as a result of a complaint. It may also be initiated when FAA has any reason to believe that an airport owner may be in violation of one or more of the airport's Federal obligations. Appendix 6 contains the procedures to follow in a formal compliance inspection.

5–7. COMPLIANCE DETERMINATIONS. The Airports office must be continuously aware of which airports are not in compliance. Before a Federal airport grant can be issued an official determination must be made that the airport owner is in compliance with its

Federal obligations. This determination of compliance status is a judgment based on a review of all available data concerning the airport and the circumstances of its operation. The review need not include a formal compliance inspection. It should, however, include the review of available data on hand and be supplemented as appropriate with spot surveillance material. At the region's discretion, absent any information to the contrary, it may rely on an airport's "self certification" of compliance (paragraph 5–2b) in making its compliance determination prior to issuance of a grant. It is important that all data used to support this determination be recorded in appropriate files.

When assessment of the airport owner's performance leads to a conclusion that compliance commitments are not being met, the status of PENDING NONCOMPLIANCE must be made and proper notification given (see Chapter 6, Section 2). Failure to declare the PENDING NONCOMPLIANCE hides the fact that discrepancies exist and results in a lack of follow–up leading to correction of the problem. Prompt communication between FAA and the airport owner regarding deficiencies is essential to establish a definite understanding of FAA position and a record for future action.

The owner must, however, be clearly told that based on available data the airport owner is failing to live up to the terms of the Federal agreements. The airport should be informed that these failures could place the FAA in a position which would preclude any further consideration of Federal assistance to the airport (see Chapter 6, Section 2). The actions needed to correct the situation must be spelled out and a reasonable time proposed for their accomplishment. Most importantly, the Airports office must make a timely follow–up review and record the airport owner's response and action.

5–8. RECORD OF COMPLIANCE STATUS. The appropriate Airports office shall maintain for each obligated airport under its jurisdiction an individual record which accurately reflects the extent to which the airport owner is complying with its obligations, and the actions carried out under this Chapter to monitor its compliance with these obligations.

a. Suggested Procedures. A compliance folder for each obligated airport is a convenient means of accumulating the data needed to support the compliance determination. It should contain, or be cross–referenced to the documents creating obligations and all appropriate correspondence or inspection reports, leases, financial records, etc., that specifically relate to the compliance status of the airport. The folder should contain any surveillance compliance actions taken, complaints received, records on any formal compliance inspections undertaken, findings from other investigations, and any other pertinent records or correspondence.

b. Summary Status of Compliance (Figure 1). The suggested format in Figure 1 is the minimum record of findings and determinations that should be maintained for each airport receiving a surveillance compliance review or compliance determination prior to issuing a letter of tentative allocation under the Federal Airport Grant Program.

c. Instructions for Completing the Summary. The record should indicate the name, locations, and sponsor (or grantee) of the airport. Under "Basis of Obligations" enter a check mark immediately over each type of instrument applicable, together with the date of the latest such instrument. For each specific element of compliance identified as (a) through (j), there should be a "yes" or "no" entry indicating whether the airport owner is complying with the applicable obligation. In the three columns to the right of these elements should be entered the date of the inspection, visit, correspondence, or other form of surveillance which support this determination. Supporting evidence to make this determination should be current within the year preceding the date shown at the top of the form. Guidance for making entries against the compliance elements shown are as follows:

(1) Maintenance. The owner will be considered in compliance if the physical condition of paving, lighting, grading, runway, marking, etc., meets applicable standards and if the owner is following realistic procedures to preserve these facilities in an acceptable condition.

(2) Approach Protection. The owner will normally be considered in compliance if there are no obstructions or where an FAA aeronautical study has determined that an obstruction is not a hazard and the obstruction complies with the conditions of the determination.

(3) Use of Airport Property. All airport property, including each area of surplus property, must be reviewed to be sure it is being used or is available for use for the purposes intended by the grant agreement or land conveyance. Also, personal property accountability records are to be verified.

(4) Use of Revenues. Income from airport operations and revenue–producing property must be fully accounted for and adequate records kept to evidence its application to or reservation for airport purposes.

(5) Exclusive Rights. There must be no evidence of an intent to deny any qualified enterprise the

right to conduct an aeronautical activity. Where there is a history or a possibility of denial, the standards and qualifications which are the basis for such denial must be supportable as identified and discussed in this Order.

(6) **Control and Operations.** The owner is in compliance if the airport is available to the public under fair, equal, reasonable, and nondiscriminatory conditions, and with adequate provisions for the operation of all facilities on a continuing basis. Additionally, the owner must not have entered into any agreements which preclude the owner of its rights and powers and must not be in violation of the exclusive rights provision. The airport owner's fee and rental structure is to be reviewed for conformance with the grant assurances.

(7) **Conformity to ALP.** There should be no actual or proposed development or use of land and facilities contrary to an ALP previously approved by the FAA.

(8) **Continuing Special Conditions.** This refers to special conditions other than those controlled by project payments under ADAP/AIP. It includes specific commitments regarding the disposition of proceeds from the disposal of surplus property and any other continuing pledges undertaken by the airport owner.

(9) **Narrative Comments.** List any complaints, previously noted violations which continued uncorrected, status of actions taken, and plans and schedules for achieving the correction of deficiencies. A signature will confirm that the compliance status "Finding" and all other entries are known to be as indicated and are based upon the evidence listed.

(10) **Disposal of Grant Acquired Land.** While reviewing airport property (paragraph (3) above) and the ALP (paragraph (8) above) it should be noted whether that all land acquired with grant funding, including land acquired for noise protection, is still being used for the purpose acquired. If there is a question concerning the usage see paragraph 4–17 for guidance. The owner is in compliance if the land is being used for the purpose acquired.

(11) **Compatible Land Usage.** The owner will be considered to be in compliance if it is determined that there are no incompatible land uses in the immediate vicinity of the airport over which the airport owner has jurisdiction.

SUMMARY STATUS OF AIRPORT COMPLIANCE

As Of: MM DD YY

Airport Name:

Location: | Owner:

Basis of Obligations: *(Check box)*
☐ Reg. 16 ☐ P.L. 289 ☐ FAAP/ADAP/AIP ☐ Section 16/23/516 ☐ Other (List)_____

	Compliance Status	As Determined By:				
		Compliance Inspection:		Airport Visit:		Desk Review*
	By Items	Inspector's Name	Date	Visitor's Name	Date	
a. Maintenance	☐ Yes ☐ No					☐ Yes
b. Approach Protection	☐ Yes ☐ No					☐ Yes
c. Use of Airport Property	☐ Yes ☐ No					☐ Yes
d. Use of Revenues	☐ Yes ☐ No					☐ Yes
e. Exclusive Rights	☐ Yes ☐ No					☐ Yes
f. Control and Operation	☐ Yes ☐ No					☐ Yes
g. Conformity to ALP	☐ Yes ☐ No					☐ Yes
h. Special Conditions	☐ Yes ☐ No					☐ Yes
i. Disposal of Grant Acquired Land	☐ Yes ☐ No					☐ Yes
j. Compatible Land Use	☐ Yes ☐ No					☐ Yes

* Desk Review — If checked "Yes", discuss nature of view on reverse side of this form.

FINDING: The owner is in a status of
☐ Compliance ☐ Conditional Compliance ☐ Pending Noncompliance ☐ Noncompliance and Default.**

Narrative Comment:

** Determination made by Manager, Airports Division

Inspector's name and date of inspection:

Signature | Title | Date

FAA Form 5190-8 (10-89)

Figure 1. Summary Status of Airport Compliance (FAA Form 5190-8)