



# Federal Aviation Administration

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## MEMORANDUM

Date: **AUG 24 2012**

To: Regional Airports Division Managers  
610 Branch Managers  
620 Branch Managers

From: *Benito De Leon*  
Benito De Leon, Director, Office of Airport Planning and Programming (APP-1)

*Randall S. Fiertz*  
Randall S. Fiertz, Director, Office of Airport Compliance (ACO-1)

*Michael J. O'Donnell*  
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Subject: **Interim Guidance on Mineral Extraction and Request for Data Update**

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With the help of Federal Aviation Administration (FAA) staff from several regions, we are preparing a new Advisory Circular (AC) that will provide guidance on how to handle the rapidly growing oil and gas extraction activity on and near federally obligated airports nationwide.

The new AC will be issued for internal review and comment prior to issuance to the public for review and comment in the Federal Register later this year. We do not yet know the exact timeframe for publication of the AC, but we will keep you informed.

In addition to the AC, the passage of the FAA Modernization and Reform Act of 2012 (P.L. 112-95, Section 813) requires the FAA to develop procedures to permit certain general aviation airports to use revenue generated by mineral extraction, production, or lease for subject to certain conditions. ACO policy guidance was published in the Federal Register for public comment on May 22, 2012 (77 FR 30350), and is available on the FAA website.

In the meantime, this memorandum outlines interim guidance for airport sponsors and FAA Regions and Airport District Offices (ADO). We are also asking each Region to complete the attached survey for any mineral extraction activities so that we can track any requests and actions taken by FAA Regions to date.

## Background

- Oil and gas extraction may raise important environmental, compliance and safety considerations. All existing FAA policies and procedures in these areas are applicable and must be considered. There is nothing unique about oil and gas extraction that would render these activities exempt from existing agency policies and procedures.
- The new AC will not include any new policies. However, it will highlight and explain how existing agency policies and procedures apply to oil and gas extraction.
- At this time, the proposed AC is specific to oil and gas development; however it may also be useful guidance for other mineral extraction activities, such as coal, sand and gravel, and timber, in and near the airport environment.

## Interim Guidance for Regions/ADOs

As we try to build a body of knowledge around mineral extraction activities, we are interested in seeing new airport mineral extraction proposals for mineral production methods introduced into the airport environment in order for us to consider the range of planning, environmental, compliance and airport safety issues associated with proposed development. This information will be used to shape the AC, and will allow ARP to notify the Regions of any concerns identified. Until the AC is published, the Regions or ADOs should consult with Headquarters when there is a new mineral extraction proposal<sup>1</sup> (e.g., lease, agreement, or contract) involving, but not limited to, the following:

- Hydraulic fracturing (shale gas/oil production)
- Mountain-top mining (coal strip mines)
- Coal bed methane extraction
- Oil sand extraction/oil shale extraction
- Injection wells
- Other extraction or mining activities subject to significant local/regional public controversy over potential environmental consequences and/or health risk.

## Headquarters Notification and Consultation

For these types of proposals cited above, please submit the following information to the attention of Danielle Rinsler and Rick Etter of APP-400:

1. Regional contact
2. Name of airport

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<sup>1</sup> A new mineral extraction proposal does not include new activities under an existing lease, contract, or agreement.



3. Type of mineral extraction proposed (e.g., hydraulic fracturing, mountain-top mining, coal bed methane extraction, etc.).
4. Type of agreement proposed if known – see attached survey for explanation of different types of agreements.
5. Indicate if proposal is for “on-airport development”<sup>2</sup> or if all proposed development is “off-airport” where there is no surface access to the airport.
6. A concise description of the development proposal, including the proposed lease terms, and any additional information that would be helpful to understand extraction proposal. If an “off-airport” proposal, describe where the off-airport extraction site is located and how the minerals underlying the airport property are to be accessed and extracted (e.g., horizontal drilling at proposed depth, other extraction/mining method at proposed depth, etc.).
7. A drawing based on the airport layout plan that depicts the extent and complexity of the proposed development. The drawing should include areas proposed to be used for the oil and gas development and related facilities.

The proposals submitted will be given a general review. You may expect that the headquarters review will be completed within 30 days upon receipt of a complete proposal submittal; however, we will work with you to expedite our review as feasible. Headquarters approval of mineral extraction proposals and associated leases, ALP changes and other documentation is not required. However, Regions and ADOs may seek further guidance and assistance from Headquarters as needed for these projects.

### Revenue Determination

If an airport sponsor asserts its mineral rights revenue should not be considered airport revenue,<sup>3</sup> the Region/ADO should request the sponsor provide documentation supporting its position. In assessing the sponsor’s submissions, the Region or ADO may use the following general guidance to determine if the sponsor’s assertion has been supported:

- *Non-Airport Revenue:* If the airport’s instruments of property conveyance<sup>4</sup> specifically exclude the mineral rights, the airport sponsor may not be bound by the

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<sup>2</sup> On-airport development includes mineral exploration, construction and operation of well sites, drilling sites, surface mining sites, and related infrastructure (e.g., access roads, utilities, pipelines, ponds, storage, disposal, or compression/treatment facilities, etc.) to be located on obligated airport land.

<sup>3</sup> This refers to circumstances in which a sponsor asserts that the revenue should not be subject to revenue use requirements specifically delineated in statute, the sponsor’s grant assurance obligations, and FAA’s Policy and Procedures Concerning the Use of Airport Revenue (64 FR 7696) (Revenue Use Policy)

<sup>4</sup> These documents support the airport’s Exhibit A property map referencing the deed(s) of transfer, assumption, or lease agreement(s), or other instrument(s) of conveyance from the conveyor to the sponsor. It is incumbent upon the

Federal grant obligations associated with mineral rights revenue. It is incumbent upon the sponsor to provide the legal documentation supporting their claim that mineral rights revenue is excluded from federally obligated property. Regions or the ADO should consult with ACO-100 before making the determination.

- *Airport Revenue:* If the airport sponsor is bound by Federal obligations, through any or all of the following actions, then the mineral rights revenue may be considered airport revenue if:
  - The airport sponsor has accepted federal assistance on or after October 1, 1996;
  - The airport sponsor had active obligations in effect on or after October 1, 1996; (this includes land purchased with AIP funds); or
  - The airport sponsor has surplus property instruments of transfer.

If the airport sponsor meets any of the above stated thresholds, and there is no documentation supporting legal separation of the minerals from the airport property prior to October 1, 1996, the use of mineral rights revenue must comply with the revenue use policy and Public Law 112-95, Section 813, Use of Mineral Revenue at Certain Airports. This applies to all mineral deposits within airport property boundaries regardless of the method of extraction or the location of the extraction site.

- *Revenues associated with leasing Airport Property:* The revenues generated from the lease of airport property to conduct drilling or extraction operations must be at fair market value for non-aeronautical use per the Revenue Use Policy (49 U.S.C. §§ 47107(b) and 47133).

### Review Process

The Regions or ADOs should apply existing policy and procedures to all reviews of mineral extraction development. This review shall include:

- lease or other type of agreement
- airspace analysis,
- on- and off-airport compatible land use,
- airport design standards,
- compliance with federal grant assurances,
- surplus property obligations, if applicable, and
- environmental reviews under FAA Order 5050.4B.

The following off-airport development activities must also be reviewed for the following:

- When horizontal drilling is expected to occur beneath the airport surface

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sponsor to provide the legal documentation supporting their claim that mineral rights are excluded from airport revenue.



- lease or other type of agreement
  - airspace analysis;
  - on-and off-airport compatible land use;
  - airport design standards; and
  - compliance with federal grant assurances
- When well sites, drilling rigs and other infrastructure could pose a hazard to air navigation
    - airspace analysis; and
    - on- and off-airport compatible land use

**Further Guidance**

- APP-400, ACO-100, and AAS-100 are available to provide further guidance on environmental, compliance and safety issues and review a sponsor’s practices that may be inconsistent with sponsor’s obligations and or existing policy.
- Regional Counsel and AGC are available to provide legal counsel to FAA offices on proposed mineral extraction projects.
- ACO is available for consultation on guidance issued for certain general aviation airports seeking to use airport revenue derived from mineral extraction for specific non-airport purposes (also see “Mineral Rights Revenue Exemption Toolkit” at [http://www.faa.gov/airports/airport\\_compliance/mineral\\_revenue/](http://www.faa.gov/airports/airport_compliance/mineral_revenue/)).
- Mineral Extraction Survey. Attached is a survey for existing mineral extraction activities on obligated airports. Please respond with the requested information by October 8, 2012. ACO previously conducted a survey in January 2011. In an effort to complete and update this information, we are asking each Region to complete the attached survey for all existing and proposed mineral extraction activities and related projects. We will periodically survey the Regions and ADOs in an effort to maintain an up-to-date database of mineral extraction projects.

It is crucial that the FAA handle the associated issues consistently. For that reason, it is important that Regions and ADOs not attempt to create separate policies at the local level. If there are any questions about this interim policy, the new Advisory Circular, or the Airport Revenue Use Policy, please let us know.

	<b>CONTACT</b>	<b>PHONE</b>
Environmental and Planning	Danielle Rinsler	(202) 267-8784
Compliance and Revenue Use	Kevin Willis	(202) 267-8741
Safety, Standards, and Engineering	Brian Rushforth	(202) 493-4655

## Attachment: Mineral Extraction Survey

Please provide the following information by October 8, 2012. Following is a link to the reporting spreadsheet.

<Q:\ARP-SWAP\Mineral Extraction Survey\Mineral Extraction Survey - ver 2.xlsx>

- A. Regional Contact for Mineral Extraction:
- B. Name of the airport with ongoing or expected mineral extraction;

And then for the listed airport, provide the following:

1. Type of mineral extraction:
  - a. Conventional gas and oil development.
  - b. Unconventional gas and oil development. Horizontal Drilling and Hydraulic Fracturing, Coal Bed Methane.
  - c. Coal or other mining beneath airport surface land.
  - d. Surface Mining (sand/gravel, coal, other).
  - e. Other (specify in comments)
2. Identify mineral extraction agreement.
  - a. Gas and oil lease.
  - b. Separated Mineral Estate. (Airport does not own minerals. The minerals rights were not acquired by the airport. Airport owns the surface estate and the mineral owner's extraction rights are subordinated to airport use.)
  - c. Production Contract (Extraction/development agreement, permit, drilling contract).
  - d. Surface Use Agreement/Contract
  - e. Other (describe in comments).

(When possible, please send a copy of the gas/oil lease, production contract or subordination agreement.)
3. Lessee / developer Name. (Original and any sub-lease/assignment).
4. Indicate lease/agreement is for On-Airport development or only Off-Airport development (i.e. no airport surface land access allowed under the lease).
5. Is on-airport development depicted on Airport Layout Plan (ALP)?
6. Fair Market Value Documentation.
  - a. Competitive Bid
  - b. Appraisal (Mineral, surface land use)
  - c. Other
  - d. Not applicable (not owned)
7. Indicate date of sponsor's request to FAA, type of request (i.e. new lease, modification, or facility closure/reclamation) and the FAA action date.
8. If known, please indicate any reported incidents, response/corrective action and current status of incident (closed, ongoing).

Any questions/concerns please contact Rick Etter at 202-267-8773 / [rick.etter@faa.gov](mailto:rick.etter@faa.gov).

Thank you your assistance and cooperation.