

notification or publication of an NASD Market Participant's intent to deny access will have no bearing on the merits of any claim between the NASD Market Participant and any affected broker-dealer, nor will it insulate the NASD Market Participant from potential liability for violations of NASD rules or the federal securities laws. The Commission believes that the mere act of providing notice of a denial of access pursuant to this rule change should not insulate an NASD Market Participant from liability if that denial of access were illegal.

The Commission finds good cause for accelerating approval of Amendment No. 2 prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment No. 1 thereto were noticed for the full comment period and that no comments were received. Amendment No. 2 clarifies the proposal and provides that compliance with the proposed rule would not bear on the merits of any claim between an NASD Market Participant and any affected broker-dealer, nor would it shield an NASD Market Participant from liability for a violation of NASD rules or federal securities laws. Furthermore, accelerated approval should permit NASD to promptly begin to receive notices for any potential denials of access, thereby enabling NASD to investigate any denial of access while providing notice of such denials to NASD members to minimize any potential disruptions in the ADF market that could result. For these reasons, the Commission finds good cause exists, consistent with sections 15A(b)<sup>18</sup> and 19(b)(2) of the Act,<sup>19</sup> to approve Amendment No. 2 on an accelerated basis.

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NASD-2004-002) and Amendment No. 1 is hereby approved, and that Amendment No. 2 is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>18</sup> 15 U.S.C. 78o-3(b).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> *Id.*

<sup>21</sup> 17 CFR 200.30-3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2004-18925]

#### Airport Improvement Program Grant Assurances; Proposed Modifications and Opportunity To Comment

**AGENCY:** Federal Aviation Administration (FAA), U.S. DOT.

**ACTION:** Notice of modification of Airport Improvement Program grant assurances and of the opportunity to comment.

**SUMMARY:** The FAA proposes to modify the standard grant assurances that are required of a sponsor before receiving a grant under the Airport Improvement Program (AIP). Pursuant to applicable law, the Secretary of Transportation is required to provide notice in the **Federal Register** and to provide an opportunity for public comment on proposals to modify the assurances and on proposals for additional AIP assurances.

Modifications to the AIP grant assurances are primarily being made to remove grant assurances that govern the application and implementation of an AIP project that expires with the completion of the project and place them as grant agreement conditions or as certifications as part of the application process. Minor technical edits for clarification of certain assurances are also being proposed. Also, a new assurance is being proposed regarding the statutory requirement for Disadvantaged Business Enterprise (DBE) participation in airport concessions. Previously this requirement was incorporated by reference. Finally, two new assurances are being proposed as required by Vision 100—Century of Aviation Reauthorization Act, (Public Law (P.L.) 108-176).

The FAA also believes that it is appropriate to review and revalidate the need for all of the assurances given the dynamic nature of airport operations, needs and economics. Although the assurances are generally verbatim restatements of current law, FAA believes it would be most helpful for the public to assist FAA in this review by soliciting comments about all of the assurances. Most assurances, if the need for deletion or change is justified, will require statutory change. FAA may use the public comments to justify future requests by the agency for statutory changes.

**DATES:** Comments must be submitted on or before 30 calendar days following

publication in the **Federal Register**. Any necessary or appropriate revision to the assurances resulting from the comments received will be adopted as of the date of a subsequent publication in the **Federal Register**. Finally, comments may be provided on the project-related assurances and certifications FAA is proposing to convert into grant conditions or certificates as listed in the table below. FAA anticipated the wording of the future grant conditions/certifications, which can be found at <http://www.faa.gov/arp/pdf/assrnep.pdf>, will be unchanged except to the extent that some minor changes may be made due to the new context for these conditions/certifications.

**ADDRESSES:** Comments may be delivered or mailed to the FAA, Airports Financial Assistance Division, APP-500, Attn: Mr. Kendall Ball, Room 619, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kendall Ball, Airport Improvement Program Branch, APP 520, Airports Financial Assistance Division, Room 619, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-7436.

**SUPPLEMENTARY INFORMATION:** The Secretary must receive certain assurances from a sponsor (applicant) seeking financial assistance for airport planning, airport development, noise compatibility planning or noise mitigation under Title 49, U.S.C., as amended. These assurances are submitted as part of a sponsor's application for Federal assistance and are incorporated into all grant agreements. As need dictates, these assurances are modified to reflect new Federal requirements. Notice of such proposed modifications is published in the **Federal Register**, and an opportunity for public comment is provided.

The current assurances were published on February 3, 1988, at 53 FR 3104 and amended on September 6, 1988, at 53 FR 34361; on August 29, 1989, at 54 FR 35748; on June 10, 1994 at 59 FR 30076; on January 4, 1995, at 60 FR 521; on June 2, 1997, at 62 FR 29761; and on August 18, 1999, at 64 FR 45008.

#### Discussion of Modifications

In the past, FAA used four separate sets of standard assurances: Airport Sponsors (owners/operators), Planning Agency Sponsors, Non-Airport Sponsors Undertaking Noise Compatibility Program Projects (hereinafter referred to as Non-Airport Sponsor Assurances), and State Assurances (for the Block

Grant Program). Moreover, we included requirements for carrying out AIP-funded projects as general grant assurances. From time to time, this approach has led to confusion over the application of these requirements to projects completed without AIP support. FAA is modifying the assurances currently in effect to incorporate the changes noted below.

To simplify the discussion, the modifications are shown in a table format for comparison with existing assurances, which can be found at <http://www.faa.gov/arp/pdf/assrnap.pdf>. The disposition of each assurance will be shown as: (a) Retention as an assurance with its proposed new assurance number; (b) conversion to a certification to be included with the

application for Federal Assistance (Standard Form 424); or (c) conversion to a grant condition. Project related assurances will be converted to certifications or grant conditions. This change in approach will clarify those grant requirements that are both project specific and expire upon the completion of the project. This notice is not intended to change the manner in which grant agreement obligations are enforced.

For the most part, assurances that are proposed for retention are incorporated without change, however, there are some instances of wording modifications for clarity that are noted in the table.

As a result of this proposed change, the assurances for Planning Agency

Sponsors and those for Non-Airport Undertaking Noise Compatibility Program Projects will be eliminated and incorporated either as grant application certifications or grant conditions since all of the assurances are effective only for the duration of the projects. In addition, two new assurances are added at the end as a result of the recently enacted Public Law 108-176 and another assurance was added in full text that was previously incorporated by reference. Finally, old assurance number 31 (proposed new assurance c. 15) is changed to reflect section 164 of Public Law 108-176, which permitted expanded use of revenue from sale of land purchased for noise compatibility purposes.

Assurance number	Title	Disposition
A. ....	General .....	Retained as A. General, with minor addition of block grant states in par. 1.
B. ....	Duration and Applicability .....	Retained as B. Duration and Applicability with elimination of par. 3.
C. 1. ....	General Federal Requirements .....	Conversion to grant condition, new assurance for the DBE concession requirement.
2. ....	Responsibility and Authority of the Sponsor.	Conversion to application certification.
3. ....	Sponsor Fund Availability .....	Conversion to application certification.
4. ....	Good Title .....	Conversion to application certification; clarification added to assurance c. 1 (see old assurance no. 5 immediately below).
5. ....	Preserving Rights and Powers .....	Retained as assurance c. 1; clarifying change in subparagraph (b) to include reference to Good Title; delete provisions related to nonairport local governments' receiving funding for noise compatibility projects under former 5(c).
6. ....	Consistency with Local Plans .....	Conversion to application certification.
7. ....	Consideration of Local Interest .....	Conversion to application certification.
8. ....	Consultation with Users .....	Conversion to application certification.
9. ....	Public Hearings .....	Conversion to application certification.
10. ....	Air and Water quality Standards .....	Eliminated by P.L 108-176.
11. ....	Pavement Preventive Maintenance .....	Retained as assurance c.2.
12. ....	Terminal Development Prerequisites .....	Conversion to application certification.
13. ....	Accounting System, Audit, and Record Keeping Requirements.	Conversion to grant condition.
14. ....	Minimum Wage Rates .....	Conversion to grant condition.
15. ....	Veteran's Preference .....	Conversion to grant condition.
16. ....	Conformity to Plans and Specifications	Conversion to grant condition.
17. ....	Construction Inspection and Approval ...	Conversion to grant condition.
18. ....	Planning Projects .....	Conversion to grant condition.
19. ....	Operation and Maintenance .....	Retained as assurance c.3.
20. ....	Hazard Removal and Mitigation .....	Retained as assurance c.4.
21. ....	Compatible Land Use .....	Retained as assurance c.5.
22. ....	Economic Nondiscrimination .....	Retained as assurance c.6. with clarifying language.
23. ....	Exclusive Rights .....	Retained as assurance c.7 with clarifying language.
24. ....	Fee and Rental Structure .....	Retitled and retained as assurance c.8.
25. ....	Airport Revenues .....	Retitled and retained as assurance c.9.
26. ....	Reports and Inspections .....	Par. (a), (c), and (d) retained as assurance c.10; par. (b) revised.
27. ....	Use of Government Aircraft .....	Retained as assurance c.11.
28. ....	Land for Federal Facilities .....	Retained as assurance c.12.
29. ....	Airport Layout Plan .....	Retained as assurance c.13.
30. ....	Civil Rights .....	Retained as assurance c.14.
31. ....	Disposal of Land .....	Retained as assurance c.15, wording changed in accordance with P.L. 108-176.
32. ....	Engineering and Design Services .....	Conversion to grant condition.
33. ....	Foreign Market Restrictions .....	Conversion to grant condition.
34. ....	Policies, Standards, and Specifications	Conversion to grant condition.
35. ....	Relocation and Real Property Acquisition.	Conversion to grant condition.
36. ....	Access by Intercity Buses .....	Retained as assurance c. 16.
37. ....	Disadvantaged Business Enterprises ....	Retained as assurance c. 19.
New Assurance ....	Hangar Construction .....	New assurance c. 17.
New Assurance ....	Competitive Access .....	New assurance c.18.

Assurance number	Title	Disposition
New Assurance .....	Participation by Disadvantaged Businesses in Airport Concessions (previously incorporated by reference).	Incorporated as full text in assurance c. 19., as subparagraph (b).

In summary, of the 39 provisions of the existing airport sponsor assurances, 19 will be retained as assurances, 12 will be converted to grant conditions and 8 will be converted to application certifications. One assurance was eliminated by Public Law 108-176, and three additional assurances are proposed (two as a result of Public Law 108-176 and one due to the need to provide full text for an assurance that was previously incorporated by reference.)

### Proposed Assurances

*The assurances being proposed under this notice are as follows:*

#### Airport Sponsors

##### A. General

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors and block grant states.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, United States Code (U.S.C.), subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.

3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated into, and become part of, the grant agreement.

##### B. Duration and Applicability

##### 1. Airport Development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor

The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the

project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

##### 2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

##### C. Sponsor Assurances

The sponsor hereby assures and certifies, with respect to this grant that:

##### 1. Preserving Rights and Powers

(a) It will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

(b) It will maintain good title and not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, U.S.C., to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or

document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions, and assurances contained in this grant agreement.

(c) For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the property owner that includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

(d) If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

(e) If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49 U.S.C., the regulations and the terms, conditions and assurances in the grant agreement, and shall ensure that such arrangement also requires compliance therewith.

##### 2. Pavement Preventive Maintenance

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

##### 3. Operation and Maintenance

(a) The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or

prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to close the airport temporarily for non-aeronautical purposes must first be approved by the Secretary.

In furtherance of this assurance, the sponsor will have in effect arrangements for:

1. Operating the airport's aeronautical facilities whenever required;
2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
3. Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an Act of God or other condition or circumstance beyond the control of the sponsor.

(b) It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

#### 4. Hazard Removal and Mitigation

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, lighting, or otherwise mitigating existing airport hazards, and by preventing the establishment or creation of future airport hazards.

#### 5. Compatible Land Use

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for implementation of noise compatibility program measures upon which Federal

funds have been expended, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility with respect to the airport.

#### 6. Economic Nondiscrimination

(a) It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

(b) In any agreement, contract, lease, or other arrangement under which the airport sponsor grants a right or privilege to conduct or to engage in activity providing aeronautical services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:

1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
2. Charge reasonable, and not unjustly discriminatory, prices for each unit of aeronautical service, provided that the service provider may be allowed to make reasonable and uniformly applicable price reductions for volume purchasers. Discounts may be offered on a basis other than volume provided the basis is reasonable and justified.

(c) Each fixed-base operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and using the same or similar facilities.

(d) Each air carrier using such airport shall have the right to service its own aircraft or to use any commercial aeronautical service provider authorized or permitted by the airport sponsor to provide aeronautical services.

(e) Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers making similar use of such airport and using similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory carriers or non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those

obligations already imposed on air carriers in such classification or status.

(f) It will not exercise or grant any right or privilege that operates to prevent any person, firm, or corporation operating its own aircraft on the airport from performing any services on its own aircraft, including, but not limited to, maintenance, repair, and refueling, provided that such service(s) are performed by the aircraft operators own employees.

(g) If the airport sponsor elects to provide aeronautical services to the public, it shall do so only on the same terms as are uniformly applicable to other commercial aeronautical service providers authorized by the airport sponsor to provide such services at the airport. This assurance is not intended to prevent the airport sponsor from invoking its propriety exclusive right to be the sole provider of a given aeronautical service.

(h) The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

(i) The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

#### 7. Exclusive Rights

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, providing services at an airport by a single fixed-base operator shall not be construed as an exclusive right if both of the following apply:

(a) It would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide such service(s), and

(b) Allowing more than one fixed-base operator to provide such service(s) would require the reduction of space currently leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in

conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities that, because of their direct relationship to the operation of aircraft, can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, U.S.C.

#### 8. Airport Revenue Generation

It will maintain a fee and rental structure for airport revenue generation for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. Except for facilities intended to be constructed for revenue production or the real property upon which such facilities are constructed, no part of the Federal share for an airport development project or an airport planning or noise compatibility project for which a grant is made under Title 49, U.S.C., the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate base in establishing fees, rates, and charges for users of that airport.

#### 9. Airport Revenue Use

(a) All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities that are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. However, if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

(b) As part of the annual audit required under the Single Audit Act of

1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49 U.S.C. and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

(c) Civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 471207 of Title 49, U.S.C.

#### 10. Reports and Inspections

It will:

(a) Submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

(b) On request by an authorized agent of the Secretary, make available for inspection records, documents, deeds, agreements, regulations, cost allocation plans, budgets and other instruments of the airport and sponsor affecting airport development projects and uses of airport revenues.

(c) For noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

(d) In a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

1. All amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

2. All services and property by the airport to other units of government and the amount of compensation received for provision of each such service and property.

#### 11. Use by Government Aircraft

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with

other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

(a) Five (5) or more Government aircraft are regulatory based at the airport or on land adjacent thereto; or  
(b) The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Governmental aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

#### 12. Land for Federal Facilities

It will furnish without cost to the Federal Government for use in conjunction with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas, or any portion thereof, will be made available as provided herein within four months after receipt of a written request from the Secretary.

#### 13. Airport Layout Plan

(a) It will keep up to date at all times an airport layout plan of the airport showing (1) Boundaries of the airport and all proposed additions thereto, together with the boundaries of all office areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to

the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities that are not in conformity with the airport layout plan, as approved by the Secretary, and that might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport.

(b) If a change or alteration in the airport or the facilities is made that the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and that is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) Eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

#### 14. Civil Rights

It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) The period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

#### 15. Disposal of Land

(a) For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land when the land is no longer needed for such purposes at fair market value at the earliest practicable time. That portion of the

proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) Be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project, as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.

(b) For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (a) Upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (b) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

(c) Land shall be considered to be needed for airport purposes under this assurance if (a) It may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (b) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

(d) Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels and safety associated with operation of the airport.

#### 16. Access by Intercity Buses

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no

obligation to fund special facilities for intercity buses or for other modes of transportation.

#### 17. Hangar Construction

If the airport owner or operator and a person who owns an aircraft agree that hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner a long-term lease for the hangar that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

#### 18. Competitive Access

(a) If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that—

1. Describes the requests;
2. Provides an explanation as to why the requests could not be accommodated; and
3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.

(b) Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six-month period prior to the applicable due date.

#### 19. Disadvantages Business Enterprise

(a) The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the

Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

(b) The airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of title 49, U.S.C.) or qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act). In taking this action, the airport owner or operator will be subject to the requirements of 49 CFR Part 23 or subsequent regulations issued by the Secretary to implement section 47107(e) of Title 49, U.S.C.

These proposed assurances will be issued pursuant to the authority of title 49, U.S.C.

Upon acceptance of the Airport Improvement Program (AIP) grant by an airport sponsor, the assurances become a contractual obligation between the airport sponsor and the Federal government.

Dated: Issued in Washington, DC, on August 13, 2004.

**Dennis E. Roberts,**

*Director, Office of Airport Planning and Programming.*

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BILLING CODE 1505-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### **Proposed Policy Statement: Proposed Change to the Airworthiness Criteria for Airworthiness Certification of Normal Category Airships; FAA Document FAA-P-8110-2; PS-ACE100-2004-10033**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on FAA document number FAA-P-8110-2, Airship Design Criteria, (ADC) at Change 2. The ADC is suitable for the type certification of airships in the normal category, with a seating capacity of nine seats or less, excluding pilots. This notice advises the public, and especially manufacturers and potential manufacturers of normal category airships, that the FAA intends to develop Change 3 for this document.

**DATES:** Comments must be received on or before December 22, 2004.

**ADDRESSES:** Copies of the current Airship Design Criteria, FAA Document FAA-P-8110-2, PS-ACE100-2004-10033, may be requested from the following: Small Airplane Directorate, Standards Office (ACE-110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. These airworthiness criteria are also available on the Internet. These criteria will be posted in the Regulations and Guidance Library at the following address <http://www.airweb.faa.gov/policy>. Send all comments concerning the proposed Change 3 of the airworthiness criteria for normal category airships to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:**

Mike Reyer or Karl Schletzbaum, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE-111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4131 (M. Reyer); or (816) 329-4146 (K. Schletzbaum); fax: (816) 329-4090; e-mail: [karl.schletzbaum@faa.gov](mailto:karl.schletzbaum@faa.gov).

### Discussion

#### *Background*

Comments received may be utilized to develop Change 3 for the ADC. This notice includes the Airship Design Criteria at Change 2 as issued on February 5, 1995. Since the issuance of Change 2 of the ADC, the FAA has received various inputs relating to revising or improving these criteria, but these inputs have not been incorporated into the document yet. Some of these recommendations may have been unsolicited and not received in the context of a formal process. Additionally, with time and the rapid change of technology since the last update of these criteria, some of the recommendations may not be as applicable as when they were initially proposed. We also believe that the structure of the industry affected has changed substantially since the receipt of many of the comments. Considering these factors, we decided to not include any of the proposed changes to the ADC in this notice but to solicit new, additional, or revised comments from the current active airship industry. This notice includes the ADC at Change 2 as issued on February 5, 1995, as a reference document for commenters.

This notice is necessary to advise the public of the development of this proposed change to the airship

airworthiness criteria and to give all interested persons an opportunity to present their views on it.

Airships are certificated under the provisions of 14 CFR, part 21, § 21.17(b), which allows the Administrator to designate appropriate airworthiness criteria for special classes of aircraft, including airships. Designated criteria should provide a level of safety equivalent to the airworthiness regulations contained in 14 CFR, parts 23, 25, 27, 29, 31, 33, and 35. The FAA has decided that airworthiness criteria, not the issuance of actual regulations, are the most efficient and flexible method of obtaining an acceptable level of safety for normal category airships. The FAA bases this decision on the formative state of this industry and the potential for airships to develop into a larger segment of the aerospace industry. The FAA may decide to codify airship airworthiness requirements at a later time, if warranted.

These are acceptable airworthiness criteria, but not the only acceptable criteria, for certifying a normal category airship in the United States. These criteria are internationally recognized, but are not suitable for all types of airships, specifically those that have more than nine seats. Up to 19 seats, the FAA may consider some other criteria based on foreign airship airworthiness standards. For certain types of proposed large airships, the FAA has recognized the need for a transport category of airships and has noticed the German-Dutch Transport Airship Requirement (TAR) as proposed airworthiness criteria.

These proposed airworthiness criteria only apply to non-rigid airships that are capable of vertical ascent (near equilibrium) operations. These proposed airworthiness criteria do not include provisions for hybrid aircraft/airships that require or operate with significant dynamic lift. The FAA expects that modifications and additions to proposed criteria will be necessary for specific airship projects, due to the unique nature of each airship design. Comments on technology issues beyond the current criteria will be reviewed, but not necessarily incorporated.

### SUPPLEMENTARY INFORMATION:

#### **Comments Invited**

We invite your comments on this proposed change to airworthiness criteria for normal category airships. Send any data or views as you may desire. Identify the airworthiness criteria Policy Statement Number PS-ACE100-2004-10033 on your