

Chapter 17. Self-sustainability

17.1 Introduction. This chapter provides guidance on the requirement that the airport remain as self-sustaining as possible under the circumstances. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to provide guidance to airport sponsors regarding the sponsor's requirement to be as self-sustaining as possible and to ensure that the airport maintains a rate and fee schedule that conforms to the grant assurances and is consistent with the FAA's *Policy Regarding Airport Rates and Charges*, 61 Fed. Reg. 31994, June 21, 1996, and as amended at 73 Fed. Reg. 40430, July 14, 2008) (*Rates and Charges Policy*).

17.2. Legislative History. Congress set forth the requirement for airports to be as self-sustaining as possible in two acts:

a. Section 511(a)(9) of the Airport and Airway Improvement Act of 1982 (AAIA) requires airports to be as self-sustaining as possible under the circumstances at that airport. (See 49 United States Code (U.S.C.) § 47107(a)(13) and Grant Assurance 24, *Fee and Rental Structure*.)

b. Section 112(a) of the Federal Aviation Administration Authorization Act of 1994 (1994 Authorization Act) amended 49 U.S.C. § 47107(l)⁴² to require FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999, (*Revenue Use Policy*) to take into account whether sponsors – when



Airports must maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under airport-specific circumstances. Absent an agreement with aeronautical users, the federal obligation to make the airport as self-sustaining as possible does not permit the airport to establish fees for the use of the airfield that exceed the airport's airfield costs. Aeronautical users include general aviation from single-engine operators to corporate flight departments and commercial air carriers. (Photos: FAA)



⁴² The referenced section is the small letter "L" (not the number "1").

entering into new or revised agreements otherwise establishing rates, charges, and fees – have undertaken reasonable efforts to be self-sustaining in accordance with 49 U.S.C. § 47107(a)(13).

17.3. Applicability. The self-sustaining requirement, Grant Assurance 24, *Fee and Rental Structure*, applies to both publicly and privately owned airports that are obligated under an Airport Improvement Program (AIP) grant.

17.4. Related FAA Policies. The FAA has included the self-sustaining rule in two policies:

a. FAA's *Policy Regarding Airport Rates and Charges*, 61 Fed. Reg. 31994, June 21, 1996 (*Rates and charges Policy*).

b. FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999 (*Revenue Use Policy*).

17.5. Self-sustaining Principle.

Airports must maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under the particular circumstances at that airport. The requirement recognizes that individual airports will differ in their ability to be fully self-sustaining, given differences in conditions at each airport. The purpose of the self-sustaining rule is to maintain the utility of the federal investment in the airport.

17.6. Airport Circumstances. At some airports, market conditions may not permit a sponsor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services.

In such circumstances, a sponsor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the federal obligation to make the airport as self-sustaining as possible given its particular circumstances.



A sponsor may charge aviation museums and aeronautical secondary and post secondary education programs conducted by accredited education institutions operating aircraft reduced rental rates to the extent that civil aviation receives reasonable tangible or intangible benefits from such use. However, attention must be paid to whether an aviation museum or post secondary school operates actual aircraft. This is important since a "flying" museum is an aeronautical activity, while one that does not operate aircraft may not be classified as one. (Photo: FAA)

17.7. Long-term Approach. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the sponsor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

17.8. New Agreements. Sponsors are encouraged to undertake reasonable efforts to make their particular airports as self-sustaining as possible when entering into new or revised agreements or when otherwise establishing rates, charges, and fees.

17.9. Revenue Surpluses. Some airports may have sufficient market power to charge fees that exceed total airport costs. In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenue may be spent under 49 U.S.C. § 47107(b)(1).

Reasonable reserves and other funds to facilitate financing and to cover contingencies are not considered revenue surpluses. The sponsor must use any surplus funds accumulated in accordance with the *Revenue Use Policy*.

Additionally, the progressive accumulation of substantial amounts of surplus aeronautical revenue could warrant an FAA inquiry into whether the aeronautical fees are consistent with the sponsor's obligation to make the airport available on fair and reasonable terms.

The FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

17.10. Rates Charged for Aeronautical Use. Charges for aeronautical uses of the airport must be reasonable. For aeronautical users, the FAA considers charges that reflect the cost of the services or facilities satisfies the self-sustaining requirement. Accordingly, the FAA does not consider the self-sustaining obligation to require the sponsor to charge fair market value rates to aeronautical users.

As explained in more detail in chapter 18 of this Order, *Airport*



At some airports, market conditions may not permit a sponsor to establish fees that are sufficiently high to recover aeronautical cost (such as the hangar/fixed-base operator (FBO) facility seen here) and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, a sponsor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible given its particular circumstances. (Photo: FAA)

Rates and Charges, fees for the use of the airfield generally may not exceed the airport's capital and operating costs of providing the airfield. Aeronautical fees for landside or non-movement area airfield facilities (e.g., hangars and aviation offices) may be at a fair market rate, but are not required to be higher than a level that reflects the cost of services and facilities. In other words, those charges can be somewhere between cost and fair market value. In part, this is because hangars and aviation offices are exclusively used by the leaseholders while airfield facilities are used in common by all aeronautical users.

The FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

17.11. Nonaeronautical Rates. Rates charged for nonaeronautical use (e.g., concessions) of the airport must be based on fair market value (e.g., lease of land at fair market rent subject to the specific exceptions listed in this chapter).

If market rent for nonaeronautical uses results in a surplus, that surplus can be used to subsidize aeronautical costs of the airport. It is to the benefit of aviation and the traveling public that aeronautical users be able to use the airport at rates and charges below the cost of providing the aviation facilities and services if these are effectively subsidized by nonaeronautical revenues. See, for example, *Bombardier Aerospace, et al. v. City of Santa Monica*, FAA Docket No. 16-03-11, January 3, 2004, (available online) where the FAA noted that it promotes the practice of using nonaviation revenues to subsidize aeronautical activities since it reduces the economic impact on aviation users and the aviation public.

17.12. Fair Market Value. Fair market fees for use of the airport are required for nonaeronautical use of the airport and are optional for non-airfield aeronautical use. Fair market pricing of airport facilities can be determined by reference to negotiated fees charged for similar uses of the airport or by appraisal of comparable properties. However, in view of the various restrictions on use of property on an airport (i.e., limits on the use of airport property, height restrictions, etc.), appraisers will need to account for such restrictions when comparing on-airport with off-airport commercial nonaeronautical properties in making fair market value determinations.

17.13. Exceptions to the Self-sustaining Rule: General. While the general rule requires market rates for nonaeronautical uses of the airport, several limited exceptions to the general rule have been defined by congressional direction and agency policy based on longstanding airport practices and public benefit. These limited exceptions include (a) property for community purposes and (b) not-for-profit aviation organizations, (c) transit projects and systems, and (d) military aeronautical units, all of which are discussed in the following paragraphs.

17.14. Property for Community Purposes. A sponsor may make airport property available for community purposes at less than fair market value on a limited basis provided all of the following conditions exist: (a) the property is not needed for an aeronautical purpose, (b) the property is not producing airport revenue and there are no near-term prospects for producing revenue, (c) allowing the community purpose will not impact the aeronautical use of the airport, (d) allowing the community purpose will maintain or enhance positive community relations in

support of the airport, (e) the proposed community use of the property is consistent with the Airport Layout Plan (ALP), and (f) the proposed community use of the property is consistent with other requirements, such as certain surplus and nonsurplus property federal obligations requiring the production of revenue by all airport parcels.

17.15. Exception for Community Use. The following are the circumstances where the FAA will consider community use to be consistent with the self-sustaining requirement. Agreements for community use of airport land should incorporate the following requirements as conditions of use.

a. Acceptance. The local community must use the land in a way that enhances the community's acceptance of the airport; the use may not adversely affect the airport's capacity, security, safety, or operations. Acceptable uses include public parks and recreation facilities, including bike or jogging paths.

When the use does not directly support the airport's operations, a sponsor may not provide land at less than fair market value rent. Accordingly, the airport must generally be reimbursed at fair market rent for airport land used for road maintenance or equipment-storage yards or for use by police, fire, or other government departments.

b. Minimal Revenue Potential. At the time it contemplates allowing community use, the sponsor may only consider land that has minimal revenue-producing potential. The sponsor may not reasonably expect that an aeronautical tenant will need the land or that the airport will need the land for airport operations for the foreseeable future (i.e., master plan cycle). When a sponsor finds that the land may earn more than minimal revenue, but still below fair market value, the sponsor may still permit community use of the land at less than fair market value rent provided the rental rate approximates the revenue that the airport could otherwise earn.



The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, U.S. Coast Guard, the U.S. Air Force Reserve, Civil Air Patrol, and Naval Reserve air units operating aircraft at the airport. (Photo: Top, FEMA; Bottom, USAF)

c. Reclaiming Land. The community use does not preclude reuse of the property for airport purposes. If the sponsor determines that the land has greater value than the community's continued use, the sponsor may reclaim the land for the higher value use.

d. No Airport Revenue. The sponsor generally may not use airport revenue to support the capital or operating costs associated with the community use.

NOTE: As explained in chapter 22 of this Order, *Releases from Federal Obligations*, airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (49 United States Code (U.S.C.) § 303).^{43 44}

17.16. Exception for Not-for-Profit Aviation Organizations.

a. Reduced Rent. A sponsor may charge reduced rental rates to aviation museums and aeronautical secondary and post secondary education programs conducted by accredited education institutions to the extent that civil aviation receives reasonable tangible or intangible benefits from such use. A sponsor may also charge reduced rental rates to Civil Air Patrol units operating aircraft at the airport.

b. In-kind Services. The FAA expects sponsors to charge police or fire fighting units that operate aircraft at the airport reasonable fees for their aeronautical use. However, the airport may offset the value of any services that the units provide to the airport against the applicable airport fees.

17.17. Exception for Transit Projects. When the airport sponsor owns a transit system and its use is for the transportation of airport passengers, property, employees, and visitors, the sponsor may make its property available at less than fair market value rent for public transit terminals, right-of-way, and related facilities without violating the *Revenue Use Policy* or self-sustaining requirements. In such circumstances, the FAA would consider a lease of nominal value to be consistent with the self-sustaining requirement.

17.18. Exception for Private Transit Systems. Airports generally charge private ground transportation providers fair market value rental rates. However, a sponsor may, without violating the *Revenue Use Policy* or self-sustaining requirements, charge private operators less than fair market value rent when the service is extremely limited and where the private transit service – such as bus, rail, or ferry – provides the primary source of public transportation to the airport.

⁴³ Department of Transportation (DOT) Section 4(f) property refers to publicly owned land of a public park, recreation area, wildlife or waterfowl refuge, or historic site of national, state, or local significance. It also applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites or that are publicly owned and function as – or are designated in a management plan as – a significant park, recreation area, or wildlife and waterfowl refuge. (See 49 U.S.C. § 303.)

⁴⁴ See 23 CFR § 774.11(g) and FHWA and FTA Final Rule; Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, 73 F.R. 13368-01, March 12, 2008 (Interpreting DOT Section 4(f) not to apply to temporary use of airport property.)

17.19. Exception for Military Aeronautical Units. The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, the U.S. Air Force Reserve, U.S. Coast Guard, Civil Air Patrol (CAP) and Naval Reserve air units operating aircraft at the airport. The search and rescue (SAR) and disaster relief roles played by Coast Guard, the U.S. Air Force Auxiliary, and the Civil Air Patrol are also recognized as a prime aeronautical role. These units generally provide services that directly benefit airport operators and safety.

This exception does not apply to military units with no aeronautical mission on the airport.

17.20. through 17.24. reserved.

THIS PAGE INTENTIONALLY LEFT BLANK