

## Part V: Financial Responsibilities

### Chapter 17. Self-Sustainability

#### 17.1 Introduction.

This chapter provides guidance on the requirement that an airport remain as self-sustaining as possible under its specific circumstances. The FAA Regional Airports Divisions (Regions), Airports District Offices (ADOs) and the Office of Airport Compliance and Management Analysis (ACO) provide guidance to airport sponsors regarding the 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, 78 Fed. Reg. 55330 \(September 10, 2013\)](#) (Rates and Charges Policy).

#### 17.2 Statutory Requirements.

Congress established the self-sustainability requirement in:

##### a. 1982 Authorization Act.

Section 511(a)(9) of the Airport and Airway Improvement Act of 1982 (AAIA), Pub. L. 97-248, (codified at 49 U.S.C. § 47107(a)(13)) requires airports accepting FAA grants to be as self-sustaining as possible under the circumstances at that airport. (See [Grant Assurance 24, Fee and Rental Structure](#)).

##### b. 1994 Authorization Act.

Section 112(a)(3) of the Federal Aviation Administration Authorization Act of 1994, Pub. L. 103-305, (codified at 49 U.S.C. § 47107(k)(3)) requires that the FAA's [Revenue Use Policy](#) take into account whether sponsors – when 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 Related Grant Assurance and FAA Policies.

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.

The FAA has included the self-sustaining rule in two policies:

1. FAA's [Policy Regarding Airport Rates and Charges 78 Fed. Reg. 55330 \(September 10, 2013\)](#) (Rates and Charges Policy).

2. FAA's [Policy and Procedures Concerning the Use of Airport Revenue](#), 64 Fed. Reg. 7696 (February 16, 1999), as amended, 79 Fed. Reg. 66282 (November 07, 2014) (Revenue Use Policy).

#### **17.4 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.<sup>1</sup> 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.

#### **17.5 Airport Circumstances.**

At some airports, market conditions may not permit a sponsor to establish fees that are high enough to recover aeronautical costs, but still low enough to attract and retain commercial aeronautical services. In these circumstances, an airport may establish fees lower than what is needed to achieve self-sustainability in order to assure that services are provided to the public (see section 17.9, *Aeronautical Use Rates*).

#### **17.6 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 strategies to make the airport as financially self-sustaining as possible.

#### **17.7 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.

#### **17.8 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. (See chapter 15, *Permitted and Prohibited Uses of Airport Revenue*, for more information on permitted uses of airport revenue).

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<sup>1</sup> 49 U.S.C. § 47107(a)(13).

Reasonable reserves and other funds, which facilitate financing and 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. Moreover, the FAA may review aeronautical fees if an airport's rate base includes charges to maintain levels of reserve funds that are not warranted by the airport's debt obligations or other circumstances at the airport.

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.

### **17.9 Aeronautical Use Rates.**

Consistent with [Grant Assurance 22, Economic Nondiscrimination](#), charges for aeronautical use of the airport must be reasonable. This reasonableness requirement takes precedence over the requirement for a self-sustaining rate structure with respect to aeronautical users. Accordingly, the FAA does not consider the self-sustaining requirement to require the sponsor to charge fair market value rates to aeronautical users. For aeronautical users, the FAA considers charges that reflect the cost of the services or facilities to satisfy the self-sustaining requirement.<sup>2</sup>

As explained in more detail in chapter 18, *Airport 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.

### **17.10 Nonaeronautical Use Rates.**

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

If fair market rent for nonaeronautical uses results in surplus revenue, the sponsor may elect to use that surplus revenue to subsidize aeronautical costs of the airport, such as,

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<sup>2</sup> See FAA's [Revenue Use Policy](#), Section VII.B.5.

a residual rates agreement. Subsidization by nonaeronautical revenues benefits aviation and the traveling public because aeronautical users can use the airport at rates and charges below the cost of providing the aviation facilities and services. See, for example, *Bombardier Aerospace, et al. v. City of Santa Monica*, FAA Docket No. 16-03-11, January 3, 2005, ([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.

### **17.11 Fair Market Value.**

Except as provided in 49 U.S.C. § 47107(v), Community Use of Airport Land, fair market fees for use of the airport are the required minimum for nonaeronautical use of the airport. 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. Appraisers should account for airport-specific circumstances (e.g., limits on the use of airport property, height restrictions), when comparing on-airport with off-airport commercial nonaeronautical properties in making fair market value determinations. The market rate for nonaeronautical users should be different from, and usually higher than, the aeronautical rates.

### **17.12 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 Congress and through agency policy based on longstanding airport practices and public benefit. These limited exceptions include providing property for (a) public community purposes, (b) not-for-profit aviation organizations, (c) military aeronautical units, (d) transit projects, and (e) private transit systems. (See FAA [Revenue Use Policy](#), Sections VII.D - H).

These are exceptions to the self-sustaining rule requirement and are further described in the sections below. In addition, airport sponsors must ensure that they are using the land in accordance with their grant obligations and property conveyance restrictions. More information is available in chapter 22, *Land Use Changes and Releases on Federally Acquired and Federally Conveyed Land*.

### **17.13 Exceptions to the Self-Sustaining Rule: Providing Property for Public Community Purposes.**

After coordination with the Region/ADO on a land use change to non-aeronautical use as described in chapter 22, *Land Use Changes and Releases on Federally Acquired and Federally Conveyed Land*, 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:

- (1) the property is not needed for an aeronautical purpose,
- (2) the property is not producing airport revenue and there are no near-term prospects for producing revenue,
- (3) allowing the community purpose will not impact the aeronautical use of the airport,
- (4) allowing the community purpose will maintain or enhance positive community relations in support of the airport,
- (5) the proposed community use of the property is consistent with the Airport Layout Plan (ALP), and
- (6) 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.

In addition to the statutory exceptions for certain interim compatible recreational purposes and certain permanent compatible recreational and public park uses under 49 U.S.C § 47107(v)<sup>3</sup>, the circumstances in which below-market rental rates of airport land for community purposes will be considered consistent with the grant assurances are listed below.<sup>4</sup> Agreements for community use of airport land should incorporate these 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.

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<sup>3</sup> FAA will not find airport sponsors in non-compliance for certain interim or permanent compatible recreational and public park uses if the airport property was purchased using funds from a Federal grant for acquiring land issued prior to January 1, 1989 and other conditions set forth in 49 U.S.C. § 47107(v) are met.

<sup>4</sup> See FAA's [Revenue Use Policy](#), Section VII (D), 64 Fed. Reg. 7696, 7721, February 16, 1999.

**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.

**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 Use of Airport Revenue.**

The sponsor may not use airport revenue to support the capital or operating costs associated with the community use. (See FAA's [Revenue Use Policy](#), section VII.D.4.).

**NOTE:** As explained in chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*, 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 (codified at 49 U.S.C. § 303).<sup>5</sup>

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<sup>5</sup> 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.) See also, 23 CFR § 774.11(g) and FHWA and FTA [Final Rule; Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, 73 Fed. Reg. 13368-01, \(March 12, 2008\)](#) (interpreting Section 4(f) not to apply to temporary use of airport property.)

### **17.14 Exception to the Self-Sustaining Rule: Use of Property by Not-for-Profit Aviation Organizations.<sup>6</sup>**

#### **a. Reduced Rent.**

A sponsor may charge reduced rental rates to non-profit 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 use (see *also*, [Revenue Use Policy](#), Section VII (E)).

#### **b. In-Kind Services.**

The FAA expects sponsors to charge police or fire fighting units that operate aircraft at the airport reasonable aeronautical 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. The in-kind offset must be supported (*e.g.*, a Memorandum Of Understanding, logs, etc.) and reflect the cost of services received.

### **17.15 Exception to the Self-Sustaining Rule: Military Units.<sup>7</sup>**

#### **a. Military Aeronautical Units.**

Airport sponsors may provide land 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, 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.

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<sup>6</sup> See FAA [Revenue Use Policy](#), Section VII.E.

<sup>7</sup> See FAA [Revenue Use Policy](#), Section VII.E.

**b. Military Nonaeronautical Units.**

49 U.S.C. § 47107(t), *Renewal of Certain Leases*, allows an airport owner or operator to renew a covered lease at a nominal lease rate. A covered lease is a lease that:

- (A) originally entered into before October 7, 2016;
- (B) under which a nominal lease rate is provided;
- (C) under which the lessee is a Federal or **State** government entity; and
- (D) that—
  - (i) supports the operation of military aircraft by the Air Force or Air National Guard—
    - (I) at the **airport**; or
    - (II) remotely from the **airport**; or
  - (ii) is for the use of nonaeronautical land or facilities of the **airport** by the National Guard.

**17.16 Exception to the Self-Sustaining Rule: Transit Projects.<sup>8</sup>**

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.

**17.17 Exception to the Self-Sustaining Rule: Private Transit Systems.<sup>9</sup>**

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.

**17.18 through 17.22 Reserved.**

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<sup>8</sup> See FAA [Revenue Use Policy](#), Section VII.G.

<sup>9</sup> See FAA [Revenue Use Policy](#), Section VII.H.