

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 152

[Docket No. 19430; Amdt. No. 152-10]

Revision of Airport Aid Program Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts revisions to the rules pertaining to the Airport Aid Program for airport development and planning grant projects. These revisions update current requirements and eliminate certain provisions that, based on the FAA's continuing review of the program, are considered unnecessary. This action is taken by the FAA in an effort to simplify the grant process.

EFFECTIVE DATE: May 22, 1980.

FOR FURTHER INFORMATION CONTACT: Peter T. Gourdouros (APP-510), Office of Airport Planning and Programming, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 426-3050.

SUPPLEMENTARY INFORMATION:

A. Background

Interested persons have been afforded an opportunity to participate in the making of this final rule by a notice of proposed rule making (Notice No. 79-14) issued on August 2, 1979, and published in the *Federal Register* on August 9, 1979 (44 FR 46858). Due consideration has been given to all comments received in response to the notice.

Notice 79-14 proposed to amend Part 152, Airport Aid Program, of the Federal Aviation Regulations to provide regulations that are easier to understand and less of a burden on the sponsor or planning agency seeking assistance. The proposed changes were based on the FAA's continuing review of the program, and they implement the President's direction to simplify regulatory procedures, as expressed in Executive Order 12044, Improving Government Regulations (43 FR 12661; March 24, 1978). The Executive Order requires that regulations be as simple and clear as possible, and that they achieve legislative goals effectively and efficiently. In addition, the order requires that regulations impose no unnecessary burdens on the economy, on individuals, on public or private organizations, or on State or local governments.

In order to achieve these goals, the FAA made a comprehensive review of all provisions of Part 152. Wherever possible, this amendment simplifies these requirements, and deletes redundant and unnecessary material. As a result, the number of regulatory sections has been reduced from 72 to 41, and, even with the addition of a new appendix, the number of appendices has been reduced from 13 to 4.

Part 152 has been simplified and updated in the following ways: (1) By deleting discussion of FAA policy and procedures that do not impose a requirement on the sponsor or planning agency, and publishing them separately; (2) by deleting explanatory and descriptive material, including some unnecessary definitions, and making them available in advisory publications; (3) by removing lengthy technical requirements and incorporating them by reference in Part 152; (4) by omitting references to out-of-date provisions and revising the part to incorporate changed requirements of statutes other than the Airport and Airway Development Act of 1970 (AADA); (5) by consolidating certain provisions, eliminating redundant provisions and reorganizing the entire part on a chronological basis; (6) by revising the part to reflect certain changes already made in the Airport Aid Program as a result of changes in the AADA; (7) by adding a new appendix that publishes the assurances made by the applicant for an airport development grant or an airport planning grant at the time of application; (8) by reducing the number of requirements imposed on applicants to the extent that it is practicable and consistent with the FAA's responsibilities under the AADA; and (9) by deleting certain appendices that set out the requirements of other Federal agencies with respect to the administration of Federal grant programs and replacing them with references to those requirements.

B. Comments

The FAA received 8 public comments in response to Notice 79-14, all of which favored the adoption of the revised part. Comments stated that they expected the revised rule to "streamline the application process and lessen our paperwork burdens" and "greatly increase a sponsor's ability to use and understand Part 152."

Project Eligibility. Some commenters objected to proposed § 152.107, which requires that a project for airport development must involve more than \$25,000 to be eligible for consideration. For a number of reasons the commenters would prefer that there be a lower

minimum or none at all. However, this minimum amount was proposed to encourage sponsors to include all eligible airport development items within a single grant application, rather than filing separate applications for each eligible item. This is intended to reduce administrative costs which could meet or exceed the amount of U.S. funds approved for a small project. It should also be noted that almost all recent grant applications have been for projects in excess of \$25,000, and that the rule does allow the Administrator to accept applications for projects of a smaller amount when circumstances warrant it.

Unified Planning Work Program. One commenter objected to proposed § 152.109(a)(4) that requires incorporation of proposed airport master planning projects, determined to have areawide significance, into a unified planning work program. The commenter contended that this would inject areawide agencies with no implementing powers into the planning process, thus making planning ineffective.

The intent of this incorporation is to improve coordination between areawide transportation planning and planning at individual airports. The unified planning work program serves as the vehicle for ensuring adequate consideration of airport development in relation to ground transportation systems. For this reason the rule has been adopted as proposed.

New Structures. Another commenter suggested that proposed § 152.203 should be revised to permit reimbursement for the cost of a new structure, when it would be less than the cost of removal or relocation of an existing building. However, expenditure of funds for the construction of any building is prohibited by the AADA, except where the act specifically authorizes it.

New Legislation. Some commenters suggested that the revision of Part 152 be delayed until new legislation is enacted. Although the Airport and Airway Development Act of 1970 expires on September 30, 1980, a significant portion (approximately \$400,000,000) of the fiscal year 1980 authorization (\$640,000,000) will not be obligated until the fourth quarter of the fiscal year. Accordingly, a majority of the 1980 grants will be issued under the revised regulations, providing experience with, among other things, its waiver, exemption, and certification provisions. Experience with revised Part 152 will provide an important bridge to new regulations implementing post-1980 legislation.

changes have been made in the rule adopted based on comments received and further consideration by the FAA. These changes are discussed below.

§ 152.3 Definition of Audit.

The definition of the term "audit" in proposed § 152.3 has been revised to incorporate the requirements of Attachment P of Office of Management and Budget Circular (OMB) A-102 (44 FR 40358). That attachment sets forth uniform administrative audit requirements for federal grants-in-aid to state and local governments.

§ 152.5 Exemptions.

Section 152.5, as adopted, provides for the required publication of a summary of a grant or denial of a petition for exemption in the Federal Register. This publication provision parallels that of § 11.27 of the Federal Aviation Regulations (14 CFR 11.27), which provides procedures for processing petitions for exemption from Federal Aviation Regulations other than Part 152. However, since exemptions under Part 152 are processed by regional offices and basically concern local situations which are of limited interest to the general public, publication of the petition for exemption itself has not been provided for.

§ 152.103 and 152.105 Eligible Sponsors and Planning Agencies.

Sections 152.103 and 152.105 have been corrected to provide that applicants for airport development projects and for airport master planning grants must be public agencies as required by the Airport and Airway Development Act of 1970.

§ 152.209 Withholding of Payment.

In accordance with OMB Circular A-102, § 152.209(g) has been expanded to provide for withholding payment to the sponsor or planning agency when it has withheld payment to a contractor to ensure satisfactory completion of work. These amounts will be paid to the sponsor or planning agency when it makes final payment, including the amount it withheld from the contractor.

§ 152.111 and 152.113 Civil Rights Assurance.

On February 7, 1980, the FAA adopted a new Subpart E, Nondiscrimination in Airport Aid Program, to Part 152 (45 FR 10184; February 14, 1980). That new subpart is unaffected by this amendment, but has not been republished in this issue of the Federal Register.

submission of the civil rights assurances required by § 152.405 of new Subpart E with each application.

§ 152.111 Compliance with Environmental Order.

Proposed § 152.111 would have required that a sponsor's application or preapplication for Federal assistance be accompanied by an environmental impact assessment report that complies with the applicable DOT and FAA environmental orders. In the rule, as adopted, the reference to the applicable FAA order has been updated to refer to FAA Order 1050.1C (45 FR 2244; January 10, 1980). The reference to the DOT order has been eliminated since the FAA order incorporates the applicable DOT requirements, and compliance with it results in compliance with the DOT order. Also the terminology used in the rule has been updated, and the rule has been revised to make it clear that an environmental assessment must be submitted only if one is required by the FAA order.

The FAA is currently issuing an Airport Environmental Handbook that contains detailed guidance for considering environmental impacts of Federal airport actions. In the near future, this handbook will be incorporated by reference into Part 152, and compliance with it will be required for airport development projects.

§ 152.115 Reduction of U.S. Share.

A new paragraph has been added to § 152.115 to provide that when project work for which costs have been incurred is deleted from a grant agreement, the Administrator reduces the maximum obligation of the United States proportionately, based on the cost or value of the deleted work as shown on the project application. This is required by the FAA's contract regulations which reflect the general rule of law that the Government does not have authority to waive or surrender gratuitously any vested right or interest acquired by contract.

§ 152.205 United States Share of Project Costs.

Section 152.205 has been revised to implement the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193; February 18, 1980) which raises the United States share of allowable project costs to 90 percent for grants made from funds for fiscal year 1980.

§ 152.305(a) of cost classifications for the sponsor's accounting records, the rule, as adopted, merely references the classifications set forth in Standard Form 271. This form, entitled "Outlay Report and Request for Reimbursement for Construction Programs," is published in OMB Circular A-102 (42 FR 45841), and is used by the sponsor in requesting reimbursement under its grant.

Appendices

The titles of Appendices A and C have been revised to make clear their content and distinguish them from one another.

Changes have been made in proposed Appendix C to reflect the revision of Attachment O to OMB Circular A-102 (44 FR 47874; August 15, 1979). The revised Attachment O provides for, and encourages, grantor agency review of grantee procurement systems.

Attachment O provides that, when a grantee procurement system meets the standards of Attachment O, it may be certified by the grantor agency, thus reducing the need for individual pre-award contract reviews by the grantor agency. Section 1 of Appendix C, as adopted, provides for reviews of this kind by the FAA, when funding and time permits. To be consistent with this review procedure, the individual pre-award review requirements for contracts in proposed section 13 of the appendix have also been revised as provided in Attachment O.

Proposed section 13 of Appendix C provided that the allowable project costs of the work, on which the Federal participation is computed, may not be more than the bid of the lowest responsible bidder. That provision has been removed because it would be inconsistent with the national policy to award a fair share of contracts to small and minority business firms, as expressed in section 9 of Attachment O of OMB Circular A-102 (44 FR 47875).

A new paragraph 15 has been added to Appendix C to require compliance with the equal employment opportunity requirements of the Department of Labor. This new paragraph updates and replaces the requirements of former § 152.61, Paragraph 15 has been renumbered as 16.

Assurances

The assurances contained in Appendix D which each sponsor or planning agency must submit with its application have been updated to reflect those currently in use.

Assurance 7, Access for the Handicapped, has been revised to require compliance with Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance, which was adopted by the Department of Transportation on May 25, 1979 (49 FR 31442; 14 CFR Part 27).

Assurance 17 has been revised to provide that the 20 year limitation on the effectiveness of the assurances does not apply to those affecting the use of real property acquired with Federal funds. This is consistent with attachments N, Property Management Standards, of OMB Circular A-102 which requires that the grantee use that property for the authorized purpose of the original grant as long as it is needed.

D. Economic Impact

While the actual cost benefits of this revision of Part 152 cannot be readily established, the benefits to sponsors and planning agencies will be tangible, and the government sector will benefit from a more efficient program. Simplification and clarification of the part, as well as improvement of its organization, will yield tangible administrative benefits to applicants and grantees.

The updating of some provisions will result in minor administrative costs to the applicant, but the over-all impact will be important savings in time and money.

Savings will result from no longer requiring the submission of certain documentation. Under the revised part, preapplications are no longer required for projects under \$100,000. The Administrator may waive an application requirement where an item is already available to the FAA or where a substitute should be accepted. The amendment provides for the acceptance of the sponsor's certification that it has complied with a statutory or administrative requirement, in lieu of demonstrating compliance.

Sponsors will benefit from the issuance of exemptions from requirements of Part 152 where conditions beyond a sponsor's control make it difficult for it to comply with specific requirements.

E. Adoption Date

Because of the benefits to sponsors and planning agencies that will result from this revision of Part 152, good cause exists for making this amendment effective on publication in the Federal Register (May 22, 1980).

F. The Amendment

Accordingly, Part 152 of the Federal Aviation Regulations (14 CFR Part 152) is amended, effective May 22, 1980, by revising Subparts A, B, C, and D, and by adding a new Subpart F to read as follows:

PART 152—AIRPORT AID PROGRAM

Subpart A—General

- Sec.
- 152.1 Applicability.
- 152.3 Definitions.
- 152.5 Exemptions.
- 152.7 Certifications.
- 152.9 Forms.
- 152.11 Incorporation by reference.

Subpart B—Eligibility Requirements and Application Procedures

- 152.101 Applicability.
- 152.103 Sponsors: airport development.
- 152.105 Sponsors and planning agencies: airport planning.
- 152.107 Project eligibility: airport development.
- 152.109 Project eligibility: airport planning.
- 152.111 Application requirements: airport development.
- 152.113 Application requirements: airport planning.
- 152.115 Grant agreement: offer, acceptance and amendment.
- 152.117 Public hearings.
- 152.119 Contract requirements and procurement standards.

Subpart C—Funding of Approved Projects

- 152.203 Allowable project costs.
- 152.205 United States share of project costs.
- 152.207 Proceeds from disposition of land.
- 152.209 Grant payments: general.
- 152.211 Grant payments: land acquisition.
- 152.213 Grant closeout requirements.

Subpart D—Accounting and Reporting Requirements

- 152.301 Applicability.
- 152.303 Financial management system.
- 152.305 Accounting records.
- 152.307 Retention of records.
- 152.309 Availability of sponsor's records.
- 152.311 Availability of contractor's records.
- 152.313 Property management standards.
- 152.315 Reporting on accrual basis.
- 152.317 Report of Federal cash transactions.
- 152.319 Monitoring and reporting of program performance.
- 152.321 Notice of delay or acceleration.
- 152.323 Budget revision: airport development.
- 152.325 Financial status report: airport planning.

Subpart E—Nondiscrimination in Airport Aid Program

Subpart F—Suspension and Termination of Grants

- 152.501 Applicability.
- 152.503 Suspension of grant.
- 152.505 Termination for cause.
- 152.507 Termination for convenience.

152.509 Request for reconsideration.
Appendix A—Contract Provisions and Labor Requirements
Appendix B—Advisory Circulars
Appendix C—Contracting Requirements
Appendix D—Assurances

Authority: Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*); sec. 1.47(f)(1) Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(f)(1)).

Subpart A—General

§ 152.1 Applicability.

This part applies to airport planning and development under the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*).

§ 152.3 Definitions.

The following are definitions of terms used throughout this part:

"AADA" means the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*).

"Air carrier airport" means—

(1) An existing public airport regularly served, or a new public airport that the Administrator determines will be regularly served, by an air carrier, other than a charter air carrier, certificated by the Civil Aeronautics Board under section 401 of the Federal Aviation Act of 1958; and

(2) A commuter service airport.

"Airport" means—

(1) Any area of land or water that is used, or intended for use, for the landing and takeoff of aircraft;

(2) Any appurtenant areas that are used, or intended for use, for airport buildings, other airport facilities, or rights-of-way; and

(3) All airport buildings and facilities located on the areas specified in this definition.

"Airport development" means—

(1) Any work involved in constructing, improving, or repairing a public airport or portion thereof, including the removal, lowering, relocation, and marking and lighting or airport hazards, and including navigation aids used by aircraft landing at, or taking off from, a public airport, and including safety equipment required by rule or regulation for certification of the airport under section 612 of the Federal Aviation Act of 1958, and security equipment required of the sponsor by the FAA by rule or regulation for the safety and security of persons or property on the airport, and including snow removal equipment, and including the purchase of noise suppressing equipment, the construction of physical barriers, and landscaping for the purpose of diminishing the effect of aircraft noise on any area adjacent to a public airport.

(2) Any acquisition of land or of any interest therein, or of any easement through or other interest in airspace, including land for future airport development, which is necessary to permit any such work or to remove or mitigate or prevent or limit the establishment of, airport hazards; and

(3) Any acquisition of land or of any interest therein necessary to insure that such land is used only for purposes which are compatible with the noise levels of the operation of a public airport.

"Airport hazard" means any structure or object of natural growth located on or in the vicinity of a public airport, or any use of land near a public airport, that—

(1) Obstructs the airspace required for the flight of aircraft landing or taking off at the airport; or

(2) Is otherwise hazardous to aircraft landing or taking off at the airport.

"Airport layout plan" means a plan for the layout of an airport, showing existing and proposed airport facilities.

"Airport master planning" means the development for planning purposes of information and guidance to determine the extent, type, and nature of development needed at a specific airport.

"Airport system planning" means the development for planning purposes of information and guidance to determine the extent, type, nature, location, and timing of airport development needed in a specific area to establish a viable and balanced system of public airports.

"Audit" means the examination and verification of part or all of the documentary evidence supporting an item of project cost in accordance with Attachment P of Office of Management and Budget Circular A-102 (44 FR 80658).

"Commuter service airport" means an air carrier airport—

(1) That is not served by an air carrier certificated under section 401 of the Federal Aviation Act of 1958;

(2) That is regularly served by one or more air carriers operating under an exemption granted by the Civil Aeronautics Board from section 401(a) of the Federal Aviation Act of 1958; and

(3) At which not less than 2,500 passengers were enplaned during the preceding calendar year by air carriers operating under an exemption from section 401(a).

"Force account" means—

(1) The sponsor's or planning agency's own labor force; or

(2) The labor force of another public agency acting as an agent of the sponsor or planning agency.

"General aviation airport" means a public airport other than an air carrier airport.

"Landing area" means an area used, or intended to be used, for the landing, takeoff, or surface maneuvering of aircraft.

"NASP" means the National Airport System Plan.

"National Airport System Plan" means the plan for the development of public airports in the United States formulated by the Administrator under section 12 of the AADA.

"Nonrevenue producing public-use areas" means areas that are directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport.

"Passengers enplaned" means—

(1) United States domestic, territorial, and international revenue passenger enplanements in scheduled and nonscheduled service of air carriers; and

(2) Revenue passenger enplanements by foreign air carriers in intrastate and interstate commerce.

"Planning agency" means a planning agency designated by the Administrator that is authorized by the laws of a State, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam, or by the laws of a political subdivision of any of those entities, to engage in areawide planning for the areas in which assistance under this part is to be used.

"Project" means a project for the accomplishment of airport development, airport master planning, or airport system planning.

"Project costs" means any costs involved in accomplishing a project.

"Project formulation costs" means, with respect to projects for airport development, any necessary costs of formulating a project including—

(1) The costs of field surveys and the preparation of plans and specifications;

(2) The acquisition of land or interests in land, or easement through or other interests in airspace; and

(3) Any necessary administrative or other incidental costs incurred by the sponsor specifically in connection with the accomplishment of a project for airport development, that would not have been incurred otherwise.

"Public agency" means—

(1) A state, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, the Government of the Northern Marianas, Guam, or any agency of those entities;

(2) A municipality or other political subdivision;

(3) A tax-supported organization; or

(4) An Indian tribe or pueblo.

"Public airport" means any airport that—

(1) Is used, or intended to be used, for public purposes;

(2) Is under the control of a public agency; and

(3) Has a property interest satisfactory to the Administrator in the landing area.

"Reliever airport" means a general aviation airport designated by the Administrator as having the primary function of relieving congestion at an air carrier airport by diverting from that airport general aviation traffic.

"Runway Clear Zone" means an area at ground level underlying a portion of the approach surface specified in the standards incorporated into this part by § 152.11.

"Satisfactory property interest" means—

(1) Title free and clear of any reversionary interest, lien, easement, lease, or other encumbrance that, in the opinion of the Administrator would—

(i) Create an undue risk that it might deprive the sponsor of possession or control;

(ii) Interfere with the use of the airport for public airport purposes; or

(iii) Make it impossible for the sponsor to carry out the agreements and covenants in its grant application;

(2) Unless a shorter term is authorized by the Administrator, a lease of not less than 20 years granted to the sponsor by another public agency, or the United States, that has title as described in paragraph (1) of this definition, on terms that the Administrator considers satisfactory;

(3) In the case of an off-airport area, title or an agreement, easement, leasehold or other right or property interest that, in the Administrator's opinion, provides reasonable assurance that the sponsor will not be deprived of its right to use the land for the intended purpose during the period necessary to meet the requirements of the grant agreement; or

(4) In the case of a runway clear zone, an easement or a covenant running with the land, giving the airport operator or owner enough control to rid the clear zone of all airport hazards and prevent the creation of future airport hazards.

"Sponsor" means any public agency that, whether individually or jointly with one or more other public agencies, submits to the Administrator, in accordance with this part, an application for financial assistance.

"Stage development" means airport development accomplished under stage construction over not less than two years where the sponsor assures that

any development not funded under the initial grant agreement will be completed with or without Federal funds.

"State" means a State of the United States or the District of Columbia.

"Terminal development" means airport development in the nonrevenue producing public-use areas which are associated with the terminal and which are directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport, including, but not limited to, vehicles for the movement of passengers between terminal facilities and aircraft.

"Unified Planning Work Program" means a single document prepared by a local areawide planning agency that identifies all transportation and related planning activities that will be undertaken within the metropolitan area during a one-year or two-year period.

§ 152.5 Exemptions.

(a) Except as provided in paragraph (b) of this section, any interested person may petition the Regional Director concerned for a temporary or permanent exemption from any requirement of this part.

(b) The Regional Director concerned does not issue an exemption from any rule of this part if the grant of exemption would be inconsistent with a specific provision of, or the purpose of, the AADA, or any other applicable Federal law.

(c) Each petition filed under this section must—

(1) Unless otherwise authorized by the Regional Director concerned, be submitted not less than 60 days before the proposed effective date of the exemption;

(2) Be submitted in duplicate to the FAA Regional Office or Airports District Office having jurisdiction over the area in which the airport is located;

(3) Contain the text or substance of the rule from which the exemption is sought;

(4) Explain the nature and extent of the relief sought; and

(5) Contain any information, views, or arguments in support of the exemption.

(d) The Regional Director concerned either grants or denies the exemption and notifies the petitioner of the decision. The FAA publishes a summary of the grant or denial of petition for exemption in the Federal Register.

The summary includes—

(1) The docket number of the petition;

(2) The name of the petitioner;

(3) A citation of each rule from which relief is requested;

(4) A brief description of the general nature of the relief requested; and

(5) The disposition of the petition.

(e) Official FAA records, including grants and denials of exemptions, relating to petitions for exemption are maintained in current docket form in the Office of the Regional Counsel for the region concerned.

(f) Any interested person may—

(1) Examine any docketed material at the Office of the Regional Counsel, at any time after the docket is established, except material that is ordered withheld from the public under section 1104 of the Federal Aviation Act of 1958 (49 U.S.C. 1504); and

(2) Obtain a photostatic or similar copy of docketed material upon paying the same fee as that prescribed in 49 CFR Part 7.

§ 152.7 Certifications.

(a) Subject to such terms and conditions as the Administrator may prescribe, a sponsor or a planning agency may submit, with respect to any provision of this part implementing a statutory or administrative requirement imposed on the sponsor or planning agency under the AADA, a certification that the sponsor or planning agency has complied or will comply with the provision, instead of making the showing required.

(b) The Administrator exercises discretion in determining whether to accept a certification.

(c) Acceptance by the Administrator of a certification from a sponsor or planning agency may be rescinded by the Administrator at any time if, in the Administrator's opinion, it is necessary to do so.

(d) If the Administrator determines that it is necessary, the sponsor or planning agency, on request, shall show compliance with any requirement for which a certification was accepted.

§ 152.9 Forms.

Any form needed to comply with this part may be obtained at any FAA Regional Office or Airports District Office.

§ 152.11 Incorporation by reference.

(a) *Mandatory standards.* The advisory circulars listed in Appendix B to this part are incorporated into this part by reference. The Director, Office of Airport Standards, determines the scope and content of the technical standards to be included in each advisory circular in Appendix B, and may add to, or delete from, Appendix B any advisory circular or part thereof. Except as provided in paragraph (c) of this section, these guidelines are mandatory standards.

(b) *Modification of standards.* When necessary to meet local conditions, any technical standard set forth in Appendix B may be modified for individual projects, if it is determined that the modifications will provide an acceptable level of safety, economy, durability, and workmanship. The determination and modification may be made by the Director, Office of Airport Standards, or the appropriate Regional Director, in instances where the authority has not been specifically reserved by the Director, Office of Airport Standards.

(c) *State standards.* Standards established by a state for airport development at general aviation airports in the state may be the standards applicable to those airports when they have been approved by the Director, Office of Airport Standards, or the appropriate Regional Director, in instances where approval authority has not been specifically reserved by the Director, Office of Airport Standards.

(d) *Availability of advisory circulars.*

The advisory circulars listed in Appendix B may be inspected and copied at any FAA Regional Office or Airports District Office. Copies of the circulars that are available free of charge may be obtained from any of those offices or from the FAA Distribution Unit, M-443.1, Washington, D.C. 20590. Copies of the circulars that are for sale may be bought from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Subpart B—Eligibility Requirements and Application Procedures

§ 152.101 Applicability.

This subpart contains requirements and application procedures applicable to airport development and planning projects.

§ 152.103 Sponsors: airport development.

(a) To be eligible to apply for a project for airport development with respect to a particular airport the following requirements must be met:

(1) Each sponsor must be a public agency authorized by law to submit the project application;

(2) If a sponsor is the holder of an airport operating certificate issued for the airport under Part 139 of this chapter, it must be in compliance with the requirements of Part 139.

(3) When any of the the following agreements is applicable to an airport which the sponsor owns or controls, the sponsor must have complied with the agreement, or show to the satisfaction of the Administrator that it will comply or.

reasons beyond its control, cannot comply with the agreement:

- (1) Each grant agreement made with it under the Federal Airport Act (49 U.S.C. et seq.), or the AADA.
- (2) Each covenant in a conveyance under section 16 of the Federal Airport Act or section 23 of the AADA.
- (3) Each covenant in a conveyance of surplus airport property under section 13(a) of the Surplus Property Act (49 U.S.C. App 1622(g)) or under section 16 of the War Assets Administration.

(4) The sponsor, in the case of a single sponsor, or one or more of the cosponsors must have, or be able to obtain—

(a) Funds to pay all estimated costs of the project that are not to be born by the United States; and

(b) Satisfactory property interests in the lands to be developed or used as part of, or in connection with, the airport as it will be after the project is completed.

(c) Another public agency may act as agent of the public agency that is to own and operate the airport, for the purpose of channeling grant funds in accordance with state or local law, without becoming a sponsor.

§ 152.106 Sponsors and planning agencies: airport planning.

(a) To be eligible to apply for a project for airport planning—

(1) If the project is for airport master planning—

(i) Each sponsor must be a public agency and meet the requirements of § 152.103(a)(3); and

(ii) The sponsor, in the case of a single sponsor, or one or more cosponsors must be legally able to implement the planning, within the existing or proposed airport boundaries, that results from the project study.

(2) If the project is for airport system planning, each sponsor must be a planning agency.

(b) Another public agency or planning agency may act as agent of another public agency or planning agency, for the purpose of channeling grant funds in accordance with state or local law, without becoming a sponsor.

§ 152.107 Project eligibility: airport development.

(a) Except in the case of approved stage development, each project for airport development must provide for—

(1) Development of an airport or unit of an airport that is safe, useful, and usable; or,

(2) An additional facility that increases the safety, usefulness, and stability of an airport.

(b) Unless otherwise authorized by the Administrator, a project for airport development must involve more than \$25,000 in United States funds.

(c) The development included in a project for airport development must—

(1) In the opinion of the Administrator, be "airport development" as defined in § 152.3;

(2) Be identified as airport development in the mandatory standards incorporated into this part by § 152.11; and

(3) Be described in an approved airport layout plan.

(d) The airport involved in a project for airport development must be included in the current NASP.

(e) In complying with paragraph (a) of this section, the sponsor must—

(1) Own, acquire, or agree to acquire control over, or a property interest in, runway clear zones that the Administrator considers adequate; and

(2) Provide for approach and runway lighting systems satisfactory to the Administrator.

§ 152.108 Project eligibility: airport planning.

(a) *Airport master planning.* A proposed project for airport master planning is not approved unless—

(1) The location of the existing or proposed airport is included in the current NASP;

(2) In the opinion of the Administrator, the proposed planning would promote the effective location of public airports and the development of an adequate NASP;

(3) The project is airport master planning as defined in § 152.3;

(4) If the project has been determined to have areawide significance by an appropriate areawide agency, it has been incorporated into a unified planning work program; and

(5) In the case of a proposed project for airport master planning in a large or medium air traffic hub, in the opinion of the Administrator—

(i) There is an appropriate system plan identifying the need for the airport;

(ii) The absence of a system plan is due to the failure of the responsible planning agency to proceed with its preparation; or

(iii) An existing system plan is not acceptable.

(b) *Airport system planning.* A proposed project for airport system planning is not approved unless—

(1) In the opinion of the Administrator, the project promotes the effective location of public airports;

(2) In the opinion of the Administrator, the project promotes the development of an adequate NASP;

(3) The project is airport system planning as defined in § 152.3; and

(4) When the project encompasses a metropolitan area that includes a large or medium hub airport, the project is incorporated in a unified planning work program.

§ 152.111 Application requirements: airport development.

(a) An eligible sponsor that desires to obtain Federal aid for eligible airport development must apply to the FAA in accordance with this section. The sponsor must apply on a form and in a manner prescribed by the Administrator, through the FAA Airports District Office or Airports Field Office having jurisdiction over the area where the sponsor is located or, where there is no such office, the Regional Office having that jurisdiction.

(b) *Preapplication for Federal assistance.* A preapplication for Federal assistance must be submitted unless—

(1) The Federal fund request is for \$100,000 or less; or,

(2) The project does not include construction, land acquisition, or land improvement.

(c) Unless otherwise authorized by the Administrator, the preapplication required by paragraph (b) of this section must be accompanied by the following:

(1) A list of the items of airport development requested for programming, together with an itemized estimated cost of the work involved.

(2) A sketch or sketches of the airport layout indicating the location for each item of work proposed, using the same item numbers used in the list required by paragraph (c)(1) of this section.

(3) If the proposed project involves the displacement of persons or the acquisition of real property, the assurances required by §§ 25.57 and 25.59, as applicable, of the Regulations of the Office of the Secretary of Transportation (49 CFR 25.57 and 25.59), whether or not reimbursement is being requested for the costs of displacement or real property acquisition.

(4) Any comments or statements required by Special Federal Aviation Regulation No. 35, FAA Interim Procedures Implementing OMB Circular A-95, with a showing that they have been considered by the sponsor.

(5) If the proposed development involves the construction of eligible airport buildings or the acquisition of eligible fixed equipment to be contained in those buildings, a statement whether the proposed development will be in an area of the community that has been identified by the Department of Housing and Urban Development as an area of special flood hazard, as defined in the

Flood Disaster Protection Act of 1973 (42 U.S.C. 4002 *et seq.*).

(6) If the proposed development is in an area of special flood hazard, a statement whether the community is participating in the National Flood Insurance Program (42 U.S.C. 4011 *et seq.*).

(7) The sponsor's environmental assessment prepared in conformance with Appendix 6 of Federal Aviation Administration "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1C, Appendix 6; 45 FR 2244, January 10, 1980) if an assessment is required by the order.

(8) A showing that the sponsor has complied with the public hearing requirements in § 152.117.

(9) In the case of a proposed new airport serving any area that does not include a metropolitan area, a showing that each community in which the proposed airport is to be located has approved the proposed airport site through the body having general legislative jurisdiction over it.

(10) In the case of a proposed project at an air carrier airport, a statement that the sponsor, in making the decision to undertake the project, has consulted with air carriers using the airport.

(11) In the case of a proposed project at a general aviation airport, a statement that the sponsor, in making the decision to undertake the project, has consulted with fixed-base operators using the airport.

(12) In the case of terminal development, a certification that the airport has, or will have, all safety and security equipment required for certification of the airport under Part 139 and has provided, or will provide, for access to the passenger enplaning and deplaning area to passengers enplaning or deplaning from aircraft other than air carrier aircraft.

(d) *Allocation of funds.* If the proposed project for airport development is selected by the Administrator for inclusion in a program, a tentative allocation of funds is made for the project and the sponsor is notified of the allocation. The tentative allocation may be withdrawn if the sponsor does not submit a project application in accordance with paragraph (f) of this section.

(e) *Application for Federal assistance.* As soon as practicable after receiving notice of a tentative allocation or, if a preapplication is not required (as provided in paragraph (b) of this section), an application for Federal assistance must be submitted.

(f) Unless otherwise authorized by the Administrator, the application required

by paragraph (e) of this section must be accompanied by the following:

(1) When a preapplication has not been previously submitted, the information required by paragraph (c) of this section.

(2) A property map of the airport showing—

(i) the property interests of each sponsor in all the lands to be developed or used as part of, or in connection with, the airport as it will be when the project is completed; and

(ii) all property interests acquired or to be acquired, for which U.S. aid is requested under the project.

(3) With respect to all lands to be developed or used as a part of, or in connection with, the airport (as it will be when the project is completed) in which a satisfactory property interest is not held by a sponsor, a covenant by the sponsor that it will obtain a satisfactory property interest before construction is begun or within a reasonable time if not needed for construction.

(4) If the proposed project involves the displacement of persons, the relocation plan required by § 25.55 of the Regulations of the Office of the Secretary of Transportation.

(5) When the project involves an airport location, a runway location, or a major runway extension, a written certification from the Governor of the state in which the project may be located (or a delegatee), providing reasonable assurance that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.

(6) A statement whether any building, installation, structure, location, or site of operations to be utilized in the performance of the grant or any contract made pursuant to the grant appears on the list of violating facilities distributed by the Environmental Protection Agency under the provisions of the Clean Air Act and Federal Water Pollution Control Act (40 CFR Part 15).

(7) The assurances on Civil Rights required by § 21.7 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21.7) and § 152.405.

(8) Plans and specifications for the proposed development in accordance with the design and construction standards listed in Appendix B to this part.

(9) The applicable assurances required by Appendix D to this part.

(10) If cosponsors are not willing to assume, jointly and severally, the obligations imposed on them by this part and the grant agreement, a statement

satisfactory to the Administrator indicating—

(i) The responsibilities of each sponsor with respect to the accomplishment of the proposed project and the operation and maintenance of the airport;

(ii) The obligations each will assume to the United States; and

(iii) The name of the sponsor or sponsors who will accept, receipt for, and disburse grant payments.

(g) *Additional documentation.* The Administrator may request additional documentation as needed to support specific items of development or to comply with other Federal and local requirements as they pertain to the requested development.

§ 152.113 Application requirements: airport planning.

(a) *Application for Federal assistance.* An eligible sponsor or planning agency that desires to obtain Federal aid for eligible airport master planning or airport system planning must submit an application for Federal assistance, on a form and in a manner prescribed by the Administrator, to the appropriate FAA Airports District Office or Airports Field Office having jurisdiction over the area where the sponsor or planning agency is located or, where there is no such office, the Regional Office having that jurisdiction.

(b) Unless otherwise authorized by the Administrator, the application required by paragraph (a) of this section must be accompanied by the following:

(1) Any comments or statements required by Special Federal Aviation Regulation No. 35, FAA Interim Procedures Implementing OMB Circular A-95.

(2) Budget (project costs) information subdivided into the following functions, as appropriate, and the basis for computation of these costs:

(i) Third party contracts.

(ii) Sponsor force account costs.

(iii) Administrative costs.

(3) A program narrative describing the proposed planning project including—

(i) The objective;

(ii) The results and benefits expected;

(iii) A Work Statement including—

(A) A detailed description of each work element;

(B) A list of each organization, consultant, and key individual who will work on the planning project; and the nature of the contribution of each; and

(C) A proposed schedule of work accomplishment; and

(iv) The geographic location of the airport or the boundaries of the planning area.

(4) If the sponsor proposes to accomplish the project with its own resources or those of another public or planning agency—

(i) An assurance that adequate, competent personnel are available to satisfactorily accomplish the proposed planning project, and

(ii) A description of the qualifications of the key personnel.

(5) If cosponsors are not willing to assume, jointly, and severally, the obligations imposed on them by this part and the grant agreement, a statement satisfactory to the Administrator indicating—

(i) The responsibilities of each sponsor with respect to the accomplishment of the proposed project;

(ii) The obligations each will assume to the United States; and

(iii) The name of the sponsor or sponsors who will accept, receipt for, and disburse grant payments.

(6) The assurances on Civil Rights required by § 21.7 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21.7).

(7) The applicable assurances required by Appendix D of this part.

(c) *Additional documentation.* The Administrator may request additional documentation as needed to support a master plan or system plan, or to comply with other Federal and local requirements as they pertain to the requested plan.

§ 152.115 Grant agreement: offer, acceptance, and amendment.

(a) *Offer.* Upon approving a project for airport development, airport master planning, or airport system planning, the Administrator issues a written offer that sets forth the terms, limitations, and requirements of the proposed agreement.

(b) *Acceptance.* The acceptance of an offer or an amendment to a grant agreement must be in writing. The sponsor's or planning agency's attorney must certify that the acceptance complies with all applicable law, and constitutes a legal and binding obligation of the sponsor or planning agency.

(c) *Amendment: airport development grants.* The maximum obligation of the United States under a grant agreement for an airport development project may be increased by an amendment if—

(1) Except as otherwise provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the maximum obligation of the United States is not increased by more than 10 percent;

(2) Funds are available for the increase;

(3) The sponsor shows that the increase is justified; and

(4) The change does not prejudice the interest of the United States.

(d) *Reduction of U.S. Share: airport development grants.* When project work for which costs have been incurred is deleted from a grant agreement, the Administrator reduces the maximum obligation of the United States proportionately, based on the cost or value of the deleted work as shown on the project application.

(e) *Amendment: airport planning.* A grant agreement for airport planning may be changed if—

(1) The change does not increase the maximum obligation of the United States under the grant agreement; and

(2) The change does not prejudice the interest of the United States.

§ 152.117 Public hearings.

(a) Before submitting a preapplication for Federal assistance for an airport development project involving the location of an airport, an airport runway, or a runway extension, the sponsor must give notice of opportunity for a public hearing, in accordance with paragraph (b) of this section, for the purpose of—

(1) Considering the economic, social, and environmental effects of the location of the airport, the airport runway, or the runway extension; and

(2) Determining the consistency of the location with the goals and objectives of any urban planning that has been carried out by the community.

(b) The notice of opportunity for public hearing must—

(1) Include a concise statement of the proposed development;

(2) Be published in a newspaper of general circulation in the communities in or near which the project may be located;

(3) Provide a minimum of 30 days from the date of the notice for submission of requests for a hearing by persons having an interest in the economic, social, or environmental effects of the project; and

(4) State that a copy is available of the sponsor's environmental assessment, if one is required by Appendix 6 of Federal Aviation Administration "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1C, Appendix 6; 45 FR 2244, January 10, 1980), and will remain available, at the sponsor's place of business for examination by the public for a minimum of 30 days, beginning with the date of the notice, before any hearing held under the notice.

(c) A public hearing must be provided if requested. If a public hearing is to be held, the sponsor must publish a notice

of that fact, in the same newspaper in which the notice of opportunity for a hearing was published.

(d) The notice required by paragraph (c) of this section must—

(1) Be published not less than 15 days before the date set for the hearing;

(2) Specify the date, time, and place of the hearings;

(3) Contain a concise description of the proposed project; and

(4) Indicate where and at what time more detailed information may be obtained.

(e) If a public hearing is held, the sponsor must—

(1) Provide the Administrator a summary of the issues raised, the alternatives considered, the conclusion reached, and the reasons for that conclusion; and

(2) If requested by the Administrator before the hearing, prepare a verbatim transcript of the hearing for submission to the Administrator.

(f) If a hearing is not held the sponsor must submit with its preapplication a certification that notice of opportunity for a hearing has been provided in accordance with this section and that no request for a public hearing has been received.

§ 152.119 Contract requirements and procurement standards.

To the extent applicable, all grant agreements, contracts, and subcontracts involving airport development projects or airport planning must be in accordance with the contract requirements in Appendixes A and C, as applicable, and the procurement standards in Attachment O of Office of Management and Budget Circular A-102 (42 FR 45828).

Subpart C—Funding of Approved Projects

§ 152.201 Applicability.

This subpart contains the requirements for funding projects for airport development, airport master planning, and airport system planning.

§ 152.203 Allowable project costs.

(a) *Airport development.* To be an allowable project cost, for the purposes of computing the amount of an airport development grant, an item that is paid or incurred must, in the opinion of the Administrator—

(1) Have been necessary to accomplish airport development in conformity with—

(i) The approved plans and specifications for an approved project; and

(ii) The terms of the grant agreement for the project;

(2) Be reasonable in amount (subject to partial disallowance to the extent the Administrator determines it is unreasonable);

(3) Have been incurred after the date the grant agreement was executed, except that project formulation costs may be allowed even though they were incurred before that date.

(4) Be supported by satisfactory evidence;

(5) Have not been included in an airport planning grant; and

(6) Be a cost determined in accordance with the cost principles for State and local governments in Federal Management Circular 74-4 (39 FR 27133; 43 FR 50977).

(b) *Airport Planning.* To be an allowable project cost, for the purposes of computing the amount of an airport planning grant, an item that is paid or incurred must, in the opinion of the Administrator—

(1) Have been necessary to accomplish airport planning in conformity with an approved project and the terms of the grant agreement for the project;

(2) Be reasonable in amount;

(3) Have been incurred after the date the grant agreement was entered into, except for substantiated and reasonable costs incurred in designing the study for;

(4) Be supported by satisfactory evidence; and

(5) Be figured in accordance with Federal Management Circular 74-4 (39 FR 27133; 43 FR 50977).

§ 152.205 United States share of project costs.

(a) *Airport development.* Except as provided in paragraphs (b) and (c) of this section, the following is the United States share of the allowable cost of an airport development project approved for the specified year:

(1) 90 percent in the case of grants made from funds for fiscal years 1976, 1977, and 1978, and grants from funds for fiscal year 1980 made after February 17, 1980, for—

(i) Each air carrier airport, other than a commuter service airport, which enplanes less than one quarter of one percent of the total annual passengers enplaned as determined for purposes of making the latest annual apportionment under section 15(a)(3) of the AADA;

(ii) Each commuter service airport; and

(iii) Each general aviation or reliever airport.

(2) 80 percent in the case of grants made from funds for fiscal year 1979 and grants from funds for fiscal year 1980 made before February 18, 1980, for the

airports specified in paragraph (a)(1) of this section.

(3) 75 percent in the case of grants made from funds for fiscal years 1976 through 1980 for airports other than those specified in paragraph (a)(1) of this section.

(b) In a State in which the unappropriated and unreserved public lands and nontaxable Indian lands, both individual and tribal, are more than five percent of the total land in that State, the United States' share under paragraph (a) of this section—

(1) Except as provided in paragraph (b)(2) of this section, shall be increased by the smaller of—

(i) 25 percent; or

(ii) A percentage (rounded to the nearest one-tenth of a percent) equal to one-half of the percentage which the area of those lands is of the total land area of the state; and

(2) May not exceed the greater of—

(i) The percentage share determined under paragraph (a) of this section; or

(ii) The percentage share applying on June 30, 1975, as determined under paragraph (b)(1) of this section.

(c) In the case of terminal development, the United States share shall be 50 percent.

(d) *Airport planning.* The United States share of the allowable project costs of an airport planning project shall be—

(1) In the case of an airport master plan, that percent for which a project for airport development at that airport would be eligible;

(2) In the case of an airport system plan, 75 percent.

§ 152.207 Proceeds from disposition of land.

Unless otherwise authorized by the Administrator, when a release has been granted authorizing the sponsor to dispose of land acquired with assistance under Part 151 of this chapter or this part, or through conveyances under the Surplus Property Act, the proceeds realized from the disposal may not be used as matching funds for any airport development project or airport planning grant, but may be used for any other airport purpose.

§ 152.209 Grant payments: general.

(a) An application for a grant payment is made on a form and in a manner prescribed by the Administrator, and must be accompanied by any supporting information, that the FAA needs to determine the allowability of any costs for which payment is requested.

(b) *Methods of payment.* Grant payments to sponsors and planning agencies will be made by—

(1) Letter of credit;

(2) Advance by Treasury check; or

(3) Reimbursement by Treasury checks.

(c) *Letter of credit funding.* Letter of credit funding may not be used unless—

(1) There is or will be a continuing relationship between a sponsor or planning agency and the FAA for at least a 12-month period and the total amount of advances to be received within that period is \$120,000 or more;

(2) The sponsor or planning agency has established or demonstrated to the FAA the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee; and

(3) The sponsor's or planning agency's financial management system meets the standards for fund control and accountability prescribed in Attachment G of Office of Management and Budget Circular A-102 (42 FR 45828).

(d) *Advance by Treasury check.*

Advance of funds by Treasury check may be made subject to the following conditions—

(1) The sponsor or planning agency meets the requirements of paragraphs (c) (2) and (3) of this section;

(2) The timing and amount of cash advances are as close as administratively feasible to actual disbursements by the sponsor or planning agency; and

(3) Except as provided in paragraph (e) of this section, in the case of an airport development project, advance payments do not exceed the estimated project costs of the airport development expected to be accomplished within 30 days after the date of the sponsor's application for the advance payment.

(e) No advance payment for airport development projects may be made in an amount that would bring the aggregate amount of all partial payments to more than the lower of the following:

(i) 90 percent of the estimated United States' share of the total estimated cost of all airport development included in the project, but not including contingency items; or

(ii) 90 percent of the maximum obligation of the United States as stated in the grant agreement.

(f) *Reimbursement by Treasury check.* Reimbursement by Treasury check will be made if the sponsor or planning agency does not meet the requirements of paragraphs (c) (2) and (3) of this section.

(g) *Withholding of payments.* Payment to the sponsor or planning agency may be withheld at any time during the grant

period under the following circumstances:

(1) The sponsor or planning agency has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements.

(2) The sponsor or planning agency is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States.

(3) The sponsor or planning agency has withheld payment to a contractor to assure satisfactory completion of work. Payment will be made to the sponsor or planning agency when it has made final payment to the contractor, including the amounts withheld.

(h) *Labor violations.* If a contractor or a subcontractor fails or refuses to comply with the labor provisions of a contract under a grant agreement for an airport development project, further grant payments to the sponsor are suspended until—

(1) The violations are corrected;

(2) The Administrator determines the allowability of the project costs to which the violations relate; or

(3) If the violations consist of underpayments to labor, the sponsor furnishes satisfactory assurances to the FAA that restitution has been or will be made to the affected employees.

(i) *Excess payments.* Upon determination of the allowability of all project costs of a project, if it is found that the total of grant payments to the sponsor or planning agency was more than the total United States share of the allowable costs of the project, the sponsor or planning agency shall promptly return the excess to FAA.

§ 152.211 Grant payments: land acquisition.

If an approved project for airport development includes land acquisition as an item for which payment is requested, the sponsor may apply to the FAA for payment of the United States share of the allowable project costs of the acquisition, after—

(a) The Administrator determines that the sponsor has acquired satisfactory title to the land; or

(b) In the case of a request for advance payment under § 152.209(d), the Administrator is assured that a satisfactory title will be acquired.

§ 152.213 Grant closeout requirements.

(a) *Program income.* Sponsors or planning agencies that are units of local government shall return all interest earned on advances of grant-in-aid funds to the Federal Government in accordance with a decision of the

Comptroller General (42 Comp. Gen. 289). All other program income (gross income) earned by grant-supported activities during the grant period shall be retained by the sponsor and, if required by the grant agreement—

(1) Be added to funds committed to the project by the FAA and the sponsor and used to further eligible program objectives; or

(2) Be deducted from the total project cost for the purpose of determining the net costs on which the Federal share of costs will be based.

(b) *Financial reports.* The sponsor or planning agency shall furnish, within 90 days after completion of all items in a grant, all reports, including financial performance reports, required as a condition of the grant.

(c) *Project completion.* When the project for airport development or planning is completed in accordance with the grant agreement, the sponsor or planning agency may apply for payment for all incurred costs, as follows:

(1) *Airport development.* When allowability of costs can be determined under § 152.203, payment may be made to the sponsor if—

(i) A final inspection of all work at the airport site has been made jointly by the appropriate FAA office and representatives of the sponsor and the contractor, unless that office agrees to a different procedure for final inspection; and

(ii) The sponsor has furnished final "as constructed" plans, unless otherwise agreed to by the Administrator.

(2) *Airport planning.* When the final planning report has been received and accepted by the FAA.

(d) *Property accounting reports: airport development projects.* The sponsor of an airport development project shall account for any property acquired with grant funds or received from the United States, in accordance with the provisions of Attachment N of Office of Management and Budget Circular A-102 (42 FR 45828).

(e) *Final determination of U.S. share.* Based upon an audit or other information considered sufficient in lieu of an audit, the Administrator determines the total amount of the allowable project costs and makes settlement for any adjustments to the Federal share of costs.

Subpart D—Accounting and Reporting Requirements

§ 152.301 Applicability.

This subpart contains accounting and reporting requirements applicable to—

(a) Each sponsor of a project for airport development;

(b) Each sponsor of a project for airport master planning; and

(c) Each planning agency conducting a project for airport system planning.

§ 152.303 Financial management system.

Each sponsor or planning agency shall establish and maintain a financial management system that meets the standards of Attachment G of Office of Management and Budget Circular A-102 (42 FR 45828).

§ 152.305 Accounting records.

(a) *Airport development.* Each sponsor of a project for airport development shall establish and maintain, for each individual project, an accounting record satisfactory to the Administrator which segregates cost information into the cost classifications set forth in Standard Form 271 (42 FR 45841).

(b) *Airport planning.* Each sponsor of a project for airport master planning and each planning agency conducting a project for airport system planning shall establish and maintain, for each planning project, an adequate accounting record that segregates and groups direct and indirect cost information in the following classifications:

(1) Third party contract costs.

(2) Force account costs.

(3) Administrative costs.

§ 152.307 Retention of records.

Each sponsor or planning agency shall retain, for a period of 3 years after the date of submission of the final expenditure report—

(a) Documentary evidence, such as invoices, cost estimates, and payrolls, supporting each item of project costs; and

(b) Evidence of all payments for items of project costs, including vouchers, cancelled checks or warrants, and receipts for cash payments.

§ 152.309 Availability of sponsor's records.

(a) The sponsor or planning agency shall allow any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller General of the United States access to any of its books, documents, papers, and records that are pertinent to grants received under this part for the purposes of accounting and audit.

(b) The sponsor or planning agency shall allow appropriate FAA or DOT representatives to make progress audits at any time during the project, upon reasonable notice to the sponsor or planning agency.

(c) If audit findings have not been resolved, the applicable records shall be retained by the sponsor or planning agency until those findings have been resolved.

(d) Records for nonexpendable property that was acquired with Federal funds shall be retained for three years after final disposition of the property.

(e) Microfilm copies of original records may be substituted for original records with the approval of the FAA.

(f) If the FAA determines that certain records have long-term retention value, the FAA may require transfer of custody of those records to the FAA.

§ 152.311 Availability of contractor's records.

The sponsor or planning agency shall include in each contract of the cost reimbursable type a clause that allows any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller General of the United States access to the contractor's records pertinent to the contract for the purposes of accounting and audit.

§ 152.313 Property management standards.

(a) The sponsor shall establish and maintain property management standards in accordance with Attachment N of Office of Management and Budget Circular A-102 (42 FR 45828) for the utilization and disposition of property furnished by the Federal government, or acquired in whole or in part by the sponsor with Federal funds.

(b) A sponsor may use its own property management standards and procedures as long as the standards required by paragraph (a) of this section are included.

§ 152.315 Reporting on accrual basis.

(a) Except as provided in paragraph (b) of this section each sponsor or planning agency shall submit all financial reports on an accrual basis.

(b) If records are not maintained on an accrual basis by a sponsor or planning agency, reports may be based on an analysis of records or best estimates.

§ 152.317 Report of Federal cash transactions.

When funds are advanced to a sponsor or planning agency by Treasury check, the sponsor or planning agency shall submit the report form prescribed by the Administrator within 15 working days following the end of the quarter in which check was received.

§ 152.319 Monitoring and reporting of program performance.

(a) The sponsor or planning agency shall monitor performance under the project to ensure that—

- (1) Time schedules are being met;
- (2) Work units projected by time periods are being accomplished; and,
- (3) Other performance goals are being achieved.

(b) Reviews shall be made for—

- (1) Each item of development or work element included in the project; and
- (2) All other work to be performed as a condition of the grant agreement.

(c) *Airport development.* Unless otherwise requested by the Administrator, the sponsor of a project for airport development shall submit a performance report, on an annual basis, that must include—

- (1) A comparison of actual accomplishments to the goals established for the period, made, if applicable, on a quantitative basis related to cost data for computation of unit costs;
- (2) The reasons for slippage in each case where an established goal was not met; and
- (3) Other pertinent information including, when appropriate, an analysis and explanation of each cost overrun and high unit cost.

(d) *Airport planning.* The sponsor of a project for airport master planning or a planning agency conducting a project for airport system planning shall submit a performance report, on a quarterly basis, that must include:

- (1) A comparison of actual accomplishments to the goals established for the period, made, if applicable, on a quantitative basis related to costs for computation of work element costs;
- (2) Reasons for slippage in each case where an established goal was not met; and
- (3) Other pertinent information including, when appropriate, an analysis and explanation of each cost overrun and high work element cost.

§ 152.321 Notice of delay or acceleration.

(a) The sponsor or planning agency shall promptly notify the FAA of each condition or event that may delay or accelerate accomplishment of the project.

(b) In the event that delay is anticipated, the notice required by paragraph (a) of this section must include—

- (1) A statement of actions taken or contemplated; and
- (2) Any federal assistance needed.

§ 152.323 Budget revision: airport development.

(a) If any performance review conducted by the sponsor discloses a need for change in the budget estimates, the sponsor shall submit a request for budget revision on a form prescribed by the Administrator.

(b) A request for prior approval for budget revision shall be made promptly by the sponsor whenever—

(1) The revision results from changes in the scope or objective of the project; or

(2) The revision increases the budgeted amounts of Federal funds needed to complete the project.

(c) The sponsor shall promptly notify the FAA whenever the amount of the grant is expected to exceed the needs of the sponsor by more than \$5,000, or 5 percent of the grant amount, whichever is greater.

§ 152.325 Financial status report: airport planning.

Each sponsor of a project for airport master planning and each planning agency conducting a project for airport system planning shall submit a financial status report on a form prescribed by the Administrator at the completion of the project.

Subpart F—Suspension and Termination of Grants

§ 152.501 Applicability.

This subpart contains procedures for suspending or terminating grants for airport development projects and airport planning.

§ 152.503 Suspension of grant.

(a) If the sponsor or planning agency fails to comply with the conditions of the grant, the FAA may, by written notice to the sponsor or planning agency, suspend the grant and withhold further payments pending—

(1) Corrective action by the sponsor or planning agency; or

(2) A decision to terminate the grant.

(b) Except as provided in paragraph (c), after receipt of notice of suspension, the sponsor or planning agency may not incur additional obligations of grant funds during the suspension.

(c) All necessary and proper costs that the sponsor or planning agency could not reasonably avoid during the period of suspension will be allowed, if those costs are in accordance with Appendix C of this part.

§ 152.505 Termination for cause.

(a) If the sponsor or planning agency fails to comply with the conditions of the grant, the FAA may, by written notice to the sponsor or planning

agency, terminate the grant in whole, or in part.

The notice of termination will contain—

(1) The reasons for the termination, and

(2) The effective date of termination.

(c) After receipt of the notice of termination, the sponsor or planning agency may not incur additional obligations of grant funds.

(d) Payments to be made to the sponsor or planning agency, or recoveries of payments by the FAA, under the grant shall be in accordance with the legal rights and liabilities of the parties.

§ 152.507 Termination for convenience.

(a) When the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds, the grant may be terminated in whole, or in part, upon mutual agreement of the FAA and the sponsor or planning agency.

(b) If an agreement to terminate is made, the sponsor or planning agency—

(1) May not incur new obligations for the terminated portion after the effective date; and

(2) Shall cancel as many obligations, relating to the terminated portion, as possible.

(c) The sponsor or planning agency is allowed full credit for the Federal share of the noncancellable obligations that were properly incurred by the sponsor before the termination.

§ 152.509 Request for reconsideration.

If a grant is suspended or terminated under this subpart, the sponsor or planning agency may request the Administrator to reconsider the suspension or termination.

Appendix A—Contract and Labor Provisions

This appendix sets forth contract and labor provisions applicable to grants under the Airport and Airway Development Act of 1970.

This appendix does not apply to: (1) Any contract with the owner of airport hazards, buildings, pipelines, powerlines, or other structures or facilities, for installing, extending, changing, removing, or relocating that structure or facility, and (2) any written agreement or understanding between a sponsor and another public agency that is not a sponsor of the project, under which the public agency undertakes construction work for or as agent of the sponsor.

1. Contract Provisions Required by the Regulations of the Secretary of Labor

Each sponsor entering into a construction contract for an airport development project shall insert in the contract and any supplemental agreement:

(1) The provisions required by the Secretary of Labor, as set forth in paragraphs A through K;

(2) The provisions set forth in paragraph L, and

(3) Any other provisions necessary to ensure completion of the work in accordance with the grant agreement.

The provisions in paragraphs A through K and provision (5) in paragraph L need not be included in prime contracts of \$2,000 or less.

A. *Minimum wages.* (1) All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act [29 CFR Part 3], the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision(s) of the Secretary of Labor which is (are) attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision(s) shall be posted by the contractor at the site of the work in a prominent place where it (they) can be easily seen by the workers. For the purpose of this paragraph, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of subparagraph (4) below. Also for the purpose of this paragraph, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period (29 CFR 5.5(a)(1)(i)).

(2) Any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination(s) and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination(s), and a report of the action taken shall be sent by the [insert sponsor's name] to the FAA for approval and transmittal to the Secretary of Labor. In the event that the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for final determination (29 CFR 5.5(a)(1)(ii)).

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for determination (29 CFR 5.5(a)(1)(iii)).

(4) If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: *Provided, however,* the Secretary of Labor has found, upon written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program (29 CFR 5.5(a)(1)(iv)).

B. *Withholding: FAA from sponsor.* Pursuant to the terms of the grant agreement between the United States and [insert sponsor's name], relating to Airport Development Aid Project No. ———, and Part 152 of the Federal Aviation Regulations (14 CFR Part 152), the FAA may withhold or cause to be withheld from the [insert sponsor's name] so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by this contract. In the event of failure to pay any laborer or mechanics, including any apprentice or trainee, employed or working on the site of the work all or part of the wages required by this contract, the FAA may, after written notice to the [insert sponsor's name], take such action as may be necessary to cause the suspension of any further payment or advance of funds until such violations have ceased (29 CFR 5.5(a)(2)).

C. *Payrolls and basic records.* (1) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv) (see subparagraph (4) of paragraph A above), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits (29 CFR 5.5(a)(3)(i)).

(2) The contractor will submit weekly a copy of all payrolls to the [insert sponsor's name] for availability to the FAA. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that

the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) (see subparagraph (4) of paragraph A above), shall satisfy this requirement. The prime contractor shall be responsible for submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the FAA and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the [insert sponsor's name] for availability to the FAA, that their employment is pursuant to an approved program and shall identify the program (29 CFR 5.5(a)(3)(ii)).

D. Apprentices and trainees. (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph (2) of this paragraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the [insert sponsor's name] or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination (29 CFR 5.5(a)(4)(i)).

(2) Trainees. Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the [insert sponsor's name] or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved (29 CFR 5.5(a)(4)(ii)).

(3) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this paragraph shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30 (29 CFR 5.5(a)(4)(iii)).

(4) Application of 29 CFR 5.5(a)(4). On contracts in excess of \$2,000 the employment of all apprentices and trainees as defined in 29 CFR 5.2(c) shall be subject to the provisions of 29 CFR 5.5(a)(4) (see paragraph D(1), (2), and (3) above).

E. Compliance with Copeland Regulations. The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference (29 CFR 5.5(a)(5)).

F. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek unless such laborer or mechanic received compensation at a rate not less than 1½ times his basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, as the case may be (29 CFR 5.5(c)(1)).

G. Violations; liability for unpaid wages; liquidated damages. In the event of any violation of paragraph F of this provision, the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition,

such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of said paragraph F of this provision, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by said paragraph F of this provision (29 CFR 5.5(c)(2)).

H. Withholding for unpaid wages and liquidated damages. The FAA may withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph G of this provision (29 CFR 5.5(c)(3)).

I. Working conditions. No contractor may require any laborer or mechanic employed in the performance of any contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards (29 CFR Part 1926) and other occupational and health standards (29 CFR Part 1910) issued by the Department of Labor.

J. Subcontracts. The contractor will insert in each of his subcontracts the clauses contained in paragraphs A through K of this provision, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made (29 CFR 5.5(a)(6), 5.5(c)(4)).

K. Contract termination debarment. A breach of clause A, B, C, D, E, or J may be grounds for termination of the contract, and for debarment as provided in § 5.6 of the Regulations of the Secretary of Labor as codified in 29 CFR 5.6 (29 CFR 5.5(a)(7)).

L. Additional contract provisions. (1) Airport Development Aid Program Project. The work in this contract is included in Airport Development Aid Program Project No. ——— which is being undertaken and accomplished by the [insert sponsor's name] in accordance with the terms and conditions of a grant agreement between the [insert sponsor's name] and the United States, under the Airport and Airway Development Act of 1970 (84 Stat. 219) and Part 152 of the Federal Aviation Regulations (14 CFR Part 152), pursuant to which the United States has agreed to pay a certain percentage of the costs of the project that are determined to be allowable project costs under that Act. The United States is not a party to this contract and no reference in this contract to the FAA or any representative thereof, or to any rights granted to the FAA or any representative thereof, or the United States, by the contract, makes the United States a party to this contract.

(2) Consent to assignment. The contractor shall obtain the prior written consent of the [insert sponsor's name] to any proposed

assignment of any interest in or part of this contract.

(3) *Convict labor.* No convict labor may be employed under this contract.

(4) *Trans preference.* In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to qualified individuals who have served in the military service of the United States (as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501) and have been honorably discharged from the service, except that preference may be given only where that labor is available locally and is qualified to perform the work to which the employment relates.

(5) *Withholding: sponsor from contractor.* Whether or not payments or advances to the [insert sponsor's name] are withheld or suspended by the FAA, the [insert sponsor's name] may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the contractor or any subcontractor on the work the full amount of wages required by this contract.

(6) *Nonpayment of wages.* If the contractor or subcontractor fails to pay any laborer or mechanic employed or working on the site of the work any of the wages required by this contract the [insert sponsor's name] may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment or advance of funds until the violations cease.

(7) *FAA inspection and review.* The contractor shall allow any authorized representative of the FAA to inspect and review any work or materials used in the performance of this contract.

(8) *Subcontracts.* The contractor shall insert in each of his subcontracts the provisions contained in paragraphs [insert designation of 6 paragraphs of contract corresponding to subparagraphs (1), (3), (4), (5), (6), and (7) of this paragraph], and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(9) *Contract termination.* A breach of paragraphs [insert designation of 3 paragraphs corresponding to subparagraphs (6), (7), and (8) of this paragraph] may be grounds for termination of the contract.

II. Adjustment in Liquidated Damages

A contractor or subcontractor who has become liable for liquidated damages under the provision set out in paragraph I.G of this appendix and who claims that the amount administratively determined as liquidated damages under section 104(a) of the Contract Work Hours and Safety Standards Act is incorrect or that he violated inadvertently the Contract Work Hours and Safety Standards Act, notwithstanding the exercise of due care, may—

(1) If the amount determined is more than \$100, apply to the Administrator for a recommendation to the Secretary of Labor if appropriate adjustment be made or

that he be relieved of liability for the liquidated damages; or

(2) If the amount determined is \$100 or less, apply to the Administrator for an appropriate adjustment in liquidated damages or for release from liability for the liquidated damages.

III. Corrected Wage Determinations

The Secretary of Labor corrects any wage determination included in any contract under this Appendix whenever the wage determination contains clerical errors. A correction may be made at the Administrator's request or on the initiative of the Secretary of Labor.

IV. Applicability of Interpretations of the Secretary of Labor

When applicable by their terms, the regulations of the Secretary of Labor (29 CFR 5.20-5.32) interpreting the "fringe benefit provisions" of the Davis-Bacon Act apply to the contract provisions in this Appendix.

V. Records

A sponsor who is required to include in a construction contract the labor provisions required by this appendix shall require the contractor to comply with those provisions and shall cooperate with the FAA in effecting that compliance. For this purpose the sponsor shall—

(1) Keep, and preserve, the record described in paragraph IC for a 3-year period beginning on the date the contract is completed, each affidavit and payroll copy furnished by the contractor, and make those affidavits and copies available to the FAA, upon request, during that period;

(2) Have each of those affidavits and payrolls examined by its resident engineer (or any other of its employees or agents who is qualified to make the necessary determinations), as soon as possible after receiving it, to the extent necessary to determine whether the contractor is complying with the labor provisions required by this appendix and particularly with respect to whether the contractor's employees are correctly classified;

(3) Have investigations made during the performance of work under the contract, to the extent necessary to determine whether the contractor is complying with those labor provisions, including in the investigations, interviews with employees and examinations of payroll information at the work site by the sponsor's resident engineer (or any other of its employees or agents who is qualified to make the necessary determinations);

(4) Keep the appropriate FAA office fully advised of all examinations and investigations made under this appendix, all determinations made on the basis of those examinations and investigations, and all efforts made to obtain compliance with the labor provisions of the contract; and

(5) Give priority to complaints of alleged violations, and treat as confidential any written or oral statements made by any employee in connection with a complaint, and not disclose an employee's statement made in connection with a complaint to a contractor without the employee's consent.

Appendix B—List of Advisory Circulars Incorporated by 152.11

(a) *Circulars available free of charge.*

Number and Subject

- 150/5100-12—Electronic Navigational Aids Approved for Funding Under the Airport Development Aid Program (ADAP).
- 150/5190-3A—Model Airport Hazard Zoning Ordinance.
- 150/5210-7A—Aircraft Fire and Rescue Communications.
- 150/5210-10—Airport Fire and Rescue Equipment Building Guide.
- 150/5300-2C—Airport Design Standards—Site Requirements for Terminal Navigational Facilities.
- 150/5300-4B—Utility Airports—Air Access to National Transportation.
- 150/5300-6—Airport Design Standards—General Aviation Airports—Basic and General Transport.
- 150/5300-8—Planning and Design Criteria for Metropolitan STOL Ports.
- 150/5320-6B—Airport Pavement Design and Evaluation.
- 150/5320-10—Environmental Enhancement at Airports—Industrial Waste Treatment.
- 150/5320-12—Methods for the Design, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces.
- 150/5325-2C—Airport Design Standards—Airports Served by Air Carriers—Surface Gradient and Line-of-Sight.
- 150/5325-4—Runway Length Requirements for Airport Design.
- 150/5325-6A—Airport Design Standards—Effect and Treatment of Jet Blast.
- 150/5325-8—Compass Calibration Pad.
- 150/5335-1A—Airport Design Standards—Airports Served by Air Carriers—Taxiways.
- 150/5335-2—Airport Aprons.
- 150/5335-3—Airport Design Standards—Airports Served by Air Carriers—Bridges and Tunnels on Airports.
- 150/5335-4—Airport Design Standards—Airports Served by Air Carriers—Runway Geometrics.
- 150/5340-1D—Marking of Paved Areas on Airports.
- 150/5340-4C—Installation Details for Runway Centerline and Touchdown Zone Lighting Systems.
- 150/5340-5A—Segmented Circle Airport Marker System.
- 150/5340-8—Airport 51-foot Tubular Beacon Tower.
- 150/5340-14B—Economy Approach Lighting Aids.
- 150/5340-17A—Standby Power for Non-FAA Airport Lighting System.
- 150/5340-18—Taxiway Guidance Sign System.
- 150/5340-19—Taxiway Centerline Lighting System.
- 150/5340-20—Installation Details and Maintenance Standards for Reflective Markers for Airport Runway and Taxiway Centerlines.
- 150/5340-21—Airport Miscellaneous Lighting Visual Aids.
- AC/5340-22—Maintenance Guide for Determining Degradation and Cleaning of Centerline and Touchdown Zone Lights.
- 150/5340-23A—Supplemental Wind Cones.

- 150/5340-24—Runway and Taxiway Edge Lighting System.
- 150/5340-25—Visual Approach Slope Indicator (VASI) Systems.
- 150/5345-1E—Approved Airport Lighting Equipment.
- 150/5345-2—Specification for L-618 Obstruction Light.
- 150/5345-3C—Specification for L-621 Panels for Remote Control of Airport Lighting.
- 150/5345-4—Specification for L-629 Internally Lighted Airport Taxi Guidance Sign.
- 150/5345-5—Specification for L-617 Circuit Selector Switch, 5,000 Volt 20 Ampere.
- 150/5345-7C—Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits.
- 150/5345-10C—Specification for L-808 Constant Current Regulators.
- 150/5345-1A—Specification for L-812 Static Indoor Type Constant Current Regulator Assembly; 4 KW and 7½ KW, With Brightness Control for Remote Operation.
- 150/5345-12A—Specification for L-801 Beacon.
- 150/5345-1B—Specification for L-801 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits.
- 150/5345-1B—Specification for L-811 Static Indoor Type Constant Current Regulator Assembly; 4 KW; With Brightness Control and Runway Selection for Direct Operation.
- 150/5345-21—Specification for L-818 Static Indoor Type Constant Current Regulator Assembly; 4 KW and 7½ KW; for Remote Operation of Taxiway Lights.
- 150/5345-26A—Specification for L-823 Plug and Receptacle, Cable Connectors.
- 150/5345-27A—Specification for L-867 Eight-foot and Twelve-foot Unlighted or Externally Lighted Wind Cone Assemblies.
- 150/5345-26C—Specification for L-851 Visual Approach Slope Indicators and Accessories.
- 150/5345-36—Specification for L-808 Lighted Wind Tee.
- 150/5345-39A—FAA Specification for L-856, Runway and Taxiway Retroreflective Markers.
- 150/5345-42A—FAA Specification L-867, Airport Light Bases, Transformer Housings, and Junction Boxes.
- 150/5345-43B—FAA/DOD Specification L-856, High Intensity Obstruction Lighting Systems.
- 150/5345-44A—Specification for L-856 Retroreflective Taxiway Guidance Sign.
- 150/5345-45—Lightweight Approach Light Structure.
- 150/5345-46—Specification for Flush Airport Lights.
- 150/5345-47—Isolation Transformers for Airport Lighting Systems.
- 150/5345-48—Specification for Runway and Taxiway Edge Lights.
- 150/5360-6—Airport Terminal Building Development with Federal Participation.
- 150/5360-7—Planning and Design Considerations for Airport Terminal Building Development.
- 150/5370-7—Airport Construction Controls to Prevent Air and Water Pollution.
- 150/5370-8—Slip Form Paving—Portland Cement Concrete.

150/5370-11—Use of Nondestructive Testing Devices in the Evaluation of Airport Pavements.
 (b) *Circulars for sale.*

Number and Subject

- 150/5320-5B—Airport Drainage; \$1.30.
- 150/5370-10—Standards for Specifying Construction of Airports; \$7.25.
- 150/5380-1A—Helipod Design Guide; \$1.00.

Appendix C—Procurement Procedures and Requirements

There is set forth below procurement procedures and requirements applicable to grants for airport development under the Airport and Airway Development Act of 1970.

1. *General.* Each contract under a project must meet the requirements of local law and the requirements and standards contained in this appendix. The sponsor shall establish procedures for procurement of supplies, equipment, construction, and services funded under the project which meet the requirements of Attachment O of Office of Management and Budget (OMB) Circular A-102 (44 FR 47674) and of this appendix. Subject to funding and time limitations, the FAA reviews the sponsor's procurement system to determine whether it may be certified in accordance with Attachment O of OMB Circular A-102.

2. *Out-of-state labor.* No procedure or requirement shall be imposed by any grantee which will operate to discriminate against the employment of labor from any other State, possession, or territory of the United States in the construction of a project.

3. *Bid guarantee.* All bids for construction or facility improvement in excess of \$100,000 shall be accompanied by a bid guarantee consisting of a firm commitment such as a bid bond, certified check or other negotiable instrument equivalent to five percent of the bid price as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

4. *Construction work.* All construction work under a project must be performed under contract, except in a case where the Administrator determines that the project, or a part of it, can be more effectively and economically accomplished on a force account basis by the sponsor or by another public agency acting for or as agent of the sponsor.

5. *Change order.* Unless otherwise authorized by the Administrator, no sponsor may issue any change order under any of its construction contracts or enter into a supplemental agreement unless three copies of that order or agreement have been sent to, and approved by, the FAA.

6. *Beginning work.* No sponsor may allow a contractor or subcontractor to begin work under a project until—

a. The sponsor has furnished three conformed copies of the contract to the appropriate FAA office;

b. The sponsor has, if applicable, submitted a statement that comparable replacement housing, as defined in § 25.15 of the Regulations of the Office of the Secretary of Transportation, will be available within a

reasonable period of time before displacement.

c. The appropriate FAA office has agreed to the issuance of a notice to proceed with the work to the contractor.

7. *Supervision and inspection.* No work will be commenced until the sponsor has provided for adequate supervision and inspection of construction and advised the appropriate FAA office.

8. *Engineering and planning services.* Unless otherwise authorized by the Administrator, each proposal for engineering and planning services shall be reviewed by FAA before the commencement of the Development of design plans and specifications.

9. *Advertising general.* Unless the Administrator approves another method for use on a particular airport development project, each contract and supplemental agreement for construction work on a project in the amount of more than \$10,000 must be awarded on the basis of public advertising and open competitive bidding under the local law applicable to the letting of public contracts.

10. *Advertising: conditions and contents.* There may be no advertisement for bids on, or negotiation of, a construction contract or supplemental agreement until the Administrator has either approved the plans and specifications or accepted a certification in accordance with § 152.7 that they meet all applicable standards prescribed by this part. The advertisement shall inform the bidders of the equal employment opportunity requirements of Part 152. Unless the estimated contract price or construction cost is \$2,000 or less, there may be no advertisement for bids or negotiations until the Administrator has given the sponsor a copy of a decision of the Secretary of Labor establishing the minimum wage rates for skilled and unskilled labor under the proposed contract. In each case, a copy of the wage determination decision, including fringe benefits, must be set forth in the initial invitation for bids or proposed contract, or incorporated therein by reference to a copy set forth in the advertised or negotiated specifications.

11. *Procedures for obtaining wage determinations.* (a) *Specific request for wage determination.* At least 60 days before the intended date of advertising or negotiating of this section, the sponsor shall send to the appropriate FAA office, completed Department of Labor Form DB-11 or DB-11(a), as appropriate, with only the classifications needed in the performance of the work checked. General entries (such as "entire schedule" or "all applicable classifications") may not be used. Additional necessary classifications not on the form may be typed in the blank spaces or on an attached separate list. A classification that can be fitted into classifications on the form, or a classification that is not generally recognized in the area or in the industry, may not be used. Except in areas where the wage patterns are clearly established, the Form must be accompanied by any available pertinent wage payment or locally prevailing fringe benefit information.

(b) *General wage determination.* Whenever the wage patterns in a particular area for a

particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for that type of construction, the Secretary of Labor, upon the request of a Federal agency or in his discretion, may issue a general wage determination when, after consideration of the facts and circumstances involved, he finds that the applicable statutory standards and those of Part 1, 29 CFR, Subtitle A, will be met. This general wage determination is used for all projects located in the area and for the type of construction covered by the general wage determination.

12. Advertising wage determinations. (a) Wage determinations are effective only for 120 days from the date of the determinations. If it appears that a determination may expire between bid opening and award, the sponsor shall so advise the FAA as soon as possible. If it wishes a new request for wage determination to be made and if any pertinent circumstances have changed, it shall submit the appropriate form of the Department of Labor and accompanying information. If it claims that the determination expires before award and after bid opening due to unavoidable circumstances, it shall submit proof of the facts which it claims support a finding to that effect.

(b) The Secretary of Labor may modify any wage determination before the award of the contract or contracts for which it was sought. If the proposed contract is awarded on the basis of public advertisement and open competitive bidding, any modification that the FAA receives less than 10 days before the opening of bids is not effective, unless the Administrator finds that there is reasonable time to notify bidders. A modification may not continue in effect beyond the effective period of the wage determination to which it relates. The Administrator sends any modification to the sponsor as soon as possible. If the modification is effective, it must be incorporated in the invitation for bids, by issuing an addendum to the specifications or otherwise.

13. Awarding contracts. (a) A sponsor may not award a construction contract without the written concurrence of the Administrator (through the appropriate FAA office) that the contract prices are reasonable. A sponsor that awards contracts on the basis of public advertising and open competitive bidding, shall, after the bids are opened, send a tabulation of the bids and its recommendations for award to the appropriate FAA office. The sponsor may not accept a bid by a contractor whose name appears on the current list of ineligible contractors published by the Comptroller General of the United States under § 5.6(b) of the regulations of the Secretary of Labor (29 CFR Part 5), or a bid by any firm, corporation, partnership, or association in which an ineligible contractor has a substantial interest.

(b) A sponsor's proposed contract must have pre-award review and approval by the FAA in any of the following circumstances:

(1) The sponsor's procurement system is not in compliance with one or more significant aspects of Attachment O of OMB

Circular A-102 or with the standards of this appendix.

(2) The procurement is expected to exceed \$10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

(3) The procurement is expected to exceed \$10,000 and specifies a "brand name" product.

(c) The FAA may require pre-award review and approval of a sponsor's proposed contract under any of the following circumstances:

(1) The sponsor's procurement system has not yet been reviewed by the FAA for compliance with OMB Circular A-102 and this appendix.

(2) The sponsor has requested pre-award assistance.

(3) The proposal is for automatic data processing in accordance with paragraph C1 of Attachment B to Federal Management Circular 74-4 (39 FR 27133; 43 FR 50977).

(4) The proposal is one of a series with the same firm.

(5) The proposal is to be performed outside the recipient's established procurement system or office.

(6) The proposal is for construction and is to be awarded through the negotiation procurement method or without competition.

14. Force account work. Before undertaking any force account construction work, the sponsor (or any public agency acting as agent for the sponsor) must obtain the written consent of the Administrator through the appropriate FAA office. In requesting that consent, the sponsor must submit—

(a) Adequate plans and specifications showing the nature and extent of the construction work to be performed under that force account;

(b) A schedule of the proposed construction and of the construction equipment that will be available for the project;

(c) Assurance that adequate labor, material, equipment, engineering personnel, as well as supervisory and inspection personnel as required by this appendix, will be provided; and

(d) A detailed estimate of the cost of the work, broken down for each class of costs involved, such as labor, materials, rental of equipment, and other pertinent items of cost.

15. Each sponsor shall—

(a) Include the equal opportunity clause required by 41 CFR 60-1.4(b) in each nonexempt construction contract and subcontract.

(b) Prior to the award of each nonexempt contract, require each prime contractor and subcontractor to submit the certification required by 41 CFR 60-1.8(b);

(c) Include the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) required by 41 CFR 60-4.2 in all solicitations for offers and bids on each nonexempt construction contract and subcontract;

(d) Include the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) required by 41 CFR 60-4.3(a) in each nonexempt construction contract and subcontract.

16. Exceptions. (a) Paragraphs 1 through 5 and paragraphs 9 through 13 of this section do not apply to contracts with the owners of airport hazards, buildings, pipelines, powerlines, or other structures or facilities, for installing, extending, changing, removing, or relocating any of those structures or facilities. However, the sponsor must obtain the approval of the appropriate FAA office before entering into such a contract.

(b) Any oral or written agreement or understanding between a sponsor and another public agency that is not a sponsor of the project, under which that public agency undertakes construction work for or as agent of the sponsor, is not considered to be a construction contract for the purposes of this appendix.

Appendix D—Assurances

There is set forth below the assurances that the sponsor or planning agency must submit with its application in accordance with §§ 152.111 or 152.113, as applicable.

I. General Assurance

Each applicant for an airport development grant or an airport planning grant shall submit the following assurance:

The applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including Office of Management and Budget Circulars No. A-85 (41 FR 2052), A-102 (42 FR 45828), and FMC 74-4 (39 FR 27133; as amended by 43 FR 50977), as they relate to the application, acceptance, and use of Federal funds for this federally-assisted project.

II. Airport Development

A. Assurances. Each applicant for an airport development grant shall submit the following assurances:

1. Authority of applicant. It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. E.O. 11296 and E.O. 11288. It will comply with the provisions of: Executive Order 11296, relating to evaluation of flood hazards, and Executive Order 11288, relating to the prevention, control, and abatement of water pollution.

3. Sufficiency of funds. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.

4. Construction. It will obtain approval by the appropriate Federal agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final

completion in accordance with the application and approved plans and specification; that it will submit to the appropriate Federal agency for prior approval changes that alter the costs of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.

5. *Supervision, inspection, and reporting.* It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Federal grantor agency may require.

6. *Operation of facility.* It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.

7. *Access to records.* It will give the grantor agency and the Comptroller General through any authorized representative access to and the right to examine all records, books, papers, or documents related to the grant.

8. *Access for handicapped.* It will require the facility to be designed to comply with Part 27, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs and Activities Receiving or Benefiting from Federal Financial Assistance, of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 27). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

9. *Commencement and completion.* It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving Federal agency that funds have been approved and that the project will be prosecuted to completion with reasonable diligence.

10. *Disposition of interest.* It will not dispose of or encumber its title or other interests in the site and facilities during the period of Federal interest or while the Government holds bonds, whichever is the longer.

11. *Civil Rights.* It will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant, this assurance shall obligate the Applicant, or in the case of transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

12. *Private gain.* It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

13. *Relocation assistance.* It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.

14. *OMB Circular A-102.* It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with Office of Management and Budget Circular No. A-102.

15. *Hatch Act.* It will comply with the provisions of the Hatch Act which limit the political activity of employees.

16. *Federal Fair Labor Standards Act.* It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

17. *Effective date and duration.* These covenants shall become effective upon acceptance by the sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA and shall constitute a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project. However, these limitations on the duration of the covenants do not apply to the covenant against exclusive rights and real property acquired with Federal funds. Any breach of these covenants on the part of the sponsor may result in the suspension or termination of, or refusal to grant Federal assistance under, FAA administered programs, or such other action which may be necessary to enforce the rights of the United States under this agreement.

18. *Conditions and limitations on airport use.* The Sponsor will operate the Airport as such for the use and benefit of the public. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that it will keep the Airport open to all types, kinds, and classes of aeronautical use on fair and reasonable terms without discrimination between such types, kinds, and classes. Provided, that the sponsor may establish such fair, equal, 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: And Provided Further, That 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.

19. *Exclusive right.* The Sponsor—

a. Will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the Airport, or at any other airport now owned or controlled by it;

b. Agrees that, in furtherance of the policy of the FAA under this covenant, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the Airport, or at any other airport now owned or controlled by it, 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 which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity.

c. Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before July 17, 1962, at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

d. Agrees that it will terminate any other exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Development Act.

20. *Public use and benefit.* The Sponsor agrees that it will operate the Airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination. In furtherance of the covenant (but without limiting its general applicability and effect), the Sponsor specifically covenants and agrees:

a. That in its operation and the operation of all facilities on the Airport, neither it nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public on the Airport.

b. That in any agreement, contract, lease or other arrangement under which a right or privilege at the Airport is granted to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Airport, the Sponsor will insert and enforce provisions requiring the contractor—

(1) to furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; Provided, That the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. That it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any services on its own aircraft

with its own employees (including, but not limited to maintenance and repair) that it may choose to perform.

d. In the event the Sponsor itself exercises any of the rights and privileges referred to in subsection b, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the Sponsor under the provisions of such subsection b.

21. *Nonaviation activities.* Nothing contained herein shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any service of a nonaeronautical nature or to obligate the Sponsor to furnish any particular nonaeronautical service at the Airport.

22. *Operation and maintenance of the airport.* The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, and will not permit any activity thereon which would interfere with its use for airport purposes; Provided, That nothing contained herein shall be construed to require that the Airport be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance; And Provided Further, That nothing herein shall be construed as requiring the 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. In furtherance of this covenant the sponsor will have in effect at all times arrangements for—

a. Operating the airport's aeronautical facilities whenever required;

b. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

c. Promptly notifying airmen of any condition affecting aeronautical use of the Airport.

23. *Airport Hazards.* Insofar as it is within its power and reasonable, the Sponsor will, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways of the Airport, which would constitute an airport hazard.

In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Sponsor has acquired, or hereafter acquires, property interests permitting it to so control the use made of the surface of the land.

24. *Use of adjacent land.* Insofar as it is within its power and reasonable, the Sponsor will, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption

and enforcement of zoning regulations, take action 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.

25. *Airport layout plan.* The Sponsor 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 offsite 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 nonaviation areas and of all existing improvements thereon. Such airport layout plan and each amendment, revision, or modification thereof, shall be subject to the approval of the FAA, which approval shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the airport layout plan. The Sponsor will not make or permit any changes or alterations in the airport or in any of its facilities other than in conformity with the airport layout plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport.

26. *Federal use of facilities.* All facilities of the Airport developed with Federal aid and all those usable for the landing and taking off of aircraft, will be available to the United States at all times, without charge, for use by government aircraft in common with other aircraft, except that if the use by government aircraft is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, 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 FAA, would unduly interfere with use of the landing area by other authorized aircraft, or during any calendar month that—

a. Five (5) or more government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement and each takeoff as a movement) of government aircraft is 300 or more, or the gross accumulative weight of government aircraft using the Airport (the total movements of government aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

27. *Areas for FAA Use.* Whenever so requested by the FAA, the Sponsor will furnish without cost to the Federal government, for construction, operation, and maintenance of facilities for air traffic control activities, or weather reporting activities and communication activities related to air traffic control, such areas of land or water, or estate therein, or rights in buildings of the Sponsor

as the FAA may consider necessary or desirable for construction at Federal expense of space or facilities for such purposes. The approximate amounts of areas and the nature of the property interests and/or rights so required will be set forth in the Grant Agreement relating to the project. Such areas or any portion thereof will be made available as provided herein within 4 months after receipt of written requests from the FAA.

28. *Fee and rental structure.* The airport operator or owner will maintain a fee and rental structure for the facilities and services being provided the airport users which will make the Airport as self-sustaining as possible under the circumstances existing at the Airport, taking into account such factors as the volume of traffic and economy of collection.

29. *Reports to FAA.* The Sponsor will furnish the FAA with such annual or special airport financial and operational reports as may be reasonably requested. Such reports may be submitted on forms furnished by the FAA, or may be submitted in such manner as the Sponsor elects so long as the essential data are furnished. The Airport and all airport records and documents affecting the Airport, including deeds, leases, operation and use agreements, regulations, and other instruments, will be made available of inspection and audit by the Secretary and the Comptroller General of the United States, or their duly authorized representatives, upon reasonable request. The Sponsor will furnish to the FAA or to the General Accounting Office, upon request, a true copy of any such document.

30. *System of accounting.* All project accounts and records will be kept in accordance with a standard system of accounting if so prescribed by the Secretary.

31. *Interfering right.* If at any time it is determined by the FAA that there is any outstanding right or claim of right in or to the Airport property, other than those set forth in Part II of the Application for Federal Assistance, the existence of which creates an undue risk of interference with the operation of the Airport or the performance of the covenants of this Part, the sponsor will acquire, extinguish, or modify such right or claim of right in a manner acceptable to the FAA.

32. *Performance obligation.* The Sponsor will not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency found by the FAA to be eligible under the Act and Regulations to assume such obligations and having the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or 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 insure that the Airport will be operated and maintained in accordance with the Act, the Regulations, and these covenants.

33. *Meaning of terms.* Unless the context otherwise requires, all terms used in these covenants which are defined in the Act and

the Regulations shall have the meanings assigned to them therein.

B. Airport Layout Plan Approval. A sponsor seeking FAA approval of a new or revised airport layout plan shall submit with the plan an environmental assessment prepared in conformance with Appendix 6 of Federal Aviation Administration "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1C, Appendix 6; 45 FR 2244, January 10, 1980) if an assessment is required by the order.

III. Airport Planning

Each applicant for an airport planning grant shall submit the assurances numbered 1 (except for the phrase "and to finance and construct the proposed facilities"), 7, 9, 11 (except for the last sentence), and 12, 14, 15, 30, and 33 of Part II of this appendix.

{Airport and Airway Development Act of 1970, as amended (49 U.S.C. § 1701 *et seq.*); Sec. 1.47 (f) (1) Regulations of the Office of the Secretary of Transportation (49 CFR 1.47 (f) (1))}

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "For Further Information Contact:".

Issued in Washington, D.C., on May 18, 1980.

Langhorne Bond,
Administrator.

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