



# Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities

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### Introduction and Overview

*The information below is intended as a guide in understanding the rules, procedures, and policies applicable to exclusive rights and minimum standards for commercial aeronautical activities. It is not intended to replace the necessary research and review of applicable law that may be required in a particular case, nor to give legal advice or take the place of an attorney who can advise with respect to a particular situation. While every care has been exercised in the preparation of this information, AOPA cannot and does not accept responsibility for an individual's reliance on its contents.*

The owners and operators of many of the nation's more than 5,000 publicly owned airports routinely allow businesses and individuals to conduct commercial aeronautical activities on airport property. Typically, the business operators must sign a lease or contract in which they agree to comply with minimum standards set by the airport owner/operators.

The airport owner/operators also have an obligation to make all airport facilities and services available on fair and reasonable terms without unjust discrimination. The airport owner cannot grant any special privilege or monopoly in the use of public airport facilities. The granting of an exclusive right to provide aeronautical services at an airport on which federal funds have been expended is specifically forbidden by FAA policy.

Minimum standards can be designed to promote higher levels of service from airport businesses. A cautionary note is that, if an airport sponsor attempts to design their minimum standards so as to protect only the interest of one business operator, it can be interpreted as the granting of an exclusive right and potentially be in violation of exclusive rights policy. Certain exceptions do exist to the exclusive rights clause and are not considered exclusive rights, including: when the aeronautical activities are being conducted by the airport sponsor; when only one business has taken the opportunity to conduct business at the airport; when the airport could only support one business; when space limitations only allow for one business; or for reasons of safety and efficiency. A more detailed discussion of exclusive rights can be found in the FAA's Advisory Circular 150/5190-5, Chg. 1, "Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities."

Minimum standards are intended to protect the level and quality of services offered to aircraft owners, pilots, and the public at large. The FAA urges airport sponsors to establish *reasonable* minimum standards that are *relevant* to the aeronautical activity being proposed.

The FAA stresses that, where minimum standards are adopted, they should be applied objectively and uniformly to all on-airport commercial

aeronautical activities. Imposing unreasonable or onerous minimum standards on airport businesses may violate the FAA's policy on exclusive rights. Airports owner/operators who receive federal financial assistance must agree to uphold that policy.

When developing minimum standards, each airport owner/operator must examine what makes its airport different from other airports. Minimum standards should be tailor made for the airport to which they will be applied.

Fill-in-the-blank minimum standards, which may be copied from other airports serving different roles, are unacceptable. For instance, it would be unreasonable for the owner/operator of a small rural airport to require a fixed-base operator (FBO) at the airport to provide jet fuel if no jet aircraft utilize the field. Many individual elements must be examined in developing minimum standards for commercial aeronautical activities on airports. The following elements are often considered in setting minimum standards:

- What type of airport are we talking about? Is it a small general aviation airport with limited aircraft operations and few based aircraft? Is it a busy reliever airport located in or near a metropolitan area? Is it an airport used by air taxi or commuter services? Or is it an airport that accommodates scheduled airline service?
- What types of businesses will be operating at the airport? What types of products and services are in demand at the airport?
- How much space will be required for each activity? Will the businesses need to rent airport property? Under what terms and conditions can specialized aviation service operations (SASOs) be accommodated?
- What minimum insurance coverage and indemnity provisions will be needed?
- Is each minimum standard directly related to the aeronautical activities to which it will be applied?
- What are the responsibilities of airport businesses regarding snow removal or facility maintenance?
- If flight training will be provided to the public, should it be on a full-time or part-time basis? How many and what types of aircraft should be involved? What types of training should be provided? What provisions should be made for storage and maintenance of aircraft?

Even when careful planning goes into establishing minimum standards, circumstances may change. That's why flexibility is the key to establishing and maintaining relevant minimum standards. Periodic reviews of minimum standards can ensure that they continue to be reasonable as the public's demand for general aviation products and services changes.

The guidelines below may be helpful for establishing fair and reasonable minimum standards. They include definitions, a list of general requirements to consider when developing minimum standards, and a sample set of minimum standards to use as a guide.

#### Definition of Terms

The following definitions explain the terms used in the sample minimum standards below.

- **Aeronautical Activity:** Any activity conducted on airport property that makes the operation of an aircraft possible or that contributes to or is required for the safe operation of aircraft. The following activities are among those considered to be aeronautical activities within this definition:
  - Charter operations;
  - Pilot training;
  - Aircraft rental;
  - Sightseeing;
  - Aerial surveying;
  - Crop dusting;
  - Air carrier operations (both airline passenger and air cargo);
  - Aircraft sales and service;
  - Aviation fuel and oil sales (whether or not conducted in conjunction with other included activities);
  - Repair and maintenance of aircraft;
  - Sale of aircraft parts;
  - Any other activities that, because of their direct relationship to the operation of aircraft, can appropriately be regarded as an aeronautical activity.
- **Aviation-related Activity:** Any activity conducted on airport property that provides service or support to aircraft passengers or air cargo. The following are examples of aviation-related activities as opposed to aeronautical activities:
  - Ground transportation;
  - Restaurants;
  - Auto parking lots;
  - Concessions;
  - Any other service or support activities that can appropriately be called aviation-related.
- **Agreement or Lease:** A contract executed between the airport and an entity granting a concession that transfers rights or interest in property, or otherwise authorizes the conduct of certain activities. The agreement or lease must be in writing, executed by both parties, and enforceable by law.
- **Air Charter:** An entity that provides on-demand, non-scheduled passenger service in aircraft having no more than 30 passenger seats. This entity must operate under the appropriate Federal Aviation Regulations (FARs).
- **Aircraft Maintenance:** The repair, maintenance, adjustment, or inspection of aircraft. Major repairs include major alterations to the airframe, powerplant, and propeller as defined in Part 43 of the FARs. Minor repairs include normal, routine annual inspection with attendant maintenance, repair, calibration, adjustment, or repair of aircraft and their accessories.

- **Airport District Office (ADO):** These offices are outlying units or extensions of regional airport divisions. They advise and assist public agencies and their agents with the submission of project requests for establishing, improving, equipping, and financing airports. They also provide advisory services to the owners and operators of both public and private airports regarding the operation and maintenance of their airports. The FAA has a [complete listing of ADO offices](#) online.
- **Airport Operating Area (AOA):** The ramp, apron, runway, and taxiway system at the airport.
- **Airport Layout Plan (ALP):** A drawing depicting the physical layout of the airport that identifies the location and configuration of runways, taxiways, buildings, roadways, utilities, nav aids, etc. The ALP must also show planned airport development.
- **Apron:** A paved area suitable for aircraft staging and parking.
- **Assurance:** A provision contained in a federal grant agreement to which the recipient of federal airport development assistance has voluntarily agreed in consideration for the assistance provided.
- **Commercial Aeronautical Activity:** Any aeronautical activity intended to secure earnings, income, compensation, or profit, whether or not such objectives are accomplished.
- **Commercial Aviation Operator:** A commercial aviation operator may be classified as either a fixed-base operator (FBO) or a specialized aviation service operator (SASO).
- **Commercial Self-service Fueling:** Fueling of an aircraft by the pilot using commercial fuel pumps installed for that purpose. The fueling facility may or may not be attended by the vendor, which may be a fixed-base operator or an airport sponsor/operator that is exercising its right to sell fuel.
- **Entity:** A person, persons, firm, partnership, limited liability company, corporation, unincorporated proprietorship, association, or group.
- **Equipment:** All personal property and machinery together with the necessary supplies, tools, and apparatus necessary for the proper conduct of the activity being performed.
- **Exclusive Right:** A power, privilege, or right that excludes another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties but excluding others would be an exclusive right.
- **FAA:** Federal Aviation Administration.
- **FAR:** Federal Aviation Regulation.
- **Federal Airport Obligations:** All references to federal grant programs, federal airport development assistance, or federal aid intended to address contractual commitments arising from the conveyance of land or from grant agreements.
- **Fixed-base Operator (FBO):** An entity that is authorized and required by agreement with the airport to provide, at a minimum, the following aeronautical activities at the airport:
  - Sale of aviation fuel and oil;
  - Tiedown, hangaring, and parking;
  - Aircraft maintenance;
  - Aircraft washings;
  - Ancillary aircraft ground services;
  - Flight instruction.
- **Grant Agreement:** Any agreement made between an airport sponsor and the FAA, acting on behalf of the United States, for the grant of federal funding or a conveyance of land, either of which the airport sponsor agrees to use for airport purposes.
- **Improvements:** All buildings, structures, and facilities. Improvements may include pavement, fencing, signs, and landscaping that is constructed; installed; or placed on, under, or above any leased area.
- **Independent Operators:** A commercial operator offering a single aeronautical service but without an established place of business on the airport. An airport sponsor may or may not allow this type of servicing to exist on the airport.
- **Lease:** A contract between the airport owner/operator and an entity granting a concession that transfers rights or interests in property, or otherwise authorizes the conduct of certain activities. The lease must be in writing, executed by both parties, and enforceable by law.
- **Land Use Identification Plan:** A scaled, dimensional layout of the entire airport property, the primary purpose of which is to indicate the current and proposed use for each identifiable segment of property as well as the airport sponsor's intentions for the future allocation of airport property. The plan should identify areas dedicated to aeronautical activities and services such as fuel storage, general aviation, passenger loading, air freight and cargo handling, common use aircraft parking, and public automobile parking. Additionally, the plan should identify areas dedicated to future expansion. The land use identification plan may take the form of an airport master plan.
- **Minimum Standards:** The criteria established by an airport owner as the minimum requirements that must be met by businesses in order to engage in providing on-airport aeronautical activities or services.
- **Operator:** As used in these minimum standards, the term operator refers to both commercial operators and non-commercial operators.
- **Self-fueling and Self-service:** The fueling or servicing of an aircraft by the owner of the aircraft or the owner's employee. Self-fueling means using fuel obtained by the aircraft owner from the source of his/her preference. Self-service includes activities such as adjusting, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources supplied by the aircraft owner.
- **Specialized Aviation Service Operation (SASO):** An aeronautical business that offers a single or limited service.
- **Sponsor:** A local municipal or state government body or a private entity obligated to the federal government to comply with the assurances contained in grant agreements or property conveyance instruments. A sponsor may be an entity that exists only to operate the airport, such as an airport authority established by state or local law. For the purposes of this document, the terms "airport sponsor" and "airport owner" are used interchangeably.
- **Sublease:** A lease agreement entered into by a lessee with another entity that transfers rights or interests in property or facilities, and that is enforceable by law.
- **"Through the Fence" Rights:** Rights to direct access to the airport from private property contiguous to the airport. The term also refers to the right to engage in commercial aeronautical activities at the airport without an agreement with the authority.

## Sample Minimum Standards

## Introduction

In order to encourage and ensure the provision of adequate services and facilities, the economic health of, and the orderly development of aviation and related aeronautical activities at the \_\_\_\_\_ [airport], the \_\_\_\_\_ as proprietor, sponsor, and operator of the airport has established these minimum standards and requirements ("minimum standards").

The following sections set forth the minimum standards prerequisite to a person or entity operating upon and engaging in one or more commercial aeronautical activities at the airport. The minimum standards are **not** intended to be all-inclusive. Any person or entity engaging in aviation operations and/or aeronautical activities at the airport will be required to comply with all applicable federal, state, and local laws; ordinances; codes; and other similar regulatory measures pertaining to such activities.

### Statement of Policy

The \_\_\_\_\_ [airport] intends to operate, manage, plan, finance, and develop the airport for its long-term financial health and safety in a manner consistent with accepted airport practices and applicable federal, state, and local policies and regulations.

Accordingly, all applicants who perform commercial aeronautical activities at the airport shall be accorded a fair and reasonable opportunity, without unlawful discrimination, to qualify and to compete (if applicable) to occupy available airport facilities. Applicants shall also have the opportunity to provide appropriate aeronautical activities subject to the minimum standards as established by the \_\_\_\_\_ [airport sponsor].

However, the granting of rights and privileges to individuals and businesses to engage in aeronautical activities shall not be construed in any manner as affording any operator any *exclusive right* for use of the premises and/or facilities at the airport, other than those premises which may be leased exclusively to any operator, and then only to the extent provided in a written lease and/or permit.

While the *airport director* has the authority to manage the airport (including the authority to interpret, administer, and enforce airport agreements and airport owner policies and the authority to permit temporary, short-term occupancy of the airport), the *ultimate authority* to grant the occupancy and use of airport real estate or permits allowing for the conduct of commercial aeronautical activities, and to approve, amend, or supplement all leases and permits is expressly reserved to the \_\_\_\_\_ [airport sponsor].

Many types of aeronautical activities may exist that are too varied to reasonably permit the establishment of specific minimum standards for each. When specific aeronautical activities that are proposed for conduct on the airport that do not fall within the categories documented, minimum standards can be developed on a case-by-case basis, taking into consideration the desires of the applicant and the airport, and the public demand for such service. Often, a simple permit process can be utilized to authorize such activities.

### Specialized Aviation Service Operation (SASO)

The \_\_\_\_\_ [airport] recognizes that when specialized aviation service operations (SASOs), sometimes known as single service operators or special fixed-base operators, apply to do business on the airport, difficulties can arise if the SASOs are required to comply with all provisions of published minimum standards. Accordingly, the airport may develop reasonable, relevant, and applicable standards for each type and class of service. Examples of these specialized services may include flight training, airframe and powerplant repair and maintenance, aircraft charter, air taxi or air ambulance, aircraft sales, avionics, instrument or propeller services, or other specialized commercial flight support businesses. These minimum standards may be supplemented, amended, or modified by the airport owner/operator from time to time and in such manner and to such extent as is deemed reasonable and appropriate by the \_\_\_\_\_ [airport owner/operator].

### Conflicts With Existing Agreements or Federal Law

These minimum standards are not retroactive. They do not affect the current term of any written agreement properly executed prior to the date of adoption and approval of these same minimum standards. Upon expiration of an existing agreement, or if the operator desires to materially increase or expand its activities, the operator shall then comply with the provisions of these minimum standards. A requirement under these minimum standards or an agreement that an operator comply with applicable local or state law does not create an opportunity or right in a sponsor or airport to enact or enforce local ordinance which is preempted under federal law. This includes any attempt to regulate airspace or the conduct of flight operations.

### General Requirements

The following general requirements shall apply to all commercial aeronautical activities at the airport. An operator engaging in a commercial aeronautical activity or activities at the airport must comply with the general requirements of this section.

1. **Agreement:** No entity shall conduct a commercial aeronautical activity unless a valid agreement authorizing such activity has been entered into by the entity and the airport sponsor. The agreement will have a maximum initial term of 20 years. At the request of the service provider, the airport owner/operator may provide for optional extensions of the agreement under agreed-upon terms and conditions. The agreement will present the terms and conditions under which the activity will be conducted at

the airport, including, but not limited to: term of the agreement; rentals, fees, and charges; and the rights and obligations of the respective parties.

2. **Fees and Charges:** The operator shall pay the fees and charges negotiated with the airport sponsor for the applicable aeronautical activities. Information relative to fees and charges applicable to the aeronautical activity described will be made available to the prospective operator by the airport manager.
3. **Leased Premises:** *Note: Under the terms and conditions applied to specialized aviation service operations (SASO), a ground rental lease may not be required. For all others, the following leased premise guidelines apply.*

The operator shall lease, sublease, or construct sufficient ground space, facilities, and accommodations for the proposed aeronautical activity. When more than one activity is proposed or when the operator will be conducting activities from an FBO leasehold as an approved sublessee, the minimum lease terms may vary depending on the nature of each activity. The operator must provide a full description and conceptual drawing [if required] of the location of the ground space, facilities, and accommodations to be utilized for the operator's proposed aeronautical activity. The operator must also provide a schedule of development and identify the location of aircraft parking and staging areas, general aviation customer lounges, vehicle parking, and restrooms.

The ground space shall include an appropriate aircraft parking apron with tiedown and/or hangar facilities sufficient to accommodate the current aeronautical activity and the types of general aviation aircraft frequenting the airport. Ground space shall also accommodate paved roadways and vehicle parking facilities that do not enter the AOA. The facilities and floor space allotments shall include office and customer lounge facilities, which must be properly heated, ventilated, cooled, and lighted. General aviation user accommodations shall include telephones for customer use, restrooms, and sufficient on-site customer vehicle parking spaces.

4. **Airport Security:** Airport security has been elevated across the nation as a result of the tragic events of September 11, 2001. The U.S. Department of Homeland Security's Transportation Security Administration (TSA) assumed oversight of the FAA's airport security regulations of Part 107 now under 49 CFR Part 1542.

Part 1542 is primarily directed toward major air carrier airports but also includes general aviation airports with scheduled air carrier service. These airports are required to have a TSA-approved airport security plan and procedure that covers the entire airport. Anyone using the airport must comply with the airport security plan as necessary for your purpose while at the airport.

The TSA has issued [recommended airport security guidance](#) for general aviation airports without scheduled air carrier service that can be used by airport managers in developing their local community airport security plan. AOPA was actively involved in the development process of TSA's airport security publication. [AOPA's Airport Watch program](#) was developed to work in conjunction with government involvement of airport security throughout the nation.

5. **Through the Fence Operations:** The owner of an airport may, at times, enter into a "through the fence" agreement that permits access to the public landing area by independent operators (i.e., flight instructors and aircraft mechanics) offering an aeronautical activity or by aircraft based on land adjacent to, but not a part of, the airport property. If allowed, the independent and non-based aircraft owner will need to abide by all current airport rules while engaged in their activity as agreed upon with the airport manager. An access fee and licensing agreement may be imposed for the activity being conducted either on a per-entry or payment-plan basis reasonable to the existing like-type businesses already based at the airport.
6. **Site Development:** Detailed development plans must be submitted to the airport owner through the airport manager's office. All construction plans must be submitted for approval prior to modification or construction of any building, hangar, or other aeronautical facility on the leased premises.

Operators must maintain the leased premises in a neat and orderly condition and provide the necessary personnel to perform day-to-day operational duties and maintenance upon the facilities.

7. **Products and Services:** Products and services shall be provided on a fair, equal, and non-discriminatory basis to all users of the airport. These products and services shall be provided at fair, reasonable, and non-discriminatory prices. If lawful, reasonable and non-discriminatory discounts and other similar types of price reductions may be extended to like purchasers and users.
8. **Licenses, Permits, and Certifications:** The operator shall obtain and comply with all necessary licenses and permits for the conduct of anticipated activities at the airport required by the airport owner or any other duly authorized governmental agency having jurisdiction. The operator shall not engage in any activities at the airport prior to obtaining any certification required by the FAA.
9. **Personnel:** The operator shall have in its employ, and on duty during defined operating hours, trained personnel in such numbers as are required to meet minimum standards herein. The operator shall also provide an employee in the office to supervise the operations on the leased premises. This employee must be able to address the service and product needs of aircraft owners and pilots. Such person shall be authorized to represent and act for, and on behalf of, the operator during all business hours. All personnel are required to hold appropriate FAA certificates and ratings, as applicable.
10. **Payment of Rents and Fees:** No entity shall be permitted to engage in commercial aeronautical activities unless said entity is current in the payment of all rents, fees, or other sums accruing to the airport under any and all agreements.
11. **Laws, Rules, and Regulations:** Any provider of commercial aeronautical activities and services at the airport shall engage in those activities only in accordance with all applicable laws, rules, and regulations of the federal government, the state of \_\_\_\_\_, and all other governmental bodies having jurisdiction, including the regulations of the FAA, the U.S. Department of Transportation, and the airport owner.
12. **Insurance Requirements:** The following insurance requirements apply to those operators who provide an aeronautical service on airport property:
  - **Comprehensive general liability insurance**, including, if applicable, products, completed operations, and hangar keepers liability.
  - **Aircraft liability insurance**, if applicable. For flight training and rental activities, the operator will be required to notify the customer as to whether or not any of the operator's insurance coverage applies to the customer while using the operator's aircraft.
  - **Workers compensation insurance**, if applicable.
  - **Ground vehicle liability insurance**, if applicable. Prior to using the airport property the operator will provide the airport with a certificate(s) of insurance identifying the policies described above. The certificate(s) will include a provision that gives the airport 30 days prior written notice of any modification or cancellation to the insurance policy. (Note: Some airports will specify in the minimum standards that they want to be identified as an additional insured on the operator's policy. Additionally, the minimum standards may also include indemnification/hold harmless provisions. However, these requirements are more often addressed in the lease agreement and therefore are not included here.)
13. **Assignments, Subletting, and Encumbrances:** All assignments, subletting, and encumbrances of agreements between an authorized operator and another entity must receive prior written approval of the airport operator. A request for such written permission, prepared in as much detail as required by the airport, will be submitted to the

airport through the airport manager for its review and approval, which will be completed in a timely fashion. This does not apply to activities provided for under the terms of an existing agreement, including rental to tie-downs and hangar space for aircraft storage. Permission will not be unreasonably withheld and response to requests will be made within 45 days of receipt by the airport.

14. **Taxes:** The operator shall, at its sole cost and expense, pay any and all taxes, which now or in the future may be assessed against the leasehold land, improvements thereto, or otherwise assessed upon its operations.
15. **Signage:** The operator shall not erect, maintain, or display any sign on the leased premises or elsewhere on the airport unless he first obtains the prior consent of the airport manager. All signage must meet the requirements of the airport.
16. **Environmental Compliance:** All operators who dispense fuel, store fuel, and perform aircraft maintenance shall strictly comply with all federal, state, and local laws, rules, and regulations concerning the handling, use, and storage of fuel, oil, solvents, chemicals, and other hazardous materials.

Operators will first obtain approval from the airport before engaging in, or permitting on the leased premises, the stripping and/or painting of aircraft or any other vehicles.

17. **Safety of Others:** All aeronautical activities at the airport shall at all times be conducted with due consideration to the safety of all airport users, other persons, and property located at or about the airport.
18. **Hours of Operation:** Operators providing fueling, customer services, and ancillary services shall be available to the public a predetermined number of hours per day, seven days per week.

## Restrictions on Self-Service

In accordance with FAA policy, the airport owner/operator may not exercise any right or privilege that would have the effect of preventing the operator of any aircraft utilizing the airport from performing services on his or her own aircraft with his or her own employees and equipment. Aircraft owners are entitled to use the landing area of the airport and may tie down, adjust, repair, refuel, clean, and otherwise service their own aircraft, provided the service is performed by the aircraft owner. Any unreasonable restrictions imposed on owners or operators of aircraft by airport commercial operators will be construed as a violation of airport policy.

## Additional Guidance

The following questions addressing two examples of commercial aeronautical activities are intended as a general guide for airport operators, prospective providers of products or services on airports, aircraft owners, and pilots.

- **Fuel and Oil Sales**
  - Will fueling facilities need to be provided, and if so where should they be located?
  - Will the fueling equipment be above ground? Have all environmental laws and considerations been addressed?
  - What types of aircraft will require service? What fuel types should be offered? What are the physical space requirements for current and future needs?
  - What capacity for fuel storage is required for current and future demand?
  - What staffing and training requirements should be established?
- **Flight Training Activities**
  - Will flight training be provided on a full-time or part-time basis? Lease arrangements for flight schools as well as for SASOs will be accommodated.
  - What space accommodations will be necessary if the school is required to comply with provisions of FAR 141?
  - What types of aircraft and how many aircraft will be required for training purposes and to meet the demand for these products and services?
  - How will aircraft maintenance and storage requirements be addressed?
  - What types of training will be provided currently and in the future?

Similar general questions should be formulated for other commercial aeronautical activities that may be provided on airports, including aircraft charter and taxi, aircraft engine/accessory repair and maintenance operations, aircraft painting, prop and radio shops, and other such services as may be required by aircraft owners and pilots.

Airport owners/operators should keep in mind that the FAA is now considering formal recognition of limited commercial activities as being specialized aviation service operations (SASOs) through which single or limited services can be provided.

Airports should also provide for periodic reviews of all airport minimum standards in order to ensure that the established minimum standards continue to be reasonable as demand for products and services changes.

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