February 2011

AIRPORT COOPERATIVE RESEARCH PROGRAM
Sponsored by the Federal Aviation Administration

Responsible Senior Program Officer: Gwen Chisholm Smith

Legal Research Digest 11

SURVEY OF MINIMUM STANDARDS: COMMERCIAL AERONAUTICAL ACTIVITIES AT AIRPORTS

This report was prepared under ACRP Project 11-01, "Legal Aspects of Airport Programs," for which the Transportation Research Board (TRB) is the agency coordinating the research. The report was prepared by Daniel S. Reimer, Esq., and Paul A. Meyers, Kaplan, Kirsch, Rockwell LLP, Aviation Management Consulting Group. James B. McDaniel, TRB Counsel for Legal Research Projects, was the principal investigator and content editor.

Background

There are over 4,000 airports in the country and most of these airports are owned by governments. A 2003 survey conducted by Airports Council International–North America concluded that city ownership accounts for 38 percent, followed by regional airports at 25 percent, single county at 17 percent, and multi-jurisdictional at 9 percent. Primary legal services to these airports are, in most cases, provided by municipal, county, and state attorneys.

Reports and summaries produced by the Airport Continuing Legal Studies Project and published as ACRP Legal Research Digests are developed to assist these attorneys seeking to deal with the myriad of legal problems encountered during airport development and operations. Such substantive areas as eminent domain, environmental concerns, leasing, contracting, security, insurance, civil rights, and tort liability present cutting-edge legal issues where research is useful and indeed needed. Airport legal research, when conducted through the TRB's legal studies process, either collects primary data that usually are not available elsewhere or performs analysis of existing literature.

Applications

Numerous commercial aeronautical activities occur at airports. Examples of these activities include aircraft fueling, line (ground handling) services, maintenance and repair, storage, rental and flight training/instruction, sales, and charter and management.

Airport owners and operators commonly impose requirements that must be met by the businesses that perform these commercial aeronautical activities. These requirements are known as "Minimum Standards." Sponsors of airports that have received Federal Airport Improvement Program grants are under a federal obligation to operate their airport in a safe and efficient manner, while allowing access to all categories of aeronautical users on reasonable terms without unjust discrimination. The FAA encourages airport sponsors to adopt appropriate minimum standards for commercial use of the airport to help meet these potentially conflicting obligations in a consistent manner.

This digest contains source material for adopting and enforcing minimum standards, reports survey results showing current practices, and includes a compendium of comparative minimum standards. The purpose of this research was to identify commercial aeronautical activities (e.g., full service fixed base operator or avionics repair) that are customary at airports and rank them according to frequency of occurrence. The research identified standards typically applied to these activities and categorized them by type of commercial activity and by subject area, e.g., minimum insurance requirements or minimum square footage.

The information contained in this digest should be useful to airports, managers, planners, developers, policy staff, financial officers, and all persons involved in developing and enforcing airport minimum standards.

TRANSPORTATION RESEARCH BOARD
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SURVEY OF MINIMUM STANDARDS: COMMERCIAL AERONAUTICAL ACTIVITIES AT AIRPORTS

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I. INTRODUCTION

Numerous commercial aeronautical activities occur at airports. Examples of these activities include aircraft fueling, aircraft line (ground handling) services, aircraft maintenance and repair, aircraft storage, aircraft rental and flight training/instruction, aircraft sales, and aircraft charter and management.

Airport owners and operators commonly impose requirements that must be met by the businesses that perform these commercial aeronautical activities. These requirements are known as "Minimum Standards."

Airport Minimum Standards vary from airport to airport, based on factors such as the nature of aeronautical activities, the type and level of aircraft operations, the type and number of based aircraft, the types of commercial aeronautical services provided, and available land and improvements. The Federal Aviation Administration (FAA) recommends against "fill in the blank" Minimum Standards.[1]

The Problem Statement for this project noted that there is not a comprehensive source of information on airport Minimum Standards available to airport lawyers. Section II of this digest provides an introduction to and overview of airport Minimum Standards. Section III summarizes the legal standards for developing and implementing airport Minimum Standards, with reference to FAA guidance, and more than 30 reported cases involving airport Minimum Standards. Section IV presents the results of research on the subject of airport Minimum Standards, including a literature review, survey, and interviews. Section V identifies the commercial aeronautical activities that customarily occur at airports and summarizes the contents of airport Minimum Standards. It is important to note that the summary of airport Minimum Standards contents is *not* intended to serve as a recommendation, as content will vary from airport to airport. What may be considered relevant, reasonable, and appropriate at one airport may not be at another. Section VI summarizes common industry practices used in developing and updating airport Minimum Standards.

The appendices to this digest contain further information on the subject of airport Minimum Standards. Appendix A is an index of relevant case law. Appendix B contains the survey conducted for this project and a summary of the survey results. Appendix C contains the interview questions and responses. Appendix D contains a compendium of comparative Minimum Standards for commercial aeronautical activities customarily conducted at airports. Again, the compendium is *not* intended to serve as a recommendation. Appendix E contains a list of abbreviations used herein and definitions of key terms. Appendix F contains illustrative examples of airport Minimum Standards reflecting the diversity of requirements and approaches from airport to airport.

This information, taken together, should assist airport lawyers and others to critically evaluate airport Minimum Standards and to counsel airports on developing, implementing, and enforcing airport Minimum Standards.

II. INTRODUCTION TO MINIMUM STANDARDS

As commonly understood within the aviation industry and the airport community, Minimum Standards are the minimum requirements that must be met for an entity to conduct aeronautical activities on an airport.[2]

[1] FAA Order 5190.6B, *Airport Compliance Manual* § 10.5(a) (2009), available at http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/ ("The FAA will not endorse 'fill-in-the-blank' minimum standards because of the high probability that many airport sponsors would adopt the document without modifying it to the needs of their particular airports. This could result in the imposition of irrelevant and unreasonable standards.").

[2] *See id.* at App. Z ("Minimum Standards" defined to mean "[t]he qualifications or criteria that may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on-airport aeronautical activities for the right to conduct those activities."); National Air Transportation Association, *Airport Sponsors Guide to Preparing Minimum Standards and Airport Rules and Regulations,* at 5 (2009), http://www.nata.aero/data/files/GIA/airport_misc/minstdsguidefinal.pdf. ("Airport minimum standards set forth the minimum requirements an individual or entity wishing to provide aeronautical services to the public on a public-use airport must meet in order to provide those services, such as minimum leasehold size, required equipment, hours of operation, and fees."); Aircraft Owners and Pilots Association, *Minimum Standards for Commercial Aeronautical Activities,* at 10 (1998), http://www.aopa.org/asn/minimum_standards.pdf (defining "minimum standards" to mean "[t]he 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.").

This understanding of Minimum Standards has been in place for decades.[3]

Minimum Standards are adopted, implemented, and enforced by the airport sponsor.[4] Minimum Standards typically include *procedural* requirements for obtaining approval from the airport sponsor to engage in aeronautical activities and *substantive* standards related to such activities.

While Minimum Standards typically concern commercial aeronautical activities (i.e., the sale of aeronautical products and services to the public), they also may contain standards applicable to noncommercial aeronautical activities (e.g., private aircraft storage, flying clubs). The FAA recommends against regulating certain noncommercial activities, particularly self-service, through Minimum Standards.[5] As a practical matter, airport sponsors typically include requirements for self-service, including self-fueling, in Minimum Standards, Rules and Regulations, or in both documents. Minimum Standards typically do *not* address nonaeronautical activities.[6]

No federal law or regulation requires an airport sponsor to establish and implement Minimum Standards.[7] Airport sponsors receiving federal financial assistance through the Airport Improvement Program (AIP) are prohibited from granting an exclusive right to conduct aeronautical activities[8] and further are required to ensure that "the airport will be available for public use on reasonable conditions and without unjust discrimination."[9] Minimum Standards are one way for an airport sponsor to condition use of the airport.[10] Minimum Standards also may serve and promote an airport sponsor's obligation to ensure the safe and efficient use of the airport.[11]

Minimum Standards serve broad purposes, beyond compliance with the airport sponsor's obligations to the FAA (known as Sponsor Assurances or Grant Assurances). For example, Minimum Standards typically address the range, level, and quality of products and services offered to the public as a means of protecting the public and ensuring that the customers of commercial aeronautical service providers can obtain the products and services required in the manner desired.

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[3] *See, e.g.,* FAA Advisory Circular 150/5190-1A, *Minimum Standards for Commercial Aeronautical Activities on Public Airports* § 5(a) (1985), http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/8e17c23e2f26e8018625726d006ce776/135131b2ba5d424786256da9005a84e3/$FILE/150-5190-1a.pdf. ("Minimum Standards" are defined as "[t]he qualifications which may be established by an airport owner as the minimum requirements to be met as a condition for the right to conduct an aeronautical activity on the airport.") (This Advisory Circular has been cancelled and superseded.)

[4] As used herein, "airport sponsor" is intended to refer to the public or private entity with primary responsibility for operating an airport and for carrying out the obligations attendant to the receipt of federal airport grant funding. The terms "airport proprietor" and "airport operator" commonly are used to refer to this same entity.

[5] FAA Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities* § 1.3(c) (2006), http://www.faa.gov/documentLibrary/media/advisory_circular/150-5190-7/150_5190_7.pdf,

> (Since self-service operations performed by the owner or operator of the aircraft using his or her own employees and equipment are not commercial activities, the FAA recommends that airport sponsor requirements concerning those non-commercial activities be separate from the document designed to address commercial activities. Airport rules and regulations or specific language in leases can better address requirements concerning self-service operations and other airport activities.).

[6] *See* FAA Order 5190.6B § 10.2 (2009), available at http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/ ("There is no requirement to include nonaeronautical activities (such as restaurants or car rental) in minimum standards since those activities are not covered under the grant assurances."); FAA Advisory Circular 150/5190-7 § 1.2(d) (same), available at http://www.faa.gov/documentLibrary/media/advisory_circular/150-5190-7/150_5190_7.pdf.

[7] Director's Determination, The Aviation Ctr., Inc. v. City of Ann Arbor, FAA Docket No. 16-05-01, at 23 (Dec. 16, 2005), http://part16.airports.faa.gov/pdf/16-05-01b.pdf ("neither Federal Law nor policy requires the development of minimum standards."); Director's Determination, Pacific Coast Flyers, Inc. v. County of San Diego, FAA Docket No. 16-04-08, at 28–29 (July 25, 2005), http://part16.airports.faa.gov/pdf/16-04-08b.pdf,

> (While recommending the use of minimum standards to avoid violations of Federal law and to ensure adequate public service, the FAA cannot mandate minimum standards at airports. In this particular case, the Complainants' argument that the County has not imposed minimum standards on PAC/Burrows, does not, per se, mean that the County is in noncompliance with its Federal obligations or has otherwise violated a particular grant assurance, such as Grant Assurance 23.).

[8] 49 U.S.C. § 40103(e) (2010), available at http://www.law.cornell.edu/uscode/49/usc_sec_49_00040103----000-.html ("A person does not have an exclusive right to use an air navigation facility on which Government money has been expended."); 49 U.S.C. § 47107(a)(4), available at http://www.law.cornell.edu/uscode/49/usc_sec_49_00047107----000-.html ("a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport…").

[9] 49 U.S.C. § 47107(a)(1) (2010) available at http://www.law.cornell.edu/uscode/html/uscode49/usc_sec_49_00047107----000-.html .

[10] *See* Grant Assurance 22(h), http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf ("The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.").

[11] *See* Grant Assurance 19, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf. ("The airport and all facilities which are necessary to serve the aeronautical users of the airport…shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation.").

Minimum Standards can best be understood as an exercise of the airport sponsor's proprietary authority over an airport, that is, its power as the property owner to condition use of the facility in exchange for the privilege of conducting aeronautical activities on the airport.[12]

The FAA describes the many purposes served by Minimum Standards as follows:

> Promote safety in all airport activities and maintain a higher quality of service for airport users, protect airport users from unlicensed and unauthorized products and services, enhance the availability of adequate services for all airport users, promote the orderly development of airport land…provide a clear and objective distinction between service providers that will provide a satisfactory level of service and those that will not…prevent disputes between aeronautical service providers and reduce potential complaints.[13]

Minimum Standards serve different purposes than other primary guiding documents such as airport Rules and Regulations, which regulate a wider variety of activities occurring at an airport, including aeronautical and nonaeronautical and commercial and noncommercial activities, and typically are adopted in furtherance of the airport sponsor's police powers to protect health, safety, and welfare. In addition, airport sponsors may adopt leasing and development policies to govern those specific activities.

III. LEGAL PRINCIPLES

A. Challenges to Minimum Standards

The FAA does not formally approve airport Minimum Standards, nor is there a requirement to submit draft documents for FAA review. While the FAA will comment on draft documents upon request, the FAA typically is called upon to evaluate Minimum Standards in response to an allegation or claim by an existing or prospective airport tenant or user that some aspect of the Minimum Standards violates the Sponsor Assurances.

Reviewing courts consistently have held that there is no private right of action to allege a violation of the statutory prohibition on granting exclusive rights or the Sponsor Assurances.[14] An airport tenant or user can challenge an airport sponsor's Minimum Standards by filing an informal or formal complaint with the FAA, pursuant to 14 C.F.R. Part 13 and Part 16. Informal complaints typically are considered by a compliance specialist in an FAA district or regional office.[15] Formal complaints are filed with FAA Headquarters in Washington, DC. FAA regulations prescribe a multistep process for investigating and adjudicating formal complaints.[16]

An index of administrative and judicial proceedings concerning airport Minimum Standards is provided in Appendix A.

B. Reasonableness of Minimum Standards

Whether offering comments in response to a request from the airport sponsor or evaluating Minimum Standards in response to an informal or formal complaint, the FAA's primary responsibility is to ensure that Minimum Standards do not violate federal law or the Sponsor Assurances by, in particular, imposing unreasonable conditions, unjustly discriminating, or conferring an exclusive right to conduct an aeronautical activity.[17] The FAA lacks jurisdiction to consider

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[12] *See* Record of Decision, Executive Air Taxi Corp. v. City of Bismarck, FAA Docket Nos. 13-91-5 and 13-92-4, at 24 (June 29, 1993) ("The city established the minimum standards in its capacity as an airport owner and operator. [49 U.S.C. § 41713(b)] preserves the authority of local governments in their capacity as owners or operators of airports to exercise proprietary powers.").

[13] FAA Order 5190.6B § 10.4, available at http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/.

[14] Bowling Green & Warren County Airport Bd. v. Martin Land Dev. Co., Inc., 561 F.3d 556 (6th Cir. 2009); Sw. Air Ambulance, Inc. v. City of Las Cruces, 268 F.3d 1162, 1169 (10th Cir. 2001); Four T's Inc. v. Little Rock Mun. Airport Comm'n, 108 F.3d 909, 916 (8th Cir. 1997); Aircraft Owners and Pilots Ass'n v. Hinson, 102 F.3d 1421, 1427 (7th Cir. 1996); Nw. Airlines, Inc. v. County of Kent, 955 F.2d 1054, 1058–59 (6th Cir. 1992); New England Legal Found. v. Mass. Port Auth., 883 F.2d 157, 168–69 (1st Cir. 1989); Air Transp. Ass'n v. Pub. Utils. Comm'n, 833 F.2d 200, 207 (9th Cir. 1987); Anderson v. USAir, Inc., 818 F.2d 49, 54 (D.C. Cir. 1987); Montauk-Caribbean Airways, Inc. v. Hope, 784 F.2d 91, 97 (2d Cir. 1986); Arrow Airways, Inc. v. Dade County, 749 F.2d 1489, 1491 (11th Cir. 1985); Diefenthal v. C.A.B., 681 F.2d 1039, 1048–1051 (5th Cir. 1982); Rauch v. United Instruments, Inc., 548 F.2d 452, 455, 460 (3d Cir. 1976); *but see* Cedarhurst Air Charter, Inc. v. Waukesha County, 110 F. Supp. 2d 891, 895–99 (E.D. Wis. 2000).

[15] *See* FAA Order 5190.6B §§ 5.4–5.15, available at http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/.

[16] *See* Rules of Practice for Federally-Assisted Airport Enforcement Proceedings, 14 C.F.R. § 16 (2009), available at http://www.access.gpo.gov/nara/cfr/waisidx_09/14cfr16_09.html.

[17] *See* Grant Assurance 22, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf (the airport sponsor shall "make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport."); Grant Assurance 23, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf (the airport sponsor shall not grant an "exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public."). *See also* 49 U.S.C. §§ 40103(e), available at http://www.law.cornell.edu/uscode/html/uscode49/usc_sec_49_00040103----000-.html, 47107(a)(1), available at http://www.law.cornell.edu/uscode/html/uscode49/usc_sec_49_00047107----000-.html and 47107(a)(4), available at http://www.law.cornell.edu/uscode/html/uscode49/usc_sec_49_00047107----000-.html.

constitutional and contractual issues that may be related to Minimum Standards.[18]

More specifically, the FAA requires that Minimum Standards be "relevant to the activity for which they apply" and "attainable."[19] The FAA also has advised that Minimum Standards should "reasonably protect the investment of providers of aeronautical services to meet minimum standards from competition not making a similar investment."[20]

The FAA has advised that it does not "control or direct the operation of airports"[21] and typically does not substitute its judgment or second-guess an airport sponsor's decision to impose particular standards. The following are some examples of FAA decisions in response to formal complaints regarding the requirements of specific airport Minimum Standards:

- The FAA found that an airport sponsor could require that an air carrier operating aircraft with more than nine seats maintain aircraft liability insurance of $20 million per occurrence, but further found that it would be unreasonable to require such coverage for an air carrier operating nine-seat aircraft because such coverage may not be attainable.[22]
- The FAA found that requiring fixed base operators (FBOs) to provide certain services in exchange for the privilege of selling aviation fuel was neither unreasonable nor unjustly discriminatory.[23]
- The FAA found that it was unreasonable for an airport sponsor to require that an aircraft rental company perform certain administrative functions at the airport and have staff available even when no scheduled business was taking place, because the requirements were unduly burdensome and not relevant to the business conducted.[24]
- The FAA found that requiring an airport tenant to place his fuel tanks in a designated fuel farm was neither unreasonable nor unduly burdensome.[25]
- The FAA found that fees and other requirements on self-fueling operations were reasonable.[26]
- The FAA found that requiring commercial aeronautical service providers to lease and develop airport property in conformance with the airport master plan and airport layout plan was reasonable and not unjustly discriminatory.[27]
- The FAA found that imposing minimum-leased-space requirements for commercial aeronautical service providers was reasonable and not unjustly discriminatory.[28]

C. Enforcement of Minimum Standards

To comply with the Sponsor Assurances, the FAA further requires that Minimum Standards must be ob-

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[18] *See* 14 C.F.R. § 16.1, available at http://www.access.gpo.gov/nara/cfr/waisidx_09/14cfr16_09.html.

[19] FAA Order 5190.6B § 10.2, available at http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/, FAA Advisory Circular 150/5190-7 § 1.2(a), http://www.faa.gov/documentLibrary/media/advisory_circular/150-5190-7/150_5190_7.pdf.

[20] FAA Advisory Circular 150/5190-7 § 1.2(d)(3), http://www.faa.gov/documentLibrary/media/advisory_circular/150-5190-7/150_5190_7.pdf.

[21] Director's Determination, BMI Salvage Corp. v. Miami-Dade County, FAA Docket No. 16-05-16, at 9 (July 25, 2006), http://part16.airports.faa.gov/pdf/16-05-16b.pdf, BMI Salvage Corp. v. FAA, 272 F. Appx 842 (11th Cir. 2008).

[22] Final Decision and Order, Flamingo Express v. City of Cincinnati, FAA Docket No. 16-06-04, at 14–16 (Aug. 7, 2007), http://part16.airports.faa.gov/pdf/16-06-04.pdf.

[23] Director's Determination, Self Serve Pumps, Inc. v. Chicago Executive Airport, FAA Docket No. 16-07-02, at 21–22 (Mar. 17, 2008), http://part16.airports.faa.gov/pdf/16-07-02b.pdf ("Bundling aeronautical services with the retail sale of fuel and setting levels of service for fueling are long-standing and common industry practice."); Director's Determination, Lanier Aviation LLC v. City of Gainesville, FAA Docket No. 16-05-03, at 12 (Nov. 25, 2005), http://part16.airports.faa.gov/pdf/16-05-03b.pdf,

> ([N]either the City's Federal obligations nor the Advisory Circular prevent a sponsor from issuing minimum standards regarding the required level-of-service associated with retailing aviation fuel at the Airport. In fact, the FAA relies on airport sponsors to create minimum standards for the provision of aviation services at its airport which best serve the civil aviation interests of the public.).

[24] Director's Determination, Roger Leonard Cardinals' Pilot Shop v. Chesapeake Airport Auth., FAA Docket No. 16-01-06, at 36 (Oct. 22, 2002), http://part16.airports.faa.gov/pdf/16-01-06b.pdf,

> ([W]hile we find it is reasonable for the Complainant to maintain a certain level of business presence at CPK—including office space and staffing at the time of aircraft pick-up—we do not find it reasonable to require the Complainant to (1) conduct his scheduling, dispatching, and record-keeping functions at CPK, and (2) maintain continuous staffing of the office during business hours when the Complainants aircraft based at CPK are not being leased.).

[25] Final Decision and Order, Airborne Flying Serv. v. City of Hot Springs, FAA Docket No. 16-07-06, at 15–19 (May 2, 2008), http://part16.airports.faa.gov/pdf/16-07-06.pdf. *See also* Final Decision and Order, Turner v. City of Kokomo, FAA Docket No. 16-98-16 (July 27, 1999), http://part16.airports.faa.gov/pdf/16-98-16a.pdf.

[26] Director's Determination, Scott Aviation v. DuPage Airport Auth., FAA Docket No. 16-00-19, at 2 (July 19, 2002), http://part16.airports.faa.gov/pdf/16-00-19b.pdf,

> (We find the minimum standards and the fees established by the Airport Authority for self-fueling operations are generally reasonable, including (a) payment of a $.025 fuel flowage fee, (b) using off-airport parking for its fuel trucks, (c) maintaining a $1,000,000 environmental liability insurance policy, (d) depositing the deductible amount associated with the $1,000,000 environmental liability insurance policy with the Airport Authority, and (e) enforcing special licensing requirements for fuel truck drivers.).

[27] Record of Determination, Buffalo Jet Ctr., Inc. v. Niagara Frontier Transp. Auth., FAA Docket No. 16-98-01, at 20–24 (Aug. 19, 1998), http://part16.airports.faa.gov/pdf/16-98-01b.pdf.

[28] Record of Decision, Hamilton v. City of Yankton, FAA Docket No. 13-93-06, at 27 (Oct. 23, 1995).

jectively and uniformly applied.[29] The following are some examples of FAA decisions in response to formal complaints regarding the application and enforcement of Minimum Standards:

• The FAA found that it was not unreasonable for an airport sponsor to waive certain minimum standards for a prospective tenant where the airport sponsor previously had waived the same standards for another tenant.[30]

• The FAA found that it was not unjustly discriminatory for an airport sponsor to refuse to waive certain minimum standards for a tenant, where the tenant had alleged that the airport sponsor had failed to enforce different minimum standards against another airport tenant.[31]

• The FAA found that an airport sponsor was not unjustly discriminating against an FBO by failing to enforce minimum insurance requirements, where the sponsor had demanded corrective action by both airport FBOs to satisfy the requirements.[32] However, the FAA found, in a prior proceeding involving the same airport, that the airport sponsor was unjustly discriminating against an FBO by failing to apply and enforce the airport Minimum Standards objectively and uniformly to similarly situated airport tenants.[33]

• The FAA found that an airport sponsor engaged in unjust discrimination and impermissibly granted an exclusive right when it failed to require a tenant to comply with amended Minimum Standards where the lease agreement required compliance with amended standards.[34]

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[29] FAA Order 5190.6B § 10.2, available at http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/, FAA Advisory Circular 150/5190-7 § 1.1, http://www.faa.gov/documentLibrary/media/advisory_circular/150-5190-7/150_5190_7.pdf.

[30] Director's Determination, Johnson v. Goldsboro-Wayne Airport Auth., FAA Docket No. 16-08-11, at 36 (Oct. 9, 2009), http://part16.airports.faa.gov/pdf/16-08-11b.pdf,

> (While the Director does not condone the Respondent's practice of routinely deviating from its Minimum Standards, this alone is not a violation of the Federal Grant Assurances. The question before the Director is whether or not these deviations result in the dissimilar treatment of two similarly situated parties. Because the Complainant was offered the same waivers at SIG, an allegation of unjust discrimination cannot stand.).

[31] Director's Determination, Self Serve Pumps, Inc. v. Chicago Executive Airport, FAA Docket No. 16-07-02, at 27 (Mar. 17, 2008), http://part16.airports.faa.gov/pdf/16-08-11b.pdf,

> (It is insufficient to simply state that another party is managing to escape sanction from the airport sponsor by departing from standards in one way, so that the airport sponsor must allow a complaining party to depart from standards in a different way. In fact, to sustain an allegation of unjust discrimination, the Complainant, in the extant case, must comply with Minimum Standards to a degree similar to Signature Aviation and request similar treatment in any preference granted by the Airport.).

[32] Director's Determination, Flightline Aviation, Inc. v. City of Shreveport, FAA Docket No. 16-07-05, at 27 (Mar. 7, 2008), http://part16.airports.faa.gov/pdf/16-08-11b.pdf,

> (In this case, Respondent clearly understands its obligations under Grant Assurance 22; that it must enforce standards equally among similarly situated operators. It has a program or process in place and is implementing that program to ensure compliance with Grant Assurance 22 as evidenced by a multitude of correspondence to the two FBOs for the violations of the Amended Minimum Standards and the actions by Respondent to address those violations…. The fact Respondent may not have enforced certain provisions of its standards in the past does not impact [its] compliance status today since it is equitably enforcing the insurance provisions of its Amended Minimum Standards upon both FBOs today.).

See also Penobscot Air Servs. v. FAA, 164 F.3d 713, 728 (1st Cir. 1999)

> (Penobscot alleges that Knox County permitted Barnstorm Aviation to perform commercial aircraft maintenance without a lease and without complying with Knox County's minimum standards, whereas Penobscot was required to comply with all minimum standards. Penobscot states this allegation in conclusory terms, and failed to supply the agency either with specifics or with evidence to support its claim. Therefore the FAA dismissed Penobscot's claim on the ground that it was "unsubstantiated and without supportive documentation to warrant further investigation." That decision was not arbitrary or capricious.).

Final Decision and Order, Rick Aviation v. Peninsula Airport Comm'n, FAA Docket No. 16-05-18, at 9–18 (Nov. 6, 2007), http://part16.airports.faa.gov/pdf/16-05-18.pdf; Director's Determination, The Aviation Ctr., Inc. v. City of Ann Arbor, FAA Docket No. 16-05-01, at 23–28 (Dec. 16, 2005), http://part16.airports.faa.gov/pdf/16-05-01b.pdf; Director's Determination, GFK Flight Support, Inc. v. Grand Forks Reg'l Airport Auth., FAA Docket No. 16-01-05, at 29 (Mar. 22, 2002), http://part16.airports.faa.gov/pdf/16-01-05b.pdf,

> ([W]e note that it is possible for an airport sponsor to be found in violation of its Federal obligations for failure to investigate alleged misconduct of a flying club when the sponsor has been provided with a reasonable basis for further investigation. A sponsor could also be in noncompliance for failing to terminate a flying club's use or lease agreement if said flying club continues to violate the conditions of its tenancy required by FAA Order 5190.6A. However, we find that it was reasonable for the Respondent not to terminate the Flying Club's tenancy at the airport in this case.).

Director's Determination, United Aircraft Servs., Inc. v. Hancock County Port Comm'n, FAA Docket No. 16-00-04, at 15–17 (Oct. 12, 2000), http://part16.airports.faa.gov/pdf/16-00-04b.pdf.

[33] Director's Determination, Royal Air, Inc. v. City of Shreveport, FAA Docket No. 16-02-06, at 53 (Jan. 9, 2004), http://part16.airports.faa.gov/pdf/16-02-06b.pdf,

> (Specifically, the Director found: Respondent did not enforce its minimum leased-space requirements for aircraft rental operations; Respondent inconsistently interpreted and applied its requirement for fixed-base operators to employ mechanics or to make such mechanics available for repair services; …Respondent did not enforce its policy to ensure only authorized mechanics meeting the minimum standards were providing services on the airport[;] Respondent did not enforce its minimum insurance standards for aircraft rental operations.).

[34] Director's Determination, Carey v. Afton-Lincoln County Mun. Airport Joint Powers Bd., FAA Docket No. 16-06-06, at 38 (Jan. 19, 2007), http://part16.airports.faa.gov/pdf/16-06-06b.pdf ("In this case, the minimum standards may not be unreasonable, but the Respondent is applying the minimum standards in such a manner to provide an advantage for one

• The FAA found that, while the airport sponsor did not engage in economic discrimination in its enforcement of the airport's Minimum Standards, the sponsor violated Assurance 5 (Preserving Rights and Powers) as a result of its "informal business practices, ad hoc procedures, and non-transparent decision-making processes."[35]

D. Judicial Challenges to Minimum Standards

Airport Minimum Standards may implicate protections under the U.S. Constitution and the requirements of federal and state law. An existing or prospective tenant or user can file a complaint in federal or state court to present claims of Constitutional deprivation or statutory violation.

Reviewing courts have found the following in response to allegations regarding airport Minimum Standards:

• A federal court held that an airport sponsor did not violate the Equal Protection Clause or Due Process Clause of the Fourteenth Amendment by imposing different and more onerous standards upon a full-service FBO than upon limited service providers.[36]

• A federal court held that an airport sponsor is immune from suit under the Sherman Act for allegedly anti-competitive behavior in the terms and enforcement of Minimum Standards.[37]

• A federal court held that an airport sponsor did not violate the Racketeer Influenced and Corrupt Organizations Act for allegedly concealing the minimum standards for retail fuel sales.[38]

E. Amendments to Minimum Standards

Just as it is the airport sponsor's prerogative to adopt Minimum Standards, airport sponsors can amend or update Minimum Standards as well. Amendments to Minimum Standards also must be reasonable and not unjustly discriminatory and must not confer an exclusive right to conduct an aeronautical activity.[39] While an airport sponsor generally can limit new commercial aeronautical activities while drafting or updating Minimum Standards, sponsors must find reasonable alternatives to accommodate certain activities, such as self-fueling, that the FAA has declared must be permitted.[40]

One issue that may arise when an airport sponsor amends its Minimum Standards is the application of the amended Minimum Standards to existing airport tenants and users. Whether or not the amended standards apply typically is a function of the language of the existing leases, permits, and other relevant agreements. The FAA recommends that airport sponsors impose a continuing obligation to comply with amendments to Minimum Standards.[41] The FAA recognizes that

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tenant to the detriment of others. This results in the granting of an exclusive right to the tenant enjoying the advantage.").

[35] Director's Determination, Moore v. Sumner County Reg'l Airport Auth., FAA Docket No. 16-07-16, at 42 (Feb. 2009), http://part16.airports.faa.gov/pdf/16-07-16b.pdf.

[36] Executive Air Taxi Corp. v. City of Bismarck, 518 F.3d 562, 566–69 (8th Cir. 2008). *See also* Rectrix Aerodrome Ctrs., Inc. v. Barnstable Mun. Airport Comm'n, 632 F. Supp. 2d 120, 128–130 (D. Mass. 2009) (same); AH Aero Servs. v. Ogden City, 2007 U.S. Dist. LEXIS 65322 * 4–7 (D. Utah Aug. 31, 2007), https://ecf.utd.uscourts.gov/cgi-bin/show_public_doc?2005cv0066-249 (court held that airport sponsor did not violate Equal Protection Clause or Due Process Clause of Fourteenth Amendment by allegedly differential enforcement of Minimum Standards); Pan Am. Airways Corp. v. Pease Dev. Auth., 2003 U.S. Dist. LEXIS 19346* 3–6 (D.N.H. Oct. 29, 2003) (court held that airport sponsor did not violate Equal Protection Clause of the Fourteenth Amendment by imposing different rules related to retail fuel sales and self-fueling).

[37] Rectrix Aerodrome Ctrs., Inc. v. Barnstable Mun. Airport Comm'n, 534 F. Supp. 2d 201, 203–06 (D. Mass. 2008). *But see* Scott Aviation, Inc. v. DuPage Airport Auth., 393 F. Supp. 2d 638, 646–47 (N.D. Ill. 2005) (rejecting motion to dismiss Sherman Act claim based on immunity); Cedarhurst Air Charter, Inc. v. Waukesha County, 110 F. Supp. 2d 891, 893–95 (E.D. Wis. 2000) (rejecting assertion of immunity from Sherman Act claim). *See also* Top Flight Aviation, Inc. v. Wash. County Reg'l Airport Comm'n, 224 F. Supp. 2d 966, 972–77 (D. Md. 2002) (court held that an airport sponsor did not engage in anti-competitive behavior in violation of the Sherman Act for denying access to an airport by a business that did not satisfy the Minimum Standards).

[38] Rectrix Aerodrome Ctrs., Inc. v. Barnstable Mun. Airport Comm'n, 632 F. Supp. 2d 120, 126–27 (D. Mass. 2009).

[39] *See* FAA Advisory Circular 150/5190-7 § 1.2(e), http://www.faa.gov/documentLibrary/media/advisory_circular/150-5190-7/150_5190_7.pdf ("Minimum standards can be amended periodically over time; however, a constant juggling of minimum standards is not encouraged…. An airport sponsor can provide for periodic reviews of the minimum standards to ensure that the standards continue to be reasonable."); Final Decision and Order, Airborne Flying Serv. v. City of Hot Springs, FAA Docket No. 16-07-06, at 17 (May 2, 2008), http://part16.airports.faa.gov/pdf/16-07-06.pdf,

> (It is reasonable and prudent to review and update standards and regulations for proposed aeronautical activities to ensure those standards and regulations serve to promote safety, protect airport users from unlicensed and unauthorized products and services, maintain and enhance the availability of adequate services for all airport users, promote the orderly development of airport land, and ensure efficiency of operations.).

Director's Determination, Carey v. Afton-Lincoln County Mun. Airport Joint Powers Bd., FAA Docket No. 16-06-06, at 35 (Jan. 19, 2007), http://part16.airports.faa.gov/pdf/16-06-06b.pdf ("The airport owner or sponsor may quite properly increase the minimum standards from time to time in order to ensure a higher quality of service to the public. Manipulating the standards solely to protect the interest of an existing tenant, however, is unacceptable."); Record of Decision, Int'l Aviation, Inc. v. City of Frederick, FAA Docket No. 13-89-5, at 12–14 (Mar. 6, 1992) (FAA found that changes in the Minimum Standards did not violate Grant Assurance 22 or Grant Assurance 23).

[40] *See* Director's Determination, Maxim United v. Jefferson County, FAA Docket No. 16-01-10, at 24 (Apr. 2, 2002), http://part16.airports.faa.gov/pdf/16-01-10b.pdf.

[41] *Id.* at 22.

changes in Minimum Standards may lead to different standards being applied to different tenants based upon the time the applicable agreements were executed.[42]

IV. SUMMARY OF RESEARCH RESULTS

A. Literature Review

There are two primary sources of guidance on the subject of airport Minimum Standards: the FAA and airport industry trade groups. FAA guidance on Minimum Standards is provided in the following documents:

- Sponsor or Grant Assurances.[43]
- Order 5190.6B, *Airport Compliance Manual*, Chap. 10 (Reasonable Commercial Minimum Standards) (2009).[44]
- Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities* (2006).[45]
- Advisory Circular 150/5190-6, *Exclusive Rights at Federally Obligated Airports* (2007).[46]

The following documents prepared by airport industry trade groups also contain guidance on airport Minimum Standards:

- National Air Transportation Association, *Airport Sponsors Guide to Minimum Standards & Airport Rules and Regulations* (2009).[47]
- American Association of Airport Executives and National Air Transportation Association, *Airport Sponsor's Guide to Preparing Minimum Standards for Airport Aeronautical Service Providers and Airport Operating Rules and Regulations* (2002).
- Aircraft Owners and Pilots Association, *Minimum Standards for Commercial Aeronautical Activities* (1998).[48]

Very few state aeronautics departments appear to publish guidance on airport Minimum Standards. One example of a state guidance document is the Wisconsin Department of Transportation's *Minimum Standards for Commercial Aeronautical Activities*.[49]

This Legal Research Digest is the only project under the Transportation Research Board (TRB) Airport Cooperative Research Program (ACRP) directly addressing the subject of airport Minimum Standards. Minimum Standards are addressed briefly in ACRP Report 16, *Guidebook for Managing Small Airports* (2009).[50] Another project currently underway—ACRP 1-08, Guidebook on Best Management Practices for Leasing and Developing Airport Property—may address the subject.

B. Minimum Standards Questionnaire

A Minimum Standards Questionnaire was developed to gather information on the commercial aeronautical activities occurring at airports; the role, purpose, and content of Minimum Standards; and the process for developing Minimum Standards.

The questionnaire was distributed to a random sample of airports located throughout the United States (survey population). The survey population consisted of a statistically significant random sample of National Plan of Integrated Airport Systems (NPIAS) public-use airports (both privately and publicly owned) having a paved runway of 3,000 ft or greater. The questionnaire was distributed to 491 airports, and 99 surveys were completed prior to the response deadline, which represents a response rate of approximately 20 percent.[51]

To further assist in developing the Compendium of Comparative Minimum Standards in Section V and Appendix D, the questionnaire requested a copy of the respondent airport's Minimum Standards. Thirty-nine airport-specific Minimum Standards were received and reviewed.

The survey results are considered statistically significant (with a 95 percent confidence level and a 5 percent margin of error). The questionnaire and results are provided in Appendix B. The following information provides a brief summary of the survey results.

The respondent airports had the following attributes:

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[42] *See* Director's Determination, Rick Aviation, Inc. v. Peninsula Airport Comm'n, FAA Docket No. 16-05-18, at 17 (May 8, 2007), http://part16.airports.faa.gov/pdf/16-05-18b.pdf,

> (The FAA does not enforce lease provisions through the compliance program. When a sponsor amends its minimum standards, it may attempt to apply such standards to all users. If such application of new minimum standards appears to be in conflict with lease agreements, such a dispute is a legal dispute over lease terms. This is outside of FAA jurisdiction. However, the FAA recognizes that sponsors may not always be able to enforce new minimum standards against leaseholders of prior legal contracts. In such circumstances, the FAA often recommends that when the sponsor has the ability to re-open lease agreements, it should pursue amending the leases to be consistent with the new minimum standards.).

[43] http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf.

[44] http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/.

[45] http://www.faa.gov/documentLibrary/media/advisory_circular/150-5190-7/150_5190_7.pdf.

[46] http://www.faa.gov/documentLibrary/media/advisory_circular/150-5190-6/150_5190_6.pdf.

[47] http://www.nata.aero/data/files/GIA/airport_misc/minstdsguidefinal.pdf.

[48] http://www.aopa.org/asn/minimum_standards.pdf.

[49] http://www.dot.wisconsin.gov/travel/air/docs/minimum-standards.pdf.

[50] http://onlinepubs.trb.org/onlinepubs/acrp/acrp_rpt_016.pdf.

[51] The questionnaire was initially disseminated to the survey population on December 22, 2009, and a final response deadline of February 12, 2010, was established. The questionnaire was made available via a dedicated Web site and the link was disseminated via email to the survey population.

• Approximately 97 percent of the respondent airports are publicly owned.

• The respondent airports range from General Aviation airports to Medium Hub Primary Commercial Service airports. The NPIAS classification of the respondent airports is reflective of the composition of the entire NPIAS.

• The mean number of based aircraft within the survey population is approximately 91, and the median number of based aircraft is 62.

• The mean annual fuel volume (all types) was calculated to be approximately 603,300 gal, and the median was calculated to be 174,750 gal.

The questionnaire revealed the following information about commercial aeronautical activities occurring at the respondent airports:

• FBOs, aircraft storage, aircraft maintenance, and flight training/instruction operators are the most common types of commercial aeronautical activities occurring at the respondent airports.

• Among the airports exercising a proprietary exclusive right, the most common activity being conducted is aircraft fueling.

• Ninety-one percent of airports engaging in a commercial aeronautical activity in competition with other entities at the airport conduct aircraft storage and parking.

• Of the airports prohibiting an aeronautical activity, approximately 39 percent prohibit commercial through-the-fence activities.

The questionnaire revealed the following information about the use, development, and amendment of Minimum Standards at the respondent airports:

• Approximately 63 percent of the respondent airports have Minimum Standards.

• There is considerable variability in the age of airport Minimum Standards, the frequency of reviewing and updating the document, the length of time to develop the document, the internal and external team members involved in developing or updating of the document, the use of external guidance, and the challenges, issues, and/or problems encountered.

• Approximately 45 percent of the respondent airports have adopted Minimum Standards within the last 10 years.

• Approximately 45 percent of the respondent airports indicated that the airport's Minimum Standards are reviewed on an annual basis.

• Approximately 37 percent of the respondent airports indicated that the airport's Minimum Standards are updated every 5 years (at a minimum), and approximately 41 percent of the respondent airports indicated that the airport's Minimum Standards are updated every 5 to 10 years.

• Approximately 75 percent of the respondent airports take less than 12 months to complete the development and/or updating process.

• The respondent airports indicated that reaching consensus on requirements, enforcing standards, and having the time to review/update Minimum Standards are the most common challenges, issues, and/or problems encountered during the development and/or updating process.

The questionnaire revealed the following information about attitudes regarding airport Minimum Standards:

• Of the respondent airports having Minimum Standards, approximately 85 percent believe that the airport's Minimum Standards are achieving the intended role and purpose.

• Lack of enforcement and the need to update the airport's Minimum Standards were cited as the most pressing issues at airports where Minimum Standards are not achieving the intended role or purpose.

• For the most part, the respondent airports believe that Minimum Standards are a great tool to ensure a level playing field and promote fair competition and that Minimum Standards should be adopted, enforced, and kept current.

C. Interviews

Twenty-eight leaders in the airport industry were interviewed to gather additional information regarding commercial aeronautical activities occurring at airports and the development and application of airport Minimum Standards. The individuals interviewed represented various organizations that serve aviation stakeholders in all segments of the aviation industry and included government agencies, major airport industry trade associations, airports, FBOs, and industry suppliers and vendors.

The interview questions and a summary of the results of the interviews are provided in Appendix C. The following information provides a brief summary of the responses:

• Several interviewees indicated that Minimum Standards serve to "level the playing field" and/or to "promote fair competition" at airports. It is important to note, however, that the FAA does not require that Minimum Standards equalize all competitive factors. While the FAA has stated that Minimum Standards serve to "reasonably protect the investment of providers of aeronautical services to meet minimum standards from competition not making a similar investment,"[52] the FAA has also indicated that, "There is no Federal requirement that an airport sponsor equalize the capi-

[52] FAA Advisory Circular 150/5190-7 § 1.2(d)(3).

tal and operating costs of competing fixed-base operators."[53]

• Two-thirds of those interviewed recognized that some commercial aeronautical activities should be prohibited in the interest of aviation safety. Several others indicated that it may be appropriate to restrict commercial aeronautical activities if aviation safety is compromised.

• Roughly one-half of those interviewed believed that Minimum Standards should be reviewed and updated every 5 years.

• Just over 90 percent of those interviewed believed that sufficient resources and guidance exist to develop, update, implement, and enforce Minimum Standards. However, some individuals felt that there were some limitations (e.g., the airport sponsor may not know about the resources or guidance, the resources or guidance may be difficult to find or understand, and it may be hard to apply resources or guidance under particular circumstances).

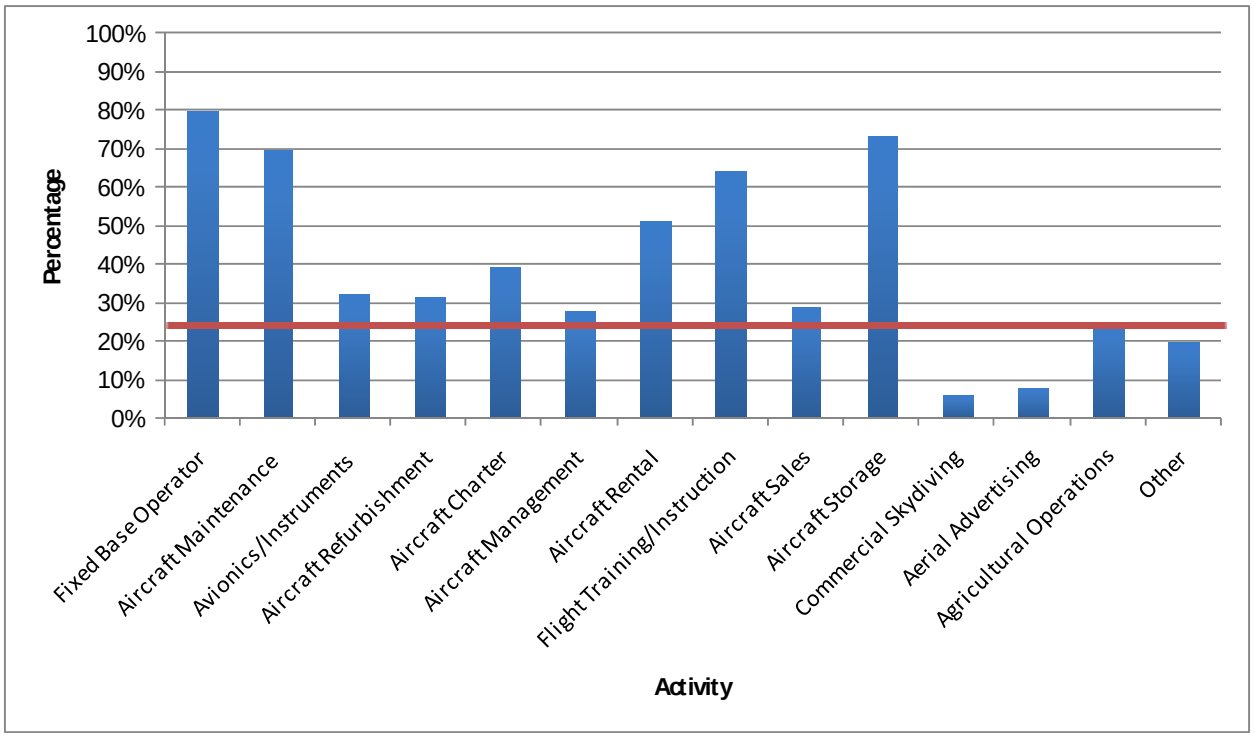
• Approximately 58 percent of those interviewed stated that FAA policies, practices, and decisions were not very reflective of the market-based realities of commercial aeronautical activities at airports; however, approximately 63 percent of those interviewed believed that the Sponsor Assurances, as currently interpreted and enforced by the FAA, were "about right" in terms of finding the balance between airports and commercial aeronautical operators.

• The vast majority of those interviewed, regardless of position, recognized the need for (and the important purposes served by) Minimum Standards.

V. COMPENDIUM OF COMPARATIVE MINIMUM STANDARDS

According to the Problem Statement, one purpose of this project was to develop a "compendium of comparative minimum standards applicable to commercial aeronautical activities that are customary at airports (occurring with a frequency of 25 percent or greater)." The compendium is provided in Appendix D.

A threshold task in developing the compendium was to determine which commercial aeronautical activities occur with a frequency of 25 percent or greater. The questionnaire results revealed the following information regarding the frequency of specific commercial aeronautical activities at the 99 respondent airports. The horizontal line represents 25 percent.



[53] Director's Determination, The Aviation Ctr., Inc. v. City of Ann Arbor, FAA Docket No. 16-05-01, at 27 (Dec. 16, 2005), http://part16.airports.faa.gov/pdf/16-05-01b.pdf.

In rank order by frequency, the customary commercial aeronautical activities are:

1. FBO.
2. Aircraft storage.
3. Aircraft maintenance.
4. Flight training/instruction.
5. Aircraft rental.
6. Aircraft charter.
7. Avionics/Instruments.
8. Aircraft refurbishment.
9. Aircraft sales.
10. Aircraft management.
11. Agricultural operations.

The compendium in Appendix D identifies the minimum standards that apply to these customary commercial aeronautical activities. To develop the compendium, 39 airport Minimum Standards (subject documents) obtained from the respondent airports were reviewed. Minimum Standards have been categorized by type of commercial aeronautical activity and subject area. As stated in the Introduction, this information is *not* intended to serve as a recommendation as to any particular airport's Minimum Standards.

The review of the subject documents yielded the following information and findings:

• There is considerable variability in the frequency of airport Minimum Standards addressing the customary commercial aeronautical activities. For example, 87 percent of the subject documents contain Minimum Standards for FBOs, which exist at roughly 80 percent of the respondent airports. However, only 25 percent of the subject documents address aircraft storage operators, which is the second-ranked commercial aeronautical activity, occurring at more than 70 percent of the respondent airports. None of the subject documents prescribe standards for aircraft refurbishment, which occurs at more than 30 percent of the respondent airports. It appears that many airports have Minimum Standards for commercial aeronautical activities that are not occurring at the airport, and that many airports lack minimum standards for activities that are occurring at the airport.

• In the majority of the subject documents, specific or numerical standards are prescribed relating to commercial aeronautical activities. For example, more than 50 percent of the subject documents that address FBOs specify whether Jet A and Avgas fueling is required; provide numerical standards for minimum leased space (land, ramp, hangars, and other buildings); provide numerical standards for Jet A and Avgas fuel storage capacity; prescribe minimum hours and days of operation; and prescribe numerical standards for commercial general liability insurance and hangar keeper's liability insurance.

• Notwithstanding these commonly-prescribed standards, there is considerable variability in the frequency with which airports prescribe specific or numerical standards for each topic. This is true for each of the customary commercial aeronautical activities. For example, while commercial general liability insurance is commonly prescribed, there is considerable variability in whether policy limits are prescribed for other insurance products (e.g., business automobile liability, hangar keeper's legal liability, aircraft passenger and liability, students and renters, and environmental).

• There is great variability in the numerical values prescribed for most topics. Here too, insurance requirements provide an illustrative example. There is a broad range between the low and high values for most insurance requirements. Similarly, there is a broad range between the low and high values for minimum leased space. While certain low and high values may constitute outliers, thorough analysis of the data confirmed a high degree of variability.

• While the subject documents reflect considerable variability in the frequency of specific or numerical standards for each topic, the subject documents exhibit greater consistency in other areas. The following are some common features of the subject documents:

• In approximately 82 percent of the subject documents, key terms are defined. In approximately 94 percent of the subject documents that define key terms, the definitions of the key terms are consolidated in a separate section of the document.

• Approximately 85 percent of the subject documents contain a separate section that outlines or identifies the general standards that apply to all commercial aeronautical operators. When included in the document, this section typically outlines or identifies a variety of general requirements such as applicability, application, agreement/permit, experience/capability, payment of rents/fees, hours of activity, insurance, multiple activities, and grounds for denial.

• In approximately 56 percent of the subject documents, an agreement is required to engage in commercial aeronautical activities at the airport. A permit is required in approximately 44 percent of the subject documents. In nearly every case (approximately 97 percent), an agreement is required to lease land or improvements at the airport.

• In approximately 74 percent of the subject documents, the airport sponsor requires that any entity desiring to engage in commercial aeronautical activities at the airport complete and submit an application for approval prior to the airport sponsor entering into agreement with or granting a permit to the commercial aeronautical operator.

• In approximately 48 percent of the subject documents, the application criteria are specified. Approximately 24 percent of the subject documents refer to a separate application that is not part of the Minimum Standards. Approximately 24 percent of the subject documents outline or identify the application criteria or provide the application as part of the Minimum Standards.

VI. SUMMARY OF COMMON INDUSTRY PRACTICES

The research, survey, and interviews conducted in preparing this digest indicate that there are some common industry practices used in developing and updating airport Minimum Standards. While this digest is not intended to serve as a how-to guide, understanding these common practices may assist airport lawyers, airport sponsors, airport managers, and consultants who desire to, or are tasked with, developing or updating airport Minimum Standards.

Some common industry practices include the following:

1. *Most airport Minimum Standards share common features*. As described in Section V, the vast majority of the subject documents define key terms, prescribe standards generally applicable to all commercial aeronautical activities, require some form of agreement with the airport sponsor, and require an application.

2. *Airport Minimum Standards typically, but do not always, correspond to the commercial aeronautical activities that currently, or may in the future, occur at the airport*. As detailed in Section V, the survey revealed 11 commercial aeronautical activities that customarily occur at airports. The survey and analysis of the subject documents further revealed that some airport Minimum Standards fail to prescribe standards for each of these customary activities or fail to prescribe standards for commercial aeronautical activities occurring at the airport. Further, a few respondents indicated receiving requests to conduct commercial aeronautical activities that were not covered by the airport's Minimum Standards.

3. *Airport Minimum Standards vary widely on the standards prescribed for specific commercial aeronautical activities*. As analyzed in Section V and reflected in Appendix D, there is no consensus regarding the specific or numeric standards that should be established for any given subject. Where specific or numeric standards are prescribed, the standards that have been established vary widely from airport to airport. Thus, airport sponsors appear to tailor Minimum Standards to the particular circumstances occurring at the airport. To ensure that airport Minimum Standards are relevant and attainable, as required to comply with the Sponsor Assurances, the FAA supports this approach and discourages fill-in-the-blank Minimum Standards.

4. *Airports typically rely on FAA resources in developing and updating Minimum Standards*. As detailed in Section IV.B and Appendix B, airports rely primarily on the Sponsor Assurances and FAA orders and advisory circulars. The literature review summarized in Section IV.A identified some additional resources. Appendix A includes citations to 36 cases specifically on the subject of airport Minimum Standards that provide guidance to airport lawyers, airport sponsors, airport managers, and consultants in approaching the task of developing or updating airport Minimum Standards.

5. *Few airport sponsors submit their Minimum Standards for FAA review*. As examined in Section III, airport sponsors are not required to submit draft Minimum Standards to the FAA for review or approval; however, if a formal or informal complaint is filed with the FAA, the FAA will be called upon to consider the airport sponsor's compliance with the Sponsor Assurances and related federal obligations. Several survey respondents have been parties to such informal and formal proceedings. It appears that airport sponsors determine on a case-by-case basis whether or not to seek FAA review and comment before adopting and implementing Minimum Standards.

6. *Airport Managers and/or the Airport Governing Body typically lead the team*. As outlined in Section IV.B and Appendix B, Airport Managers and/or the Airport Governing Body typically lead the team responsible for the development/update process.

7. *Airport sponsors regularly review and update airport Minimum Standards and typically complete the development or update process in less than 1 year*. As reflected in Appendix B, the survey revealed that roughly half of the respondents review their airport Minimum Standards annually, and a majority update their airport Minimum Standards every 5 or fewer years. The vast majority of respondents indicated that it took less than 1 year to develop or update their Minimum Standards.

APPENDIX A—Index of Case Law on Airport Minimum Standards

Adventure Aviation v. City of Las Cruces, FAA Docket No. 16-01-14 (Sept. 9, 2003) (Final Decision and Order).

AH Aero Servs. v. Ogden City, 2007 U.S. Dist. LEXIS 65322 (D. Utah 2007) (not reported).

Airborne Flying Serv., Inc. v. City of Hot Springs, FAA Docket No. 16-07-06 (May 2, 2008) (Final Decision and Order).

AmAv, Inc. v. Maryland Aviation Administration, FAA Docket No. 16-05-12 (Aug. 8, 2006) (Final Decision and Order).

The Aviation Ctr., Inc. v. City of Ann Arbor, FAA Docket No. 16-05-01 (Dec. 16, 2005) (Director's Determination).

BMI Salvage Corp. v. FAA, 272 F. Appx. 842 (11th Cir. 2008) (not selected for publication) (on review of FAA decision in *BMI Salvage Corp. v. Miami-Dade County*, FAA Docket No. 16-05-16).

Buffalo Jet Ctr., Inc. v. Niagara Frontier Transp. Auth., FAA Docket No. 16-98-01 (Aug. 19, 1998) (Record of Determination).

Carey v. Afton-Lincoln County Mun. Airport Joint Powers Bd., FAA Docket No. 16-06-06 (Jan. 19, 2007) (Director's Determination).

City of Pompano Beach v. FAA, 774 F.2d 1529 (11th Cir. 1985).

Executive Air Taxi Corp. v. City of Bismarck, 518 F.3d 562 (8th Cir. 2008).

Executive Air Taxi Corp. v. City of Bismarck, FAA Docket Nos. 13-91-5 and 13-92-4 (June 29, 1993) (Record of Decision).

Flamingo Express, Inc. v. FAA, 536 F.3d 561 (6th Cir. 2008) (on review of FAA decision in *Flamingo Express v. City of Cincinnati*, FAA Docket No. 16-06-04).

Flightline Aviation, Inc. v. City of Shreveport, FAA Docket No. 16-07-05 (Mar. 7, 2008) (Director's Determination).

GFK Flight Support, Inc. v. Grand Forks Reg'l Airport Auth., FAA Docket No. 16-01-05 (Mar. 22, 2002) (Director's Determination).

Hamilton v. City of Yankton, FAA Docket No. 13-93-06 (Oct. 23, 1995) (Record of Decision).

Int'l Aviation, Inc. v. City of Frederick, FAA Docket No. 13-89-5 (Mar. 6, 1992) (Record of Decision).

JetAway Aviation, Inc. v. Montrose County, FAA Docket No. 16-08-01 (July 2, 2009) (Director's Determination).

Johnson v. Goldsboro-Wayne Airport Auth., FAA Docket No. 16-08-11 (Oct. 9, 2009) (Director's Determination).

Juarez v. FAA, 156 F.3d 1237 (9th Cir. 1998) (unpublished opinion).

Lanier Aviation LLC v. City of Gainesville, FAA Docket No. 16-05-03 (Nov. 25, 2005) (Director's Determination).

Lange, Inc. v. FAA, 208 F.3d 389 (2d Cir. 2000).

Maxim United v. Jefferson County, FAA Docket No. 16-01-10 (Apr. 2, 2002) (Director's Determination).

Moore v. Sumner County Reg'l Airport Auth., FAA Docket No. 16-07-16 (Feb. 27, 2009) (Director's Determination).

Pacific Coast Flyers, Inc. v. County of San Diego, FAA Docket No. 16-04-08 (July 25, 2005) (Director's Determination).

Pan American Airways Corp. v. Pease Dev. Auth., 2003 U.S. Dist. LEXIS 19346 (D.N.H. 2003).

Penobscot Air Servs. v. FAA, 164 F.3d 713 (1st Cir. 1999).

Rectrix Aerodrome Ctrs., Inc. v. Barnstable Mun. Airport Comm'n, 610 F.3d 8 (1st Cir. 2010).

Rick Aviation, Inc. v. Peninsula Airport Comm'n, FAA Docket No. 16-05-18 (Nov. 6, 2007) (Final Decision and Order).

Roger Leonard Cardinal's Pilot Shop, Inc. v. Chesapeake Airport Auth., FAA Docket No. 16-01-06 (Oct. 22, 2002) (Director's Determination).

Royal Air, Inc. v. City of Shreveport, FAA Docket No. 16-02-06 (Jan. 9, 2004) (Director's Determination).

Scott Aviation, Inc. v. DuPage Airport Auth., FAA Docket No. 16-00-19 (July 19, 2002) (Director's Determination).

Self Serve Pumps, Inc. v. Chicago Executive Airport, FAA Docket No. 16-07-02 (Marc. 17, 2008) (Director's Determination).

Top Flight Aviation v. Washington County Reg'l Airport Comm'n, 224 F. Supp. 2d 966 (D. Md. 2002).

Turner v. City of Kokomo, FAA Docket No. 16-98-16 (July 27, 1999) (Final Decision and Order).

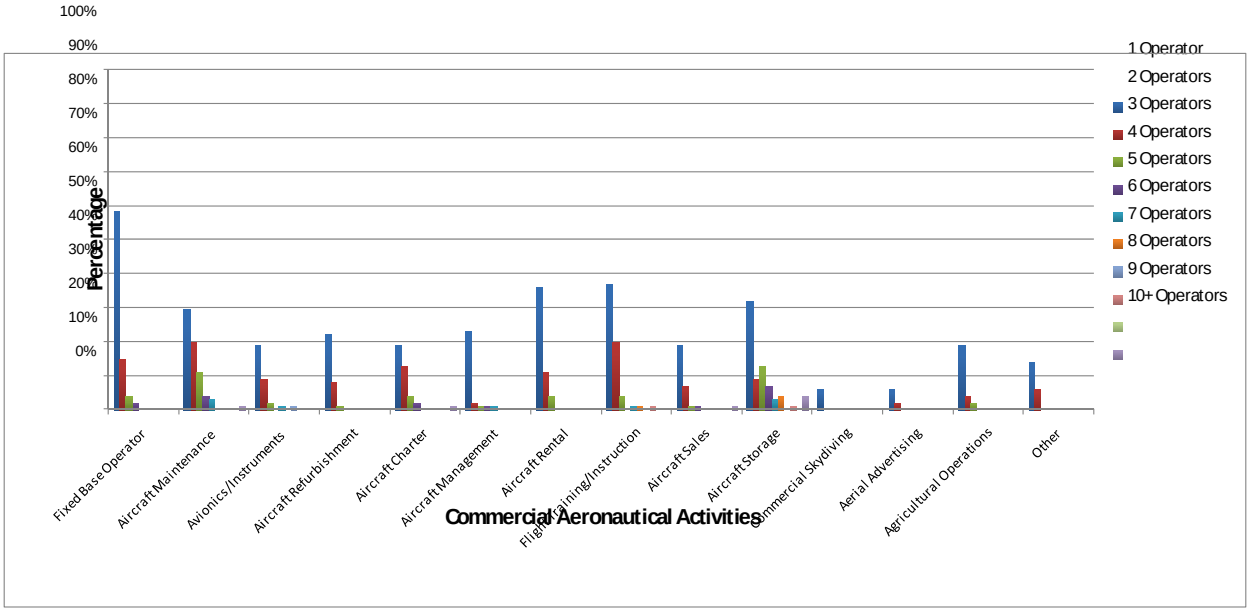
United Aircraft Services, Inc. v. Hancock County Port Comm'n, FAA Docket No. 16-00-04 (Oct. 12, 2000) (Director's Determination).

Wilson Air Center v. FAA, 372 F.3d 807 (6th Cir. 2004).

APPENDIX B—Questionnaire and Results

AIRPORT BACKGROUND QUESTIONS

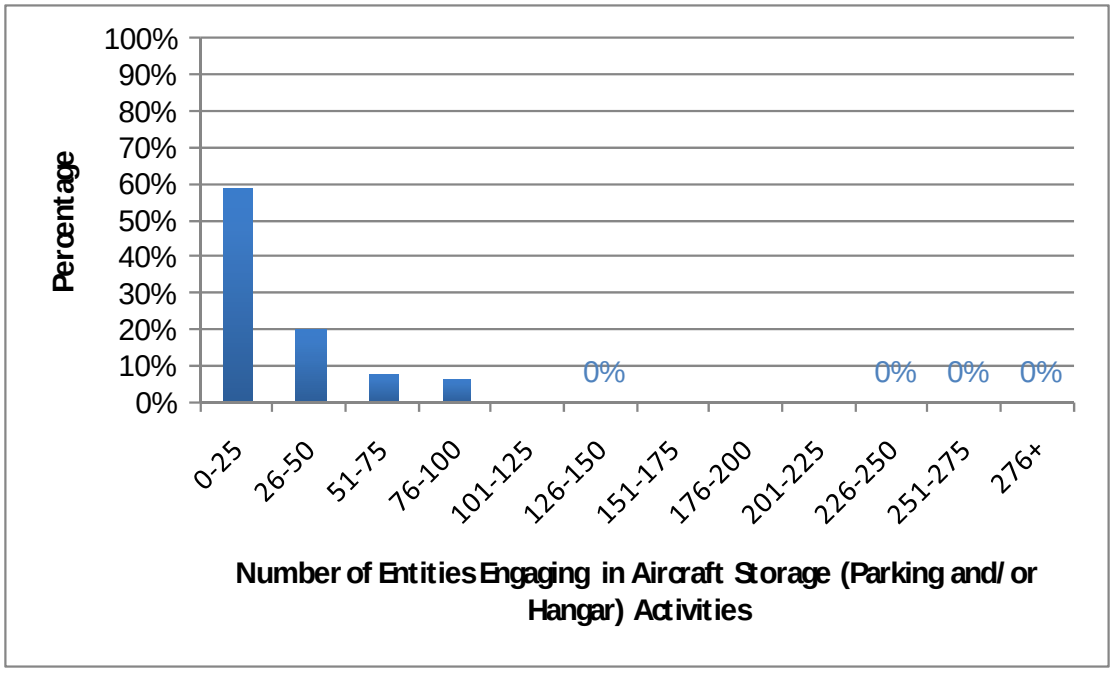
1. Airport name
2. FAA identifier
3. Respondent information
    a. Your name
    b. Your position/title
4. Please identify the number of operators who currently engage in each of the following commercial (for hire) aeronautical activities at the airport.



Response Rate: 99 out of 99 (100%)

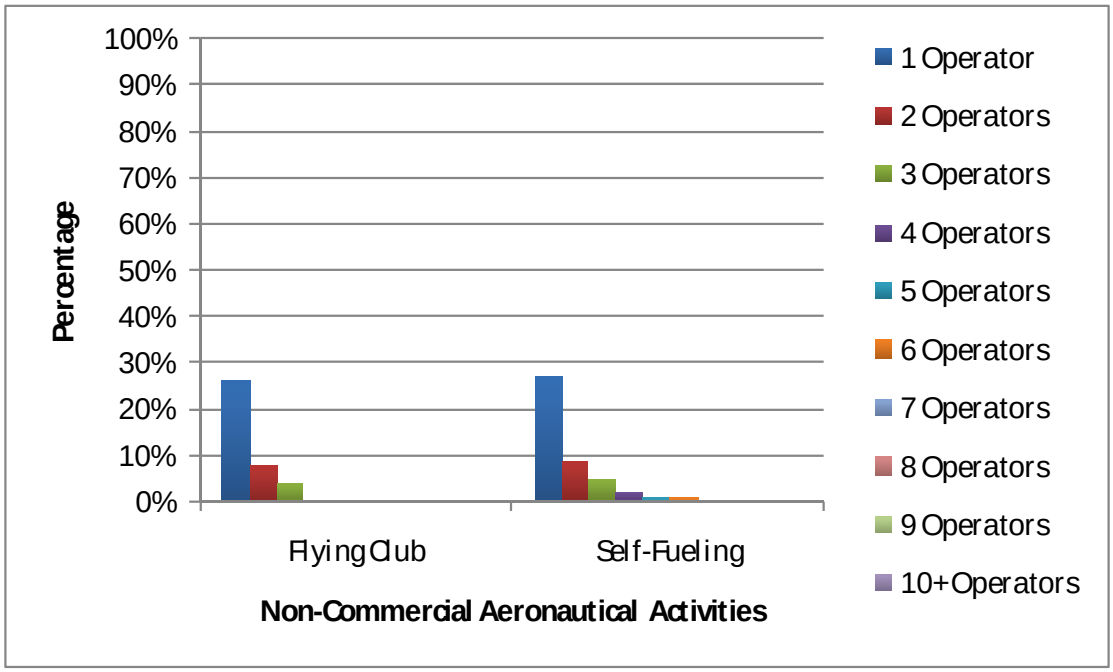
5. Please identify the number of lessees (and sublessees) at the airport who currently lease land and/or improvements from the airport owner (or sublease space from the airport owner's lessees) and engage in each of the following non-commercial (not for hire or private) aeronautical activities at the airport.

   a. Aircraft Storage (Hangar)



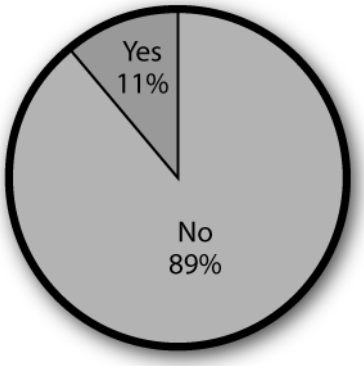
Response Rate: 97 out of 99 (98%)

b. Flying Club and Self-Fueling



Response Rate: 97 out of 99 (98%)

6. Does the airport owner exercise its proprietary exclusive right to conduct any commercial aeronautical activities at the airport?



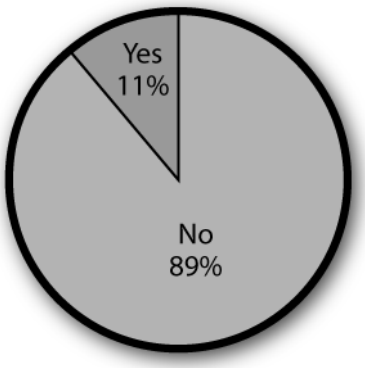
Response Rate: 98 out of 99 (99%)

If yes, please describe the activities.

	Percentage
Aircraft Fueling	70.00%
Aircraft Storage (Parking and/or Hangar)	20.00%
Fuel Storage	5.00%
Other	20.00%

Response Rate: 20 out of 98 (20%)

7. Does the airport owner engage in any commercial aeronautical activities in competition with other entities at the airport?



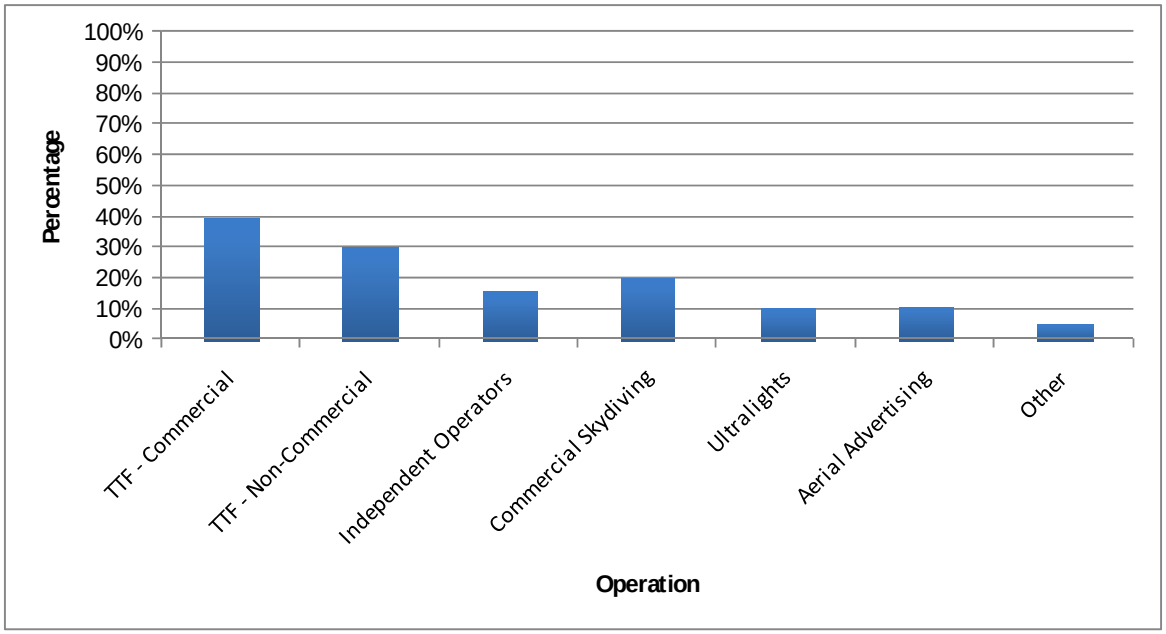
Response Rate: 97 out of 99 (98%)

If yes, please describe the activities.

	Percentage
Aircraft Storage (Parking and/or Hangar)	90.91%
Aircraft Rental	9.09%
Other	0.00%

Response Rate: 11 out of 97 (11%)

8. Does the airport owner prohibit any of the following aeronautical activities at the airport?



TTF = Through-the-fence (activities requiring airfield access from adjacent private property)

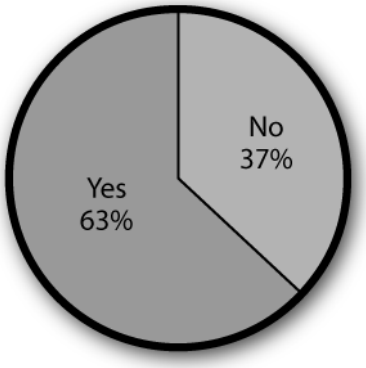
Response Rate: 45 out of 99 (45%)

9. In your opinion, what roles and purposes do Minimum Standards serve?

	Percentage
Level the playing field/promote fair competition	45.00%
Require minimum level of service	25.00%
Serve as guidance for activities on the airport	7.50%
Ensure federal compliance/protection from complaints/litigation	7.50%
Other	23.75%

Response Rate: 80 out of 99 (81%)

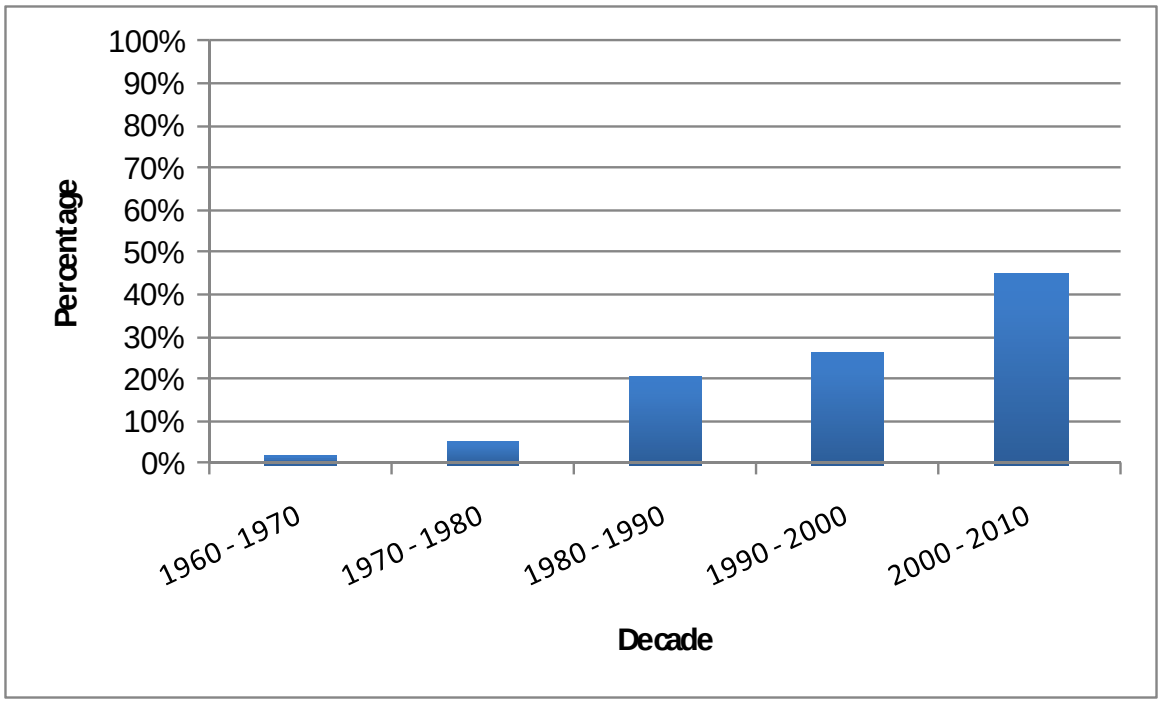
10. Does the airport have Minimum Standards?



Response Rate: 97 out of 99 (98%)

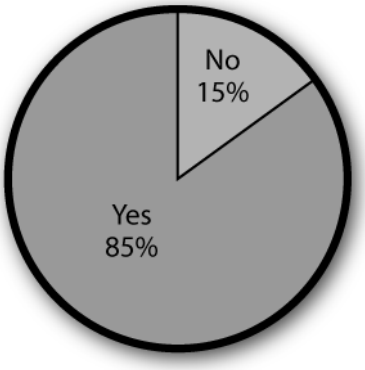
AIRPORT MINIMUM STANDARDS QUESTIONS

11. What year were the airport's Minimum Standards originally adopted?



Response Rate: 58 out of 61 (95%)

12. Do you believe that the airport's Minimum Standards are achieving the intended roles and purposes?

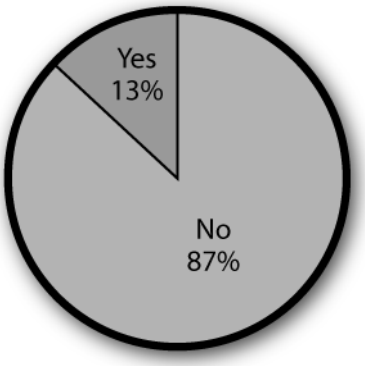


Response Rate: 61 out of 61 (100%)

	Percentage
Lack enforcement	33.33%
Need to be updated	33.33%
Too vague - not specific enough	22.22%
Other	11.11%

Response Rate: 9 out of 61 (15%)

13. Has the airport received any requests from an entity to conduct activities that were not addressed in the Minimum Standards?



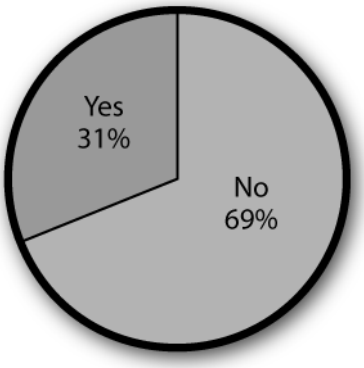
Response Rate: 61 out of 61 (100%)

If yes, please describe the activities.

	Percentage
Air cargo	12.50%
Temporary activities	12.50%
Self-Fueling	12.50%
Other	62.50%

Response Rate: 8 out of 61 (13%)

14. Do the airport's Minimum Standards address any non-general aviation commercial (for hire) activities (e.g., air carrier into-plane fueling, ground handling, passenger/cargo services, etc.)?



Response Rate: 61 out of 61 (100%)

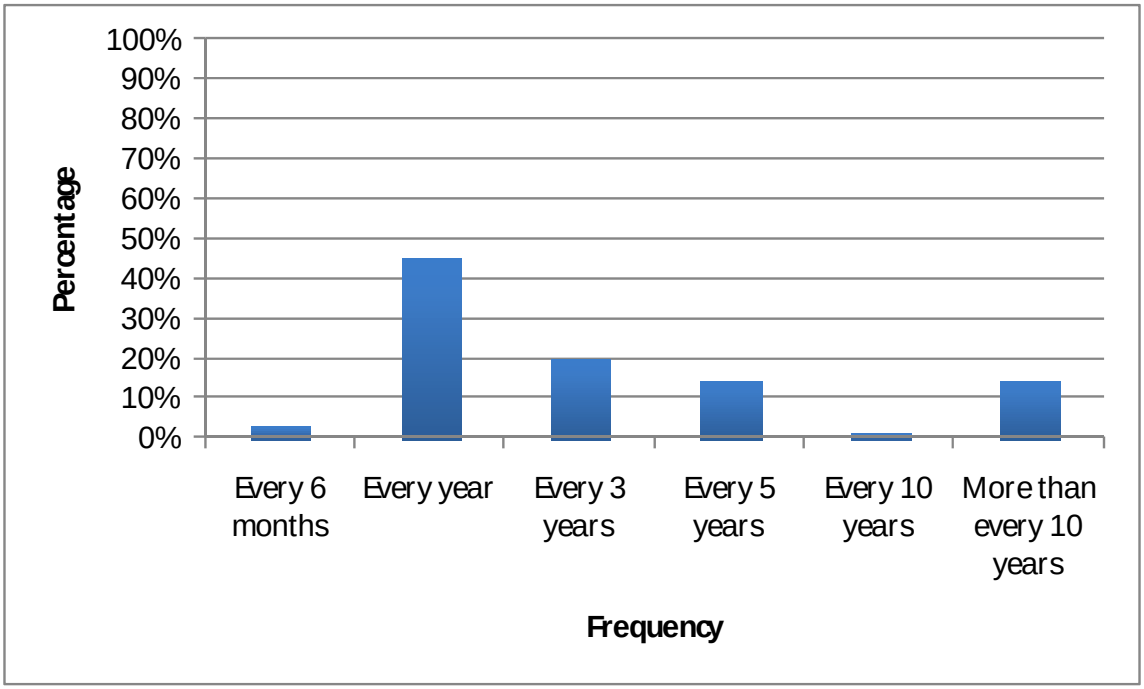
If no and non-general aviation commercial activities are taking place at the airport, how are such activities governed?

	Percentage
Rules and regulations	40.00%
Agreements	40.00%
Regulatory measures	20.00%

Response Rate: 5 out of 61 (8%)

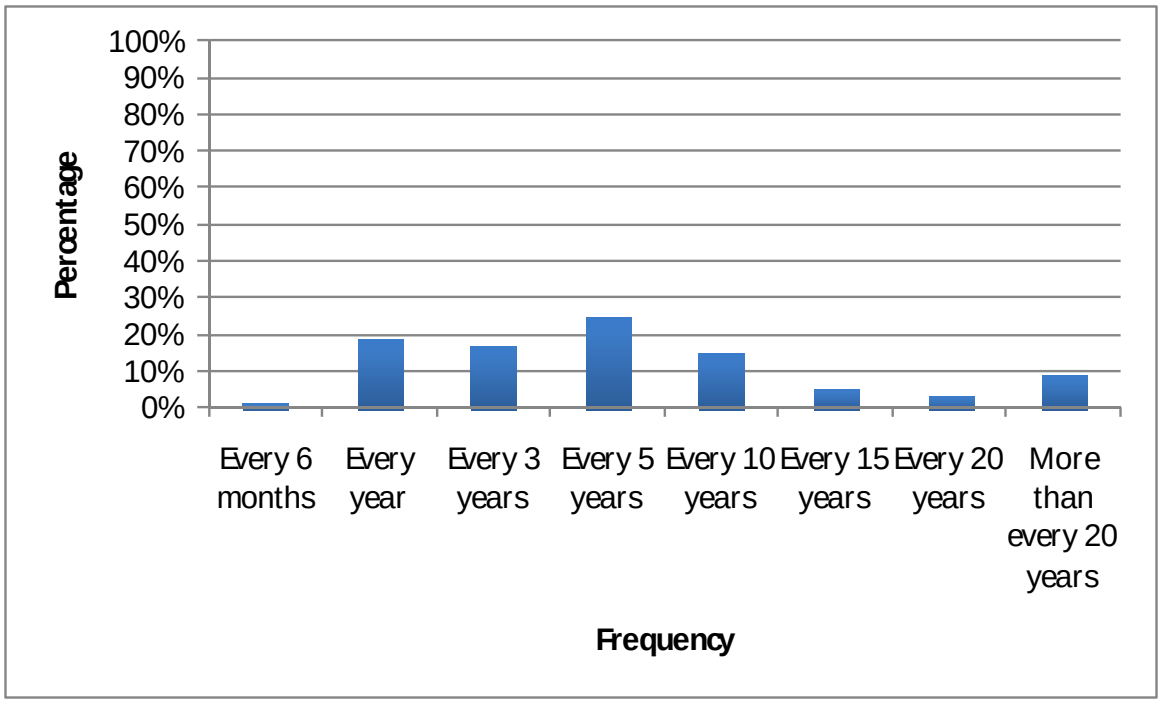
How often are the airport's Minimum Standards:

a. Reviewed



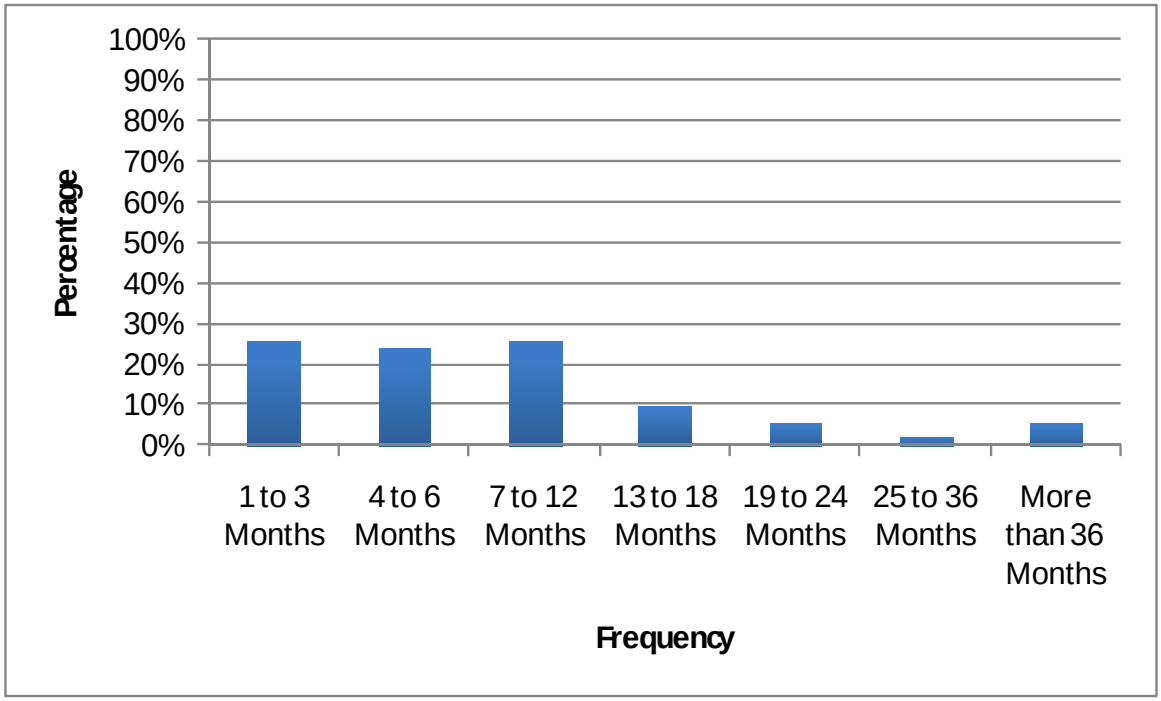
Response Rate: 55 out of 61 (90%)

b. Updated



Response Rate: 51 out of 61 (84%)

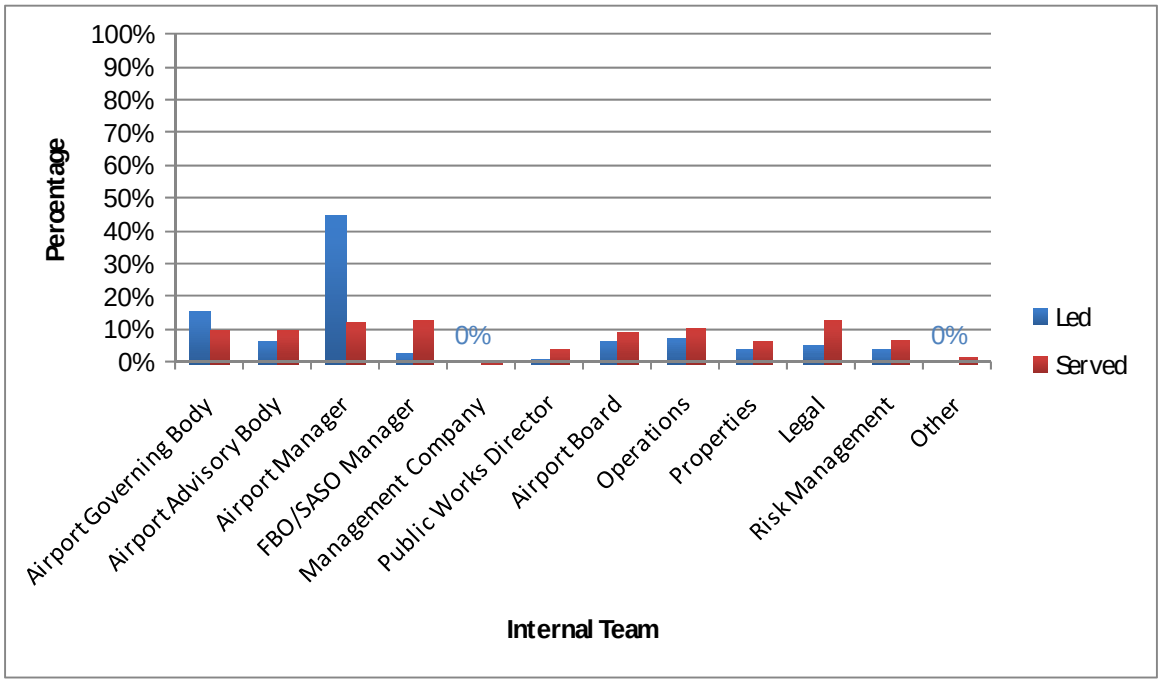
15. Approximately how long did it take to complete the development/updating process?



Response Rate: 50 out of 61 (82%)

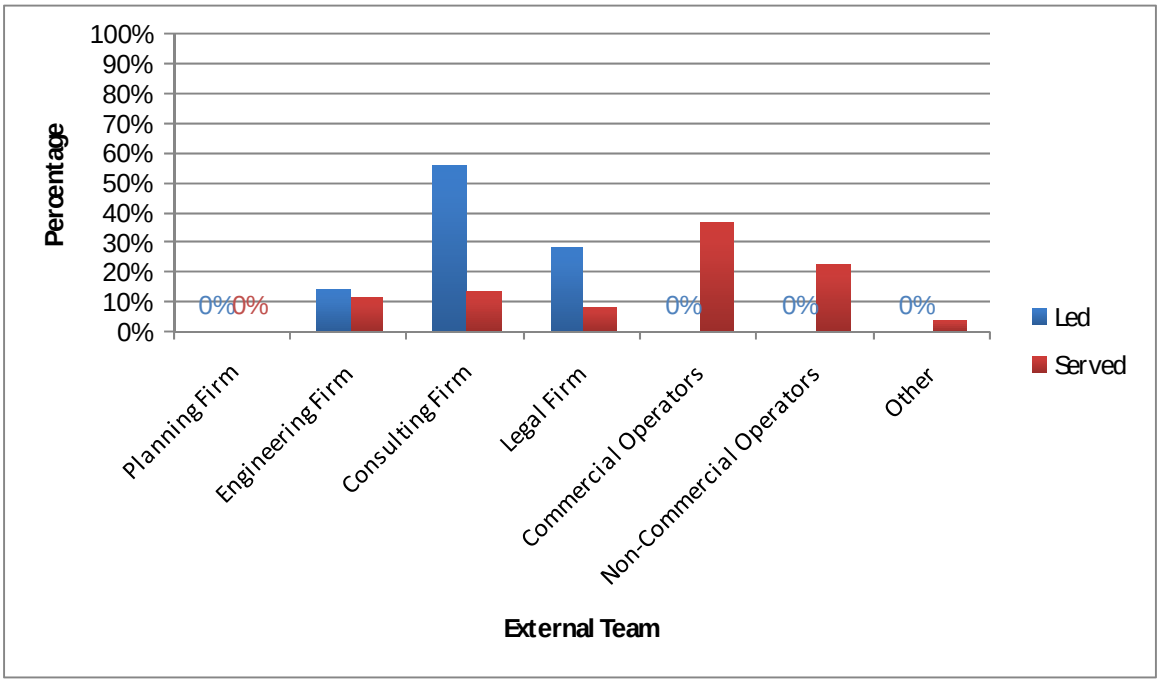
16. Who led the team and who served on the team that was responsible for the development/updating process?

    a. Internal Team



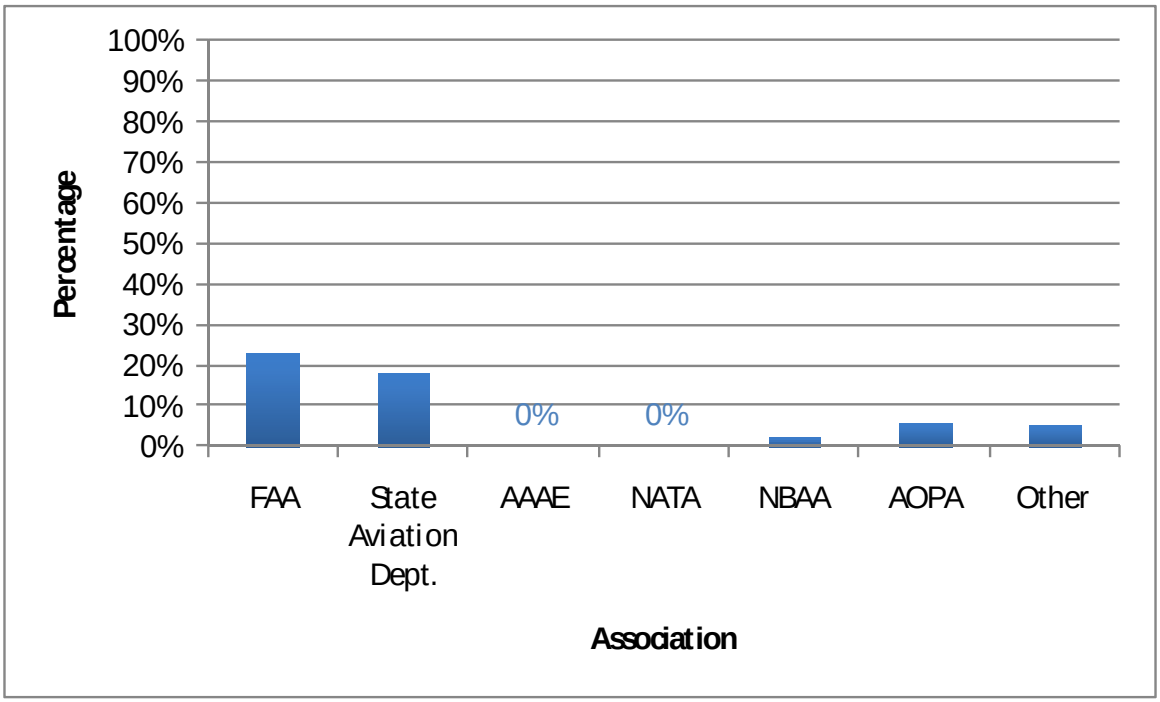
Response Rate: 54 out of 61 (89%)

b. External Team



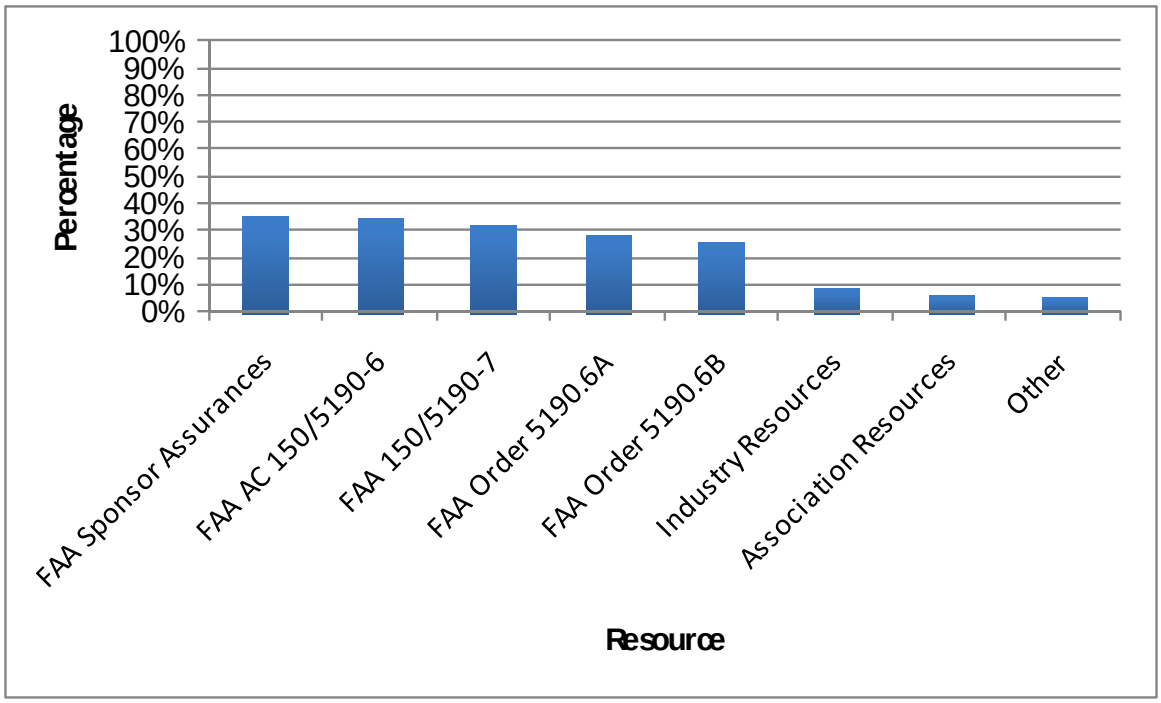
Response Rate: 22 out of 61 (36%)

17. Did any of the following entities review the developed/updated Minimum Standards at the request of the airport sponsor?



Response Rate: 31 out of 61 (51%)

18. What resources and/or guidance did you/the team rely upon in developing/updating the Minimum Standards and how helpful were the resources and/or guidance?

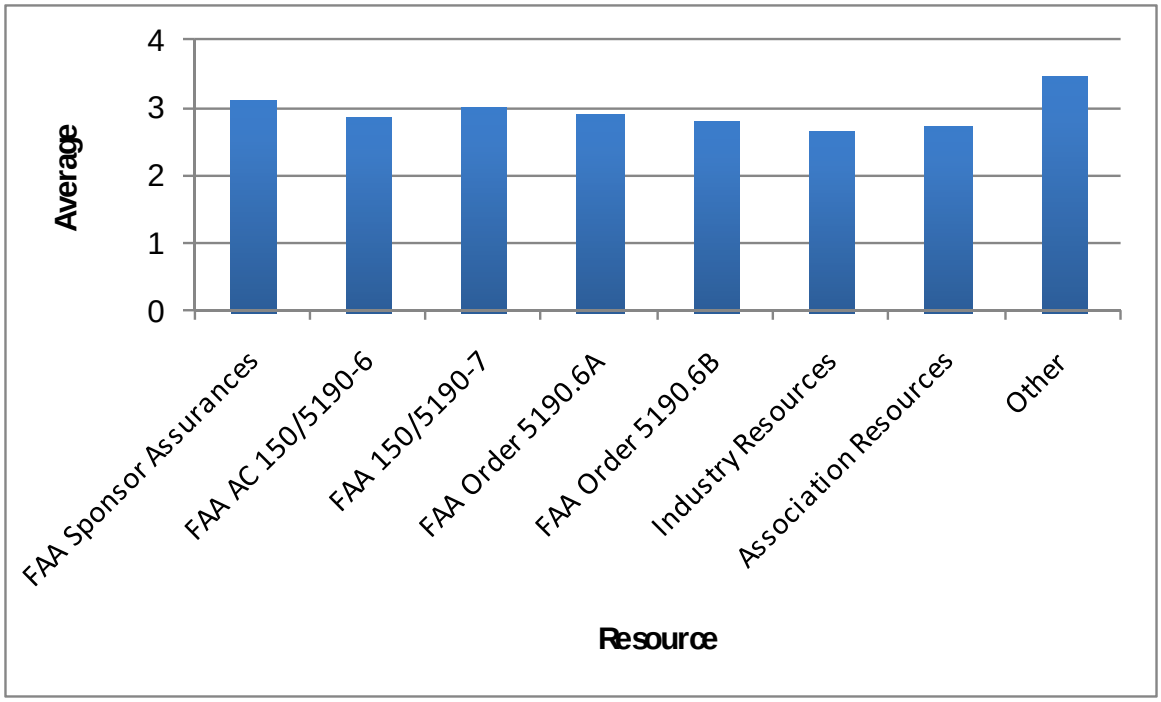


Response Rate: 44 out of 61 (72%)

Industry, Association, and Other Resources

	Percentage
AAAE/ NATA/ AOPA	35.00%
Other Airport Minimum Standards	35.00%
Consultant	25.00%
Other Regulatory Measures	20.00%
Other	15.00%

Response Rate: 20 out of 44 (46%)



Scale: 1 – not helpful to 4 – very helpful

19. What additional resources and/or guidance would be helpful?

	Percentage
Legal and/ or agency assistance/ training	53.85%
Industry benchmarks/ recommendations	30.77%
Previous minimum standards experience	7.69%
Other	15.38%

Response Rate: 13 out of 61 (21%)

20. What challenges, issues, and/or problems did you/the team encounter (or are you/the team currently encountering) relating to the development/updating, implementation, and/or enforcement of Minimum Standards?

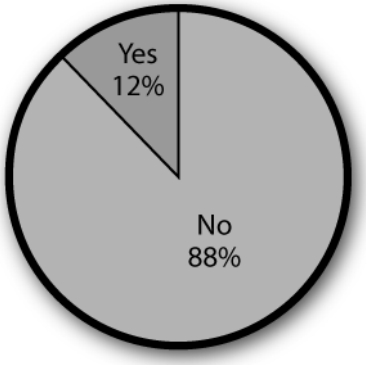
	Percentage
Consensus of standards/ requirements	20.00%
Enforcement of standards/ requirements	16.67%
Adequate time to review/ update document	16.67%
Educating involved parties of role/ purpose	10.00%
Other	43.33%

Response Rate: 30 out of 61 (49%)

GENERAL MINIMUM STANDARDS QUESTIONS

21. As it relates specifically to Minimum Standards or related issues, has the airport ever been subject to:

A 14 C.F.R. Part 13 informal complaint?



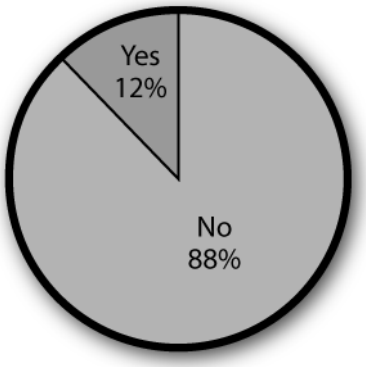
Response Rate: 94 out of 99 (95%)

If yes, what was the outcome?

	Percentage
In Favor of Airport	45.45%
Elevated to Part 16	9.09%
In Favor of Operator	0.00%
Other	36.36%

Response Rate: 11 out of 94 (12%)

a. A 14 C.F.R. Part 16 formal complaint?



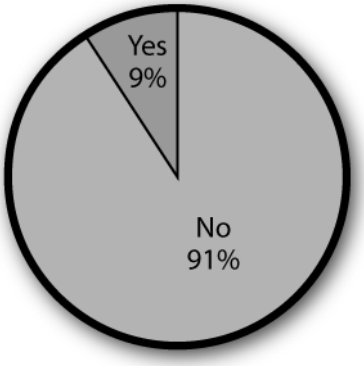
Response Rate: 93 out of 99 (94%)

If yes, what was the outcome?

	Percentage
In Favor of Airport	36.36%
Pending	27.27%
In Favor of Operator	18.18%
Other	27.27%

Response Rate: 11 out of 93 (12%)

b. A lawsuit?



Response Rate: 92 out of 99 (93%)

If yes, what was the outcome?

	Percentage
Pending	50.00%
In Favor of Airport	25.00%
In Favor of Operator	0.00%
Other	12.50%

Response Rate: 8 out of 92 (9%)

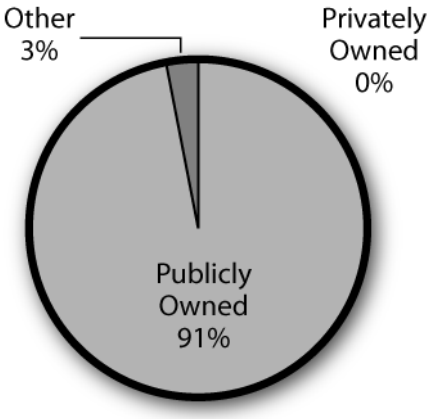
22. What's your bottom line on Minimum Standards—if you could say one thing to the entire industry about Minimum Standards, what would it be?

	Percentage
Great tool for any airport	41.18%
Need to adopt, enforce, and keep up-to-date	17.65%
Levels the playing field and ensures fair treatment	11.76%
Provides guidance for airport staff and users	7.35%
Other	30.88%

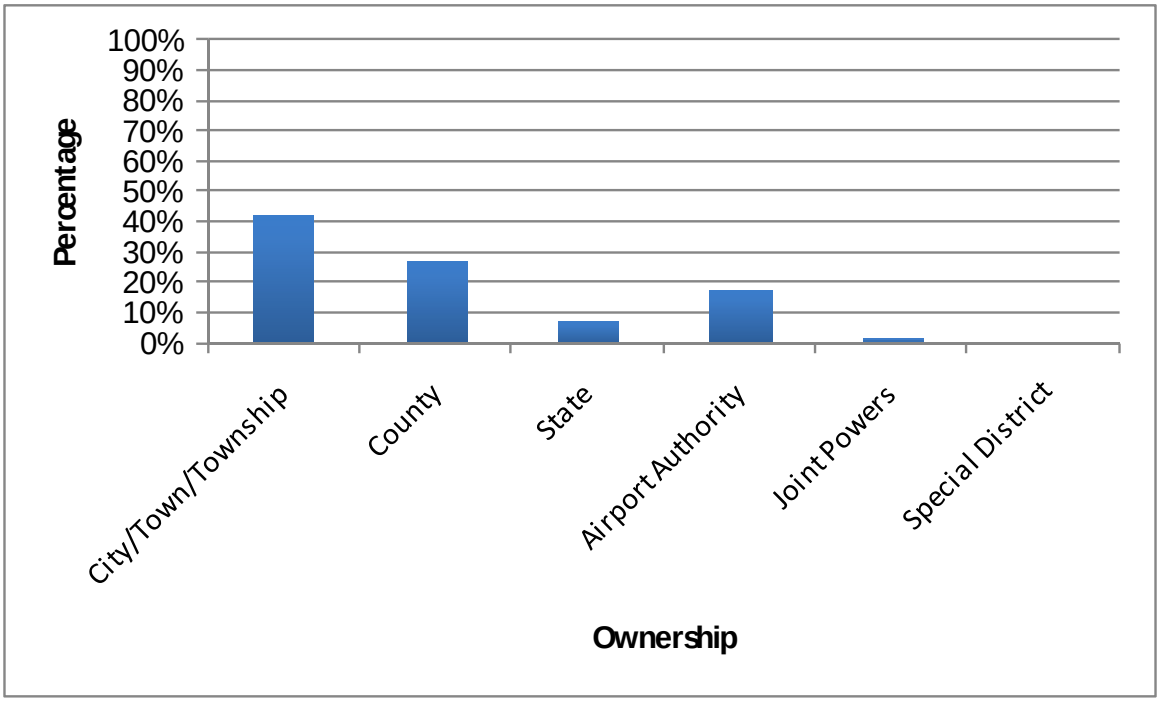
Response Rate: 68 out of 99 (69%)

OPTIONAL QUESTIONS

23. Which of the following best describes the ownership structure of the airport?

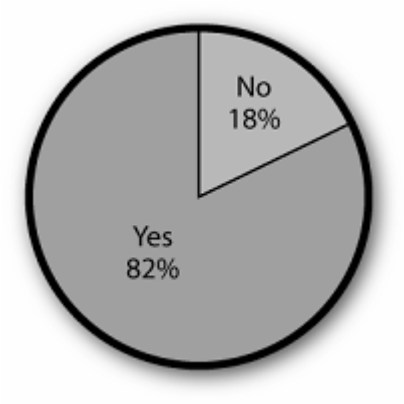


Response Rate: 92 out of 99 (93%)



Response Rate: 89 out of 99 (90%)

24. Is the airport governing body the same as the airport owner?

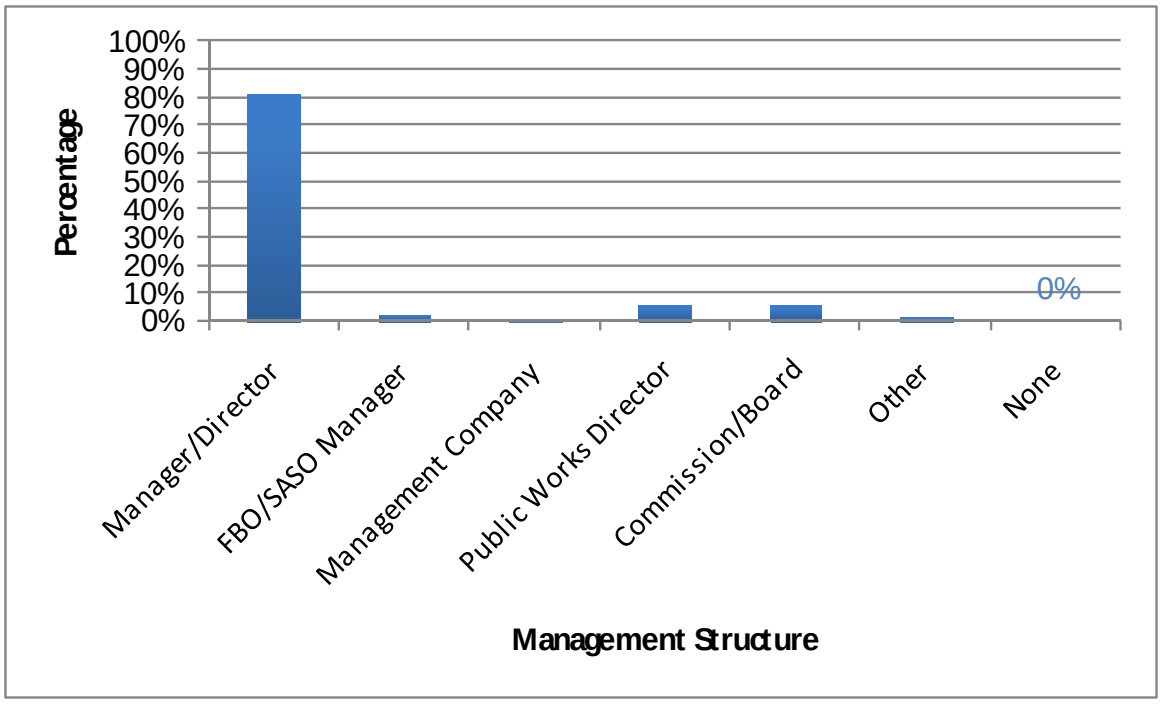


Response Rate: 95 out of 99 (96%)

	Percentage
Airport Authority	47.37%
Airport Commission	31.58%
Advisory Committee	5.26%
Other	15.79%

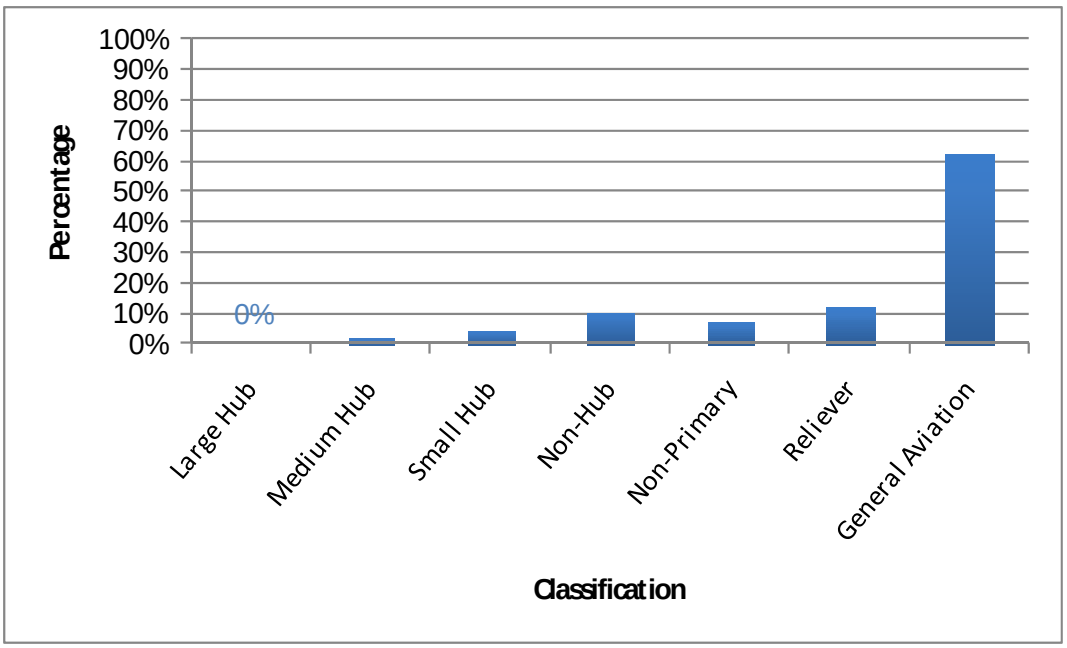
Response Rate: 19 out of 95 (20%)

25. Which of the following best describes the direct (day-to-day) management structure of the airport?



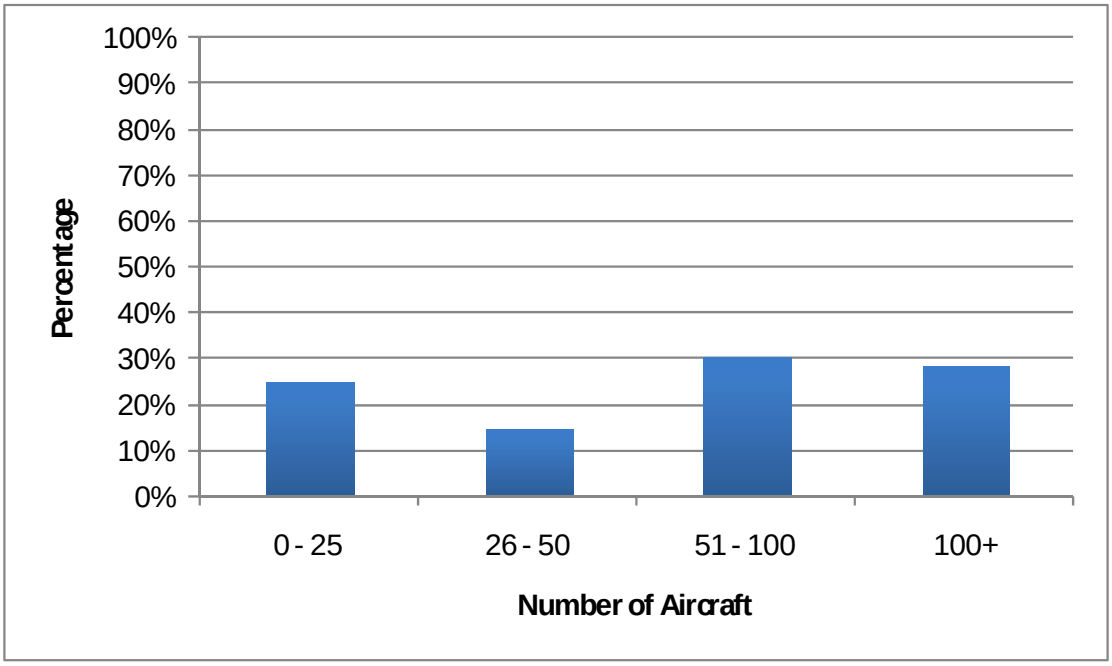
Response Rate: 99 out of 99 (100%)

26. What is the classification of the airport?



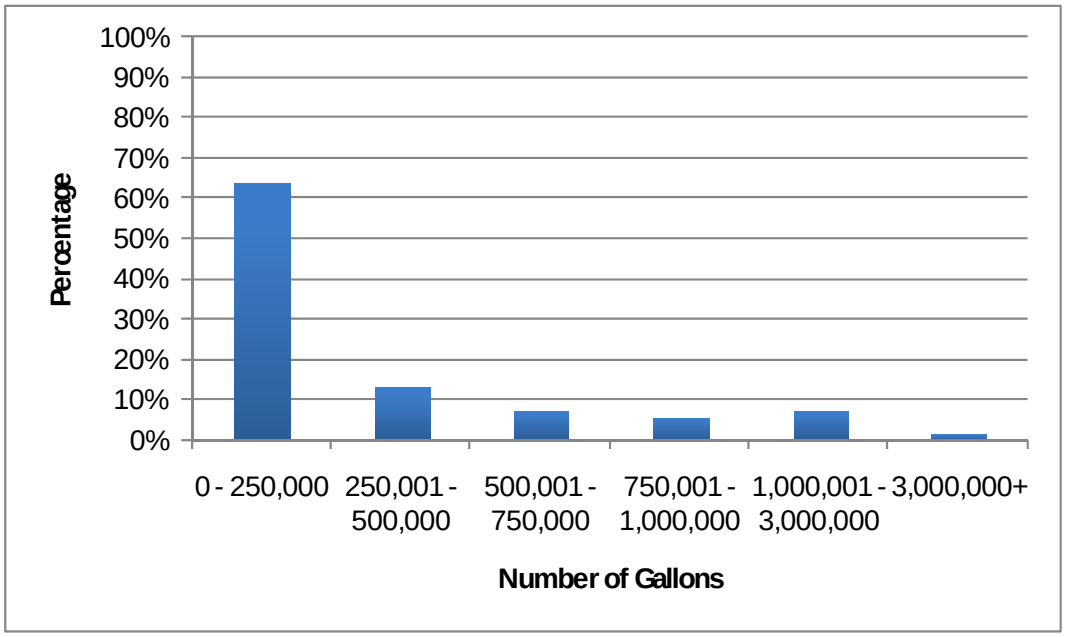
Response Rate: 99 out of 99 (100%)

27. How many general aviation aircraft are currently based at the airport?



Response Rate: 87 out of 99 (88%)

28. How many gallons of general aviation fuel (by type) were sold/dispensed at the airport during the last 12 months?



Response Rate: 62 out of 99 (63%)

APPENDIX C—Interviews and Results

Leaders within the airport industry that likely would have experience with airport Minimum Standards were identified for interviews. Leaders were drawn from the following areas:

- Government agencies, including FAA compliance personnel and state aviation directors or managers.
- Major industry trade associations, including senior executives or managers.
- Airports, including directors or managers from some of the top general aviation airports in the country (measured in terms of annual aircraft operations).
- Fixed base operations (FBOs), including senior executives or managers.
- Industry suppliers/vendors, including senior executives or managers.

Twenty-eight individuals responded to the request for an interview.

Interview Questions and Responses

Note: The narrative responses for each question are arranged by frequency, from the most to the least frequent.

1. Organization name.
2. Your position/title.
3. What is your role with the organization (or what responsibilities do you have)?
4. Who does your organization serve or represent (who are your members/constituents)?
5. What experience do you have with regard to the development, implementation, and/or enforcement (or interpretation) of Minimum Standards?

Respondents have (1) developed/updated Minimum Standards, (2) participated in the process of developing/updating Minimum Standards, (3) developed/updated guidance documents for Minimum Standards, and (4) worked with others to develop/update Minimum Standards. A few had little or no experience with (or related to) Minimum Standards or had not dealt with them extensively.

6. In your opinion, what "roles" or "purposes" do Minimum Standards serve?

Respondents indicated that Minimum Standards (1) level the playing field and/or promote fair competition, (2) protect consumers, (3) require minimum level of service, (4) protect airports, and (5) provide guidance for the development of the airport.

7. Which aeronautical activities at an airport should be subject to Minimum Standards?

a. Commercial ("for hire").

i. Fixed Base Operator (FBO).

ii. Specialized Aviation Service Operators (SASO).

b. Non-Commercial ("not for hire" or "private").

*i. If **so**, please describe the activity(ies):*

All respondents indicated that all commercial (for hire) aeronautical activities (i.e., FBO and SASO activities) should be subject to Minimum Standards. Approximately 70 percent of respondents indicated that noncommercial (not for hire) aeronautical activities should be subject to Minimum Standards.

8. Do you believe that some commercial ("for hire") aeronautical activities should be "prohibited" at an airport?

a. _____ No _____ Yes

*b. If **yes**, please describe the activity(ies):*

i. Should the activities that you have described be prohibited "universally" or "only under specific circumstances"?

1. _____ Universally _____ Only Under Specific Circumstances

2. If "only under specific circumstances," please describe the circumstances.

Approximately 67 percent of respondents believe that some commercial aeronautical activities should be prohibited. These respondents described several commercial aeronautical activities that could, in some cases, create

a safety hazard (or jeopardize safety) at an airport (e.g., commercial skydiving, aerial advertising/banner towing, ultralights, gliders, blimps, etc.). Approximately 33 percent of respondents believe that, from a general standpoint, commercial aeronautical activities should not be prohibited at an airport, although it is significant to note that many of these respondents also provided an important caveat to the response "that unless a safety hazard is created (or safety is jeopardized) at the airport."

9. What are your thoughts ("specifically" as it relates to Minimum Standards) with regard to:

a. Through-the-fence activities.

Respondents indicated the following:

- *If through-the-fence activity is going to be allowed at an airport, the operator should be subject to Minimum Standards.*
- *Through-the-fence activities are already allowed at the airport, subject to the operator meeting certain conditions (e.g., having an access agreement with the airport sponsor).*
- *They were generally opposed to through-the-fence activities, but indicated that the activity may be acceptable under certain circumstances or uses (e.g., aircraft manufacturing).*
- *They were opposed to through-the-fence activities, indicating that the activity should not be allowed under any circumstances.*
- *Through-the-fence activities should be addressed on a case by case basis.*

b. Independent operators.

Respondents indicated the following:

- *Generally, independent operators should not be allowed at airports, but this activity may be acceptable under certain circumstances and subject to meeting Minimum Standards and/or other conditions established by the airport sponsor.*
- *Generally, independent operators should be allowed at airports, subject to meeting Minimum Standards and/or other conditions established by the airport sponsor.*
- *Independent operators are already allowed at the airport, subject to meeting Minimum Standards or other conditions established by the airport sponsor.*
- *Independent operators should be addressed on a case-by-case basis.*
- *Independent operators should not be allowed or are not allowed at the airport.*

c. Commercial skydiving.

Respondents indicated the following:

- *Generally, commercial skydiving should be allowed at airports, subject to meeting specific conditions.*
- *Generally, this activity should not be allowed at airports, but may be acceptable under certain circumstances and subject to meeting specific conditions.*
- *This activity should be addressed on a case-by-case basis.*
- *Commercial skydiving should not be allowed or is not allowed at the airport.*

d. Ultralights.

Respondents indicated the following:

- *Generally, ultralights should be allowed at airports, subject to meeting specific conditions.*
- *Generally, this activity should not be allowed at airports, but may be acceptable under certain circumstances and subject to meeting specific conditions.*
- *This activity should be addressed on a case-by-case basis.*
- *Ultralights should not be allowed or are not allowed at the airport.*

e. Aerial advertising (banner towing).

Respondents indicated the following:

- *Generally, aerial advertising should be allowed, subject to meeting specific conditions.*
- *Generally, this activity should not be allowed at airports, but may be acceptable under certain circumstances and subject to meeting specific conditions.*
- *Aerial advertising should not be allowed or is not allowed at the airport.*
- *This activity should be addressed on a case-by-case basis.*

f. Other (please describe).

- *Several respondents identified gliders as another activity that should be addressed on a case-by-case basis.*

10. How often should an airport's Minimum Standards be:

a. Reviewed (to determine whether or not they need to/should be updated)

i. Every 6 months.

ii. Every year.

iii. Every 3 years.

iv. Every 5 years.

v. Every 10 years.

vi. More than every 10 years.

Approximately 54 percent indicated every 5 years (several interviewees indicated a range between 3 to 5 years), approximately 19 percent indicated every 3 years, approximately 12 percent indicated every year, and approximately 12 percent indicated when the situation and/or circumstances (in the industry, in the market, at the airport, etc.) change or if FAA guidance changes or if the guidance provided by industry associations (or others in the industry) changes. In addition, several respondents who provided a definitive answer to this question (i.e., every year, every 3 years, every 5 years, etc.) also indicated that if the situation and/or circumstances change, Minimum Standards should be reviewed (i.e., that airport sponsors should not wait until some prescribed or scheduled time to review the document). Finally, approximately 4 percent indicated Minimum Standards should be reviewed at least every 10 years.[54]

a. Updated

i. Every 6 months.

ii. Every year.

iii. Every 3 years.

iv. Every 5 years.

v. Every 10 years.

vi. Every 15 years.

vii. Every 20 years.

viii. More than every 20 years.

Approximately 42 percent indicated every 5 years, approximately 42 percent indicated when the situation and/or circumstances change, and approximately 15 percent indicated every 3 years.[55]

[54] Percentages do not add up to 100 percent due to rounding.

[55] Percentages do not add up to 100 percent due to rounding.

11. What challenges, issues, and/or problems (relating "specifically" to Minimum Standards) have you or your members/constituents encountered (or are you or your members/constituents currently encountering) relating to the development (or updating), implementation, and/or enforcement (or interpretation) of Minimum Standards?

Respondents indicated the following:

- *The document is not balanced (i.e., current situation/circumstances and future considerations/possibilities are out of balance with too much weight or emphasis being given to one or the other).*
- *The document is out of date (not current), not relevant for the aeronautical activities taking place at the airport, or not reasonable and/or appropriate (too low or too high) for the airport and/or the market.*
- *There is a lack of process or the process is not timely or there is little or no opportunity for stakeholder involvement/input during the process.*
- *Political influences are significant.*
- *There is a lack of consistent (and/or uniform) enforcement.*

12. Do you believe that airport sponsors (owners/operators) have the requisite resources and/or guidance from the FAA and/or association (and/or industry) groups to develop (or update), implement, and enforce Minimum Standards (check "all" that apply)?

While the majority of respondents (just over 90 percent) answered affirmatively (yes), approximately 26 percent of the respondents indicated that (1) the airport sponsor may not know about the resources and/or guidance, (2) it may be difficult to find (or understand) the resources and/or guidance, or (3) it may be hard to apply the resources and/or guidance to specific situations and/or circumstances. The remaining respondents (about 9 percent) answered negatively (no).

13. What do you think the FAA's "role" should be with regard to the development (or updating) and implementation of Minimum Standards (check "all" that apply)?

a. The FAA should "not" require that airport sponsors adopt Minimum Standards.

b. The FAA should require that airport sponsors adopt Minimum Standards.

c. The FAA should "not" review Minimum Standards before adoption.

d. The FAA should review Minimum Standards before adoption.

e. The FAA should "not" approve Minimum Standards before adoption.

f. The FAA should approve Minimum Standards before adoption.

g. Other (please describe).

Approximately 68 percent of respondents believe that the FAA should "not" require that airport sponsors adopt Minimum Standards (approximately 32 percent believe the FAA should require adoption of Minimum Standards). With regard to believing that the FAA should "review" Minimum Standards before adoption by the airport sponsor, approximately 55 percent of respondents believe it should not, while 45 percent believe it should. Just over 90 percent of respondents believe that the FAA should "not" approve Minimum Standards before adoption (approximately 9 percent believe the FAA should approve Minimum Standards before adoption).

14. On a scale of 1 to 4 (with "1" being "not" reflective, "2" being "not very" reflective, "3" being "somewhat" reflective, and "4" being "extremely" reflective), how well do FAA policies, practices, and decisions "reflect" the market-based realities of commercial aeronautical activities at airports?

Approximately 58 percent of respondents indicated a 2 (not very reflective), 25 percent indicated a 3 (somewhat reflective), and approximately 17 percent indicated a 1 (not reflective).

15. What statement best reflects your views on the Sponsor Assurances, as currently interpreted and enforced by the FAA:

a. Too favorable for airports—it's too easy to achieve and maintain compliance (not enough weight is given to the meeting the needs of commercial aeronautical operators).

b. About right in terms of the balance between airports and commercial aeronautical operators.

c. Too burdensome for airports—it's too difficult to achieve and maintain compliance (too much weight is given to meeting the needs of commercial aeronautical operators).

Approximately 63 percent of respondents indicated "about right" in terms of the balance between airports and commercial aeronautical operators, 25 percent indicated "too burdensome for airports" (i.e., it's too difficult for airports to achieve and maintain compliance—too much weight is given to meeting the needs of commercial aero-

nautical operators), and approximately 13 percent indicated "too favorable for airports" (i.e., it's too easy for airports to achieve and maintain compliance—not enough weight is given to the meeting the needs of commercial aeronautical operators).[56]

16. As it relates "specifically" to Minimum Standards, have you (or any of your members/constituents) ever been a party to a:

a. 14 C.F.R. Part 13 "informal" complaint?

i. _____ No _____ Yes

*ii. If **yes**, what was the outcome?*

Approximately 68 percent of respondents have not been a party to a Part 13 informal complaint (32 percent have).

b. 14 C.F.R. Part 16 "formal" complaint?

i. _____ No _____ Yes

*ii. If **yes**, what was the outcome?*

Approximately 70 percent of respondents have not been a party to a Part 16 formal complaint (26 percent have, 4 percent are unsure).

c. Lawsuit?

i. _____ No _____ Yes

*ii. If **yes**, in which court?*

iii. _____ Federal _____ State

*iv. If **yes**, what was the outcome?*

Approximately 70 percent of respondents have not been a party to a lawsuit (22 percent have, 8 percent are unsure).

17. What's your bottom line on Minimum Standards—if you could say one thing to the "entire" industry about Minimum Standards, what would it be?

[56] Percentages do not add up to 100 percent due to rounding.

Respondents indicated the following:

- *Airports (airport sponsors) need to adopt Minimum Standards (Minimum Standards are a valuable/useful tool).*
- *Airport sponsors need to consistently (and uniformly) enforce Minimum Standards (once adopted).*
- *Minimum Standards need to be relevant, reasonable, and appropriate.*
- *Minimum Standards level the playing field (between operators)/promote fair competition (amongst operators).*
- *Airport sponsors need to consider today and tomorrow (when developing/updating and/or implementing Minimum Standards).*
- *Minimum Standards protect operators and airports.*
- *Minimum Standards ensure the long-term viability of operators or airports.*
- *Airport sponsors need to keep Minimum Standards current.*
- *Airport sponsors need to include airport stakeholders in the (development/updating and implementation) process.*

APPENDIX D—Compendium of Comparative Minimum Standards

The following tables identify the types of standards commonly included in airport Minimum Standards for the customary commercial aeronautical activities identified in this digest, and information concerning each standard. Specifically, the tables include the following data for each standard:

- *Frequency*—The number of airport Minimum Standards from among the subject documents that include the particular standard.
- *Mean*—The arithmetic average for each standard.
- *Low*—The lowest value for each standard.
- *High*—The highest value for each standard.

The tables are organized in rank order according to the frequency with which the particular commercial aeronautical activity occurs at the 99 respondent airports, as detailed in Section V.[57] It is important to note that this frequency is different from the frequency with which particular commercial aeronautical activities are addressed within the subject documents.

[57] Aircraft refurbishment is not included in the Compendium because none of the subject documents addressed this commercial aeronautical activity.

A. Fixed Base Operator

Topic	Frequency	Mean	Low	High
Addressed in Subject Documents	34/39			
Leased Premises—Land (sq. ft.)	20/34	194,866	12,000	435,600
Leased Premises—Ramp (sq. ft.)	18/34	102,376	14,067	250,000
Leased Premises—Hangars (sq. ft.)	22/34	24,255	5,000	74,500
Leased Premises—Other Buildings (sq. ft.)	23/34	7,337	200	50,000
Number of Refueling Vehicles—Jet A	12/34		1	3
Number of Refueling Vehicles—Avgas	13/34		1	2
Capacity of Refueling Vehicles—Jet A (gallons)	16/34	1,772	200	5,000
Capacity of Refueling Vehicles—Avgas (gallons)	17/34	675	200	1,200
Tugs	6/34		1	2
Non-Refueling Vehicles	10/34		1	2
Ground Support Equipment Specified	16/34			
Fuel Storage—Jet A (gal)	23/34	15,261	2,000	40,000
Fuel Storage—Avgas (gal)	22/34	12,091	2,000	30,000
Fuel Storage—Mogas (gal)	1/34	500		
Personnel	11/34	2.27	1	10
Number of Hours (per day)	22/34	14.91	8	24
Number of Days (per week)	27/34	6.70	5	7
Insurance—Commercial General Liability	21/34	$3,914,286	$100,000	$25,000,000

Topic	Frequency	Mean	Low	High
Insurance—Business Automobile Liability	9/34	$1,666,667	$1,000,000	$5,000,000
Insurance—Hangar Keeper's Legal Liability (per aircraft)	9/34	$4,577,778	$100,000	$15,000,000
Insurance—Hangar Keeper's Legal Liability (per occurrence)	18/34	$5,547,059	$300,000	$25,000,000
Insurance—Aircraft Passenger and Liability (per person)	4/34	$200,000	$100,000	$500,000
Insurance—Aircraft Passenger and Liability (per occurrence)	16/34	$1,191,667	$300,000	$5,000,000
Insurance—Students and Renters	2/34	$175,000	$50,000	$300,000
Insurance—Environmental Liability	5/34	$3,000,000	$1,000,000	$5,000,000

B. Aircraft Storage Operator

Topic	Frequency	Mean	Low	High
Addressed in Subject Documents	10/39			
Leased Premises—Land (sq. ft.)	6/10	43,314	21,780	87,120
Leased Premises—Ramp (sq. ft.)	6/10	15,875	5,000	26,250
Leased Premises—Hangars (sq. ft.)	8/10	11,231	5,000	17,500
Leased Premises—Other Buildings (sq. ft.)	2/10	6,500	5,000	8,000
Insurance—Commercial General Liability	6/10	$850,000	$100,000	$1,000,000
Insurance—Business Automobile Liability	5/10	$1,000,000	$1,000,000	$1,000,000
Insurance—Hangar Keeper's Legal Liability (per aircraft)	5/10	$150,000	$100,000	$250,000
Insurance—Hangar Keeper's Legal Liability (per occurrence)	5/10	$1,420,000	$300,000	$5,000,000
Insurance—Aircraft Passenger and Liability (per person)	2/10	$550,000	$100,000	$1,000,000
Insurance—Aircraft Passenger and Liability (per occurrence)	2/10	$1,000,000	$1,000,000	$1,000,000

C. Aircraft Maintenance and Repair Operator

Topic	Frequency	Mean	Low	High
Addressed in Subject Documents	30/39			
Airframe Maintenance Required	20/30			
Powerplant Maintenance Required	20/30			
Leased Premises—Land (sq. ft.)	16/30	29,766	10,000	55,000
Leased Premises—Ramp (sq. ft.)	13/30	6,481	3,000	22,500
Leased Premises—Hangars (sq. ft.)	14/30	8,167	1,000	15,000
Leased Premises—Other Buildings (sq. ft.)	13/30	2,771	400	10,000
Leased Premises—All Buildings (sq. ft.)	7/30	5,786	2,000	8,000
14 C.F.R. Part 145 Repair Station Specified	12/30			
Personnel	21/30	1.25	1	3
Number of Hours (per day)	19/30	8.44	8	9
Number of Days (per week)	20/30	5	5	5
Insurance—Commercial General Liability	12/30	$1,850,000	$100,000	$5,000,000
Insurance—Business Automobile Liability	6/30	$1,000,000	$1,000,000	$1,000,000
Insurance—Hangar Keeper's Legal Liability (per aircraft)	9/30	$861,111	$100,000	$5,000,000
Insurance—Hangar Keeper's Legal Liability (per occurrence)	5/30	$660,000	$300,000	$1,000,000
Insurance—Aircraft Passenger and Liability	4/30	$1,000,000	$1,000,000	$1,000,000
Insurance—Environmental Liability	2/30	$5,000,000	$5,000,000	$5,000,000

D. Flight Training/Instruction Operator

Topic	Frequency	Mean	Low	High
Addressed in Subject Documents	24/39			
Primary Training Required	3/24			
Advanced Training Required	3/24			
Leased Premises—Land (sq. ft.)	12/24	21,551	5,000	55,000
Leased Premises—Ramp (sq. ft.)	9/24	8,771	3,000	18,000
Leased Premises—Hangars (sq. ft.)	8/24	6,625	2,500	12,500
Leased Premises—Other Buildings (sq. ft.)	13/24	983	200	2,500
Leased Premises—All Buildings (sq. ft.)	1/24	8,000		
Number of Aircraft	18/24	2.35	1	6
Personnel	16/24	1.33	1	3
Number of Hours (per day)	17/24	8.25	8	9
Number of Days (per week)	18/24	5.35	5	7
Insurance—Commercial General Liability	12/24	$925,000	$100,000	$1,000,000
Insurance—Business Automobile Liability	7/24	$892,857	$250,000	$1,000,000
Insurance—Hangar Keeper's Legal Liability (per aircraft)	6/24	$280,000	$150,000	$500,000
Insurance—Hangar Keeper's Legal Liability (per occurrence)	4/24	$1,575,000	$300,000	$5,000,000
Insurance—Aircraft Passenger and Liability (per person)	12/24	$643,750	$75,000	$2,000,000
Insurance—Aircraft Passenger and Liability (per occurrence)	7/24	$3,428,571	$500,000	$10,000,000
Insurance—Students and Renters	6/24	$250,000	$50,000	$500,000

E. Aircraft Rental Operator

Topic	Frequency	Mean	Low	High
Addressed in Subject Documents	23/39			
Leased Premises—Land (sq. ft.)	12/23	53,348	5,000	435,660
Leased Premises—Ramp (sq. ft.)	9/23	8,321	3,000	15,000
Leased Premises—Hangars (sq. ft.)	10/23	5,500	1,000	12,500
Leased Premises—Other Buildings (sq. ft.)	13/23	854	100	2,500
Leased Premises—All Buildings (sq. ft.)	1/23	6,400		
Number of Aircraft	19/23	2	1	4
Personnel	17/23	1.25	1	3
Number of Hours (per day)	15/23	8.43	8	9
Number of Days (per week)	15/23	5.43	5	7
Insurance—Commercial General Liability	12/23	$925,000	$100,000	$1,000,000
Insurance—Business Automobile Liability	7/23	$892,857	$250,000	$1,000,000
Insurance—Hangar Keeper's Legal Liability (per aircraft)	7/23	$285,714	$100,000	$500,000
Insurance—Hangar Keeper's Legal Liability (per occurrence)	5/23	$1,460,000	$300,000	$5,000,000
Insurance—Aircraft Passenger and Liability (per person)	11/23	$777,273	$100,000	$2,000,000
Insurance—Aircraft Passenger and Liability (per occurrence)	7/23	$4,614,286	$300,000	$10,000,000
Insurance—Students and Renters	6/23	$250,000	$50,000	$500,000

F. Aircraft Charter Operator

Topic	Frequency	Mean	Low	High
Addressed in Subject Documents	23/39			
Leased Premises—Land (sq. ft.)	14/23	22,570	5,000	55,000
Leased Premises—Ramp (sq. ft.)	11/23	7,928	3,000	15,000
Leased Premises—Hangars (sq. ft.)	12/23	5,864	1,000	12,500
Leased Premises—Other Buildings (sq. ft.)	13/23	867	150	1,750
Leased Premises—All Buildings (sq. ft.)	2/23	5,500	3,000	8,000
Number of Aircraft	20/23	1.53	1	3
Personnel	13/23	1.33	1	2
Number of Hours (per day)	17/23	9.44	8	24
Number of Days (per week)	17/23	5.25	5	7
Insurance—Commercial General Liability	13/23	$1,592,308	$100,00	$5,000,000
Insurance—Business Automobile Liability	7/23	$1,571,429	$1,000,000	$5,000,000
Insurance—Hangar Keeper's Legal Liability (per aircraft)	8/23	$825,000	$100,000	$5,000,000
Insurance—Hangar Keeper's Legal Liability (per occurrence)	6/23	$1,266,667	$300,000	$5,000,000
Insurance—Aircraft Passenger and Liability (per person)	11/23	$1,922,727	$100,000	$10,000,000
Insurance—Aircraft Passenger and Liability (per occurrence)	5/23	$800,000	$500,000	$1,000,000

G. Avionics/Instrument Sales, Maintenance, and Repair Operator

Topic	Frequency	Mean	Low	High
Addressed in Subject Documents	17/39			
Sales Required	1/17			
Maintenance Required	5/17			
Repair Required	5/17			
Leased Premises—Land (sq. ft.)	11/17	28,839	1,000	54,450
Leased Premises—Ramp (sq. ft.)	10/17	11,307	3,000	22,500
Leased Premises—Hangars (sq. ft.)	11/17	7,633	2,000	15,000
Leased Premises—Other Buildings (sq. ft.)	13/17	1,060	400	3,500
Leased Premises—All Buildings (sq. ft.)	1/17	2,000		
14 C.F.R. Part 145 Repair Station Specified	6/17			
Personnel	10/17	1.11	1	2
Number of Hours (per day)	13/17	8.42	8	9
Number of Days (per week)	14/17	5	5	5
Insurance—Commercial General Liability	10/17	$3,200,000	$1,000,000	$10,000,000
Insurance—Business Automobile Liability	8/17	$906,250	$250,000	$1,000,000
Insurance—Hangar Keeper's Legal Liability (per aircraft)	9/17	$805,556	$100,000	$5,000,000
Insurance—Hangar Keeper's Legal Liability (per occurrence)	6/17	$1,300,000	$300,000	$5,000,000
Insurance—Aircraft Passenger and Liability	4/17	$1,000,000	$1,000,000	$1,000,000

H. Aircraft Sales Operator

Topic	Frequency	Mean	Low	High
Addressed in Subject Documents	22/39			
Threshold Number of Aircraft Sold Annually	12/22	2.08	1	4
Leased Premises—Land (sq. ft.)	15/22	21,850	10,000	55,000
Leased Premises—Ramp (sq. ft.)	12/22	8,486	3,000	15,000
Leased Premises—Hangars (sq. ft.)	10/22	6,167	2,500	12,500
Leased Premises—Other Buildings (sq. ft.)	15/22	1,032	100	4,800
Leased Premises—All Buildings (sq. ft.)	1/22	3,000		
Personnel	16/22	1.13	1	2
Number of Hours (per day)	18/22	8.53	8	9
Number of Days (per week)	19/22	5	5	5
Insurance—Commercial General Liability	10/22	$900,000	$100,000	$1,000,000
Insurance—Business Automobile Liability	7/22	$1,000,000	$1,000,000	$1,000,000
Insurance—Hangar Keeper's Legal Liability (per aircraft)	9/22	$788,889	$100,000	$5,000,000
Insurance—Hangar Keeper's Legal Liability (per occurrence)	6/22	$516,667	$300,000	$1,000,000
Insurance—Aircraft Passenger and Liability (per person)	10/22	$565,000	$100,000	$1,000,000
Insurance—Aircraft Passenger and Liability (per occurrence)	7/22	$2,214,286	$500,000	$10,000,000

I. Aircraft Management Operator (see Aircraft Charter Operator)[58]

[58] With few exceptions, the requirements for Aircraft Management Operator are the same as, or very similar to, the requirements for Aircraft Charter Operator.

J. Agricultural Operator (Crop Dusting)

Topic	Frequency	Mean	Low	High
Addressed in Subject Documents	8/39			
Leased Premises—Land (sq. ft.)	6/8	25,357	5,000	55,000
Leased Premises—Ramp (sq. ft.)	3/8	11,173	7,000	15,000
Leased Premises—Hangars (sq. ft.)	3/8	8,333	5,000	12,500
Leased Premises—Other Buildings (sq. ft.)	3/8	573	320	1,000
Leased Premises—All Buildings (sq. ft.)	1/8	3,000		
Number of Aircraft	4/8	1	1	1
Personnel	4/8	1	1	1
Number of Hours (per day)	4/8	8.50	8	9
Number of Days (per week)	5/8	5.40	5	7
Insurance—Commercial General Liability	4/8	$775,000	$100,000	$1,000,000
Insurance—Hangar Keeper's Legal Liability (per aircraft)	2/8	$300,000	$100,000	$500,000
Insurance—Hangar Keeper's Legal Liability (per occurrence)	1/8	$300,000		
Insurance—Aircraft Passenger and Liability (per person)	2/8	$625,000	$250,000	$1,000,000
Insurance—Aircraft Passenger and Liability (per occurrence)	1/8	$500,000		

APPENDIX E—Abbreviations and Definitions

AIP—Airport Improvement Program.

Airport Sponsor—"The airport sponsor is the entity that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other obligations required of sponsors, which are contained in the AIP grant agreement and property conveyances." FAA Advisory Circular 150/5190-6, *Exclusive Rights at Federally-Obligated Airports*, App. 1 (2007).

Exclusive Right—"A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either 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 from enjoying or exercising a similar right or rights, would be an exclusive right." FAA Advisory Circular 150/5190-6, App. 1.

FAA—Federal Aviation Administration.

Fixed Base Operator or FBO—"A business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, and flight instruction." FAA Advisory Circular 150-5190-6, App. 1.

Minimum Standards—"The qualifications or criteria that may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on-airport aeronautical activities for the right to conduct those activities." FAA Order 5190.6B, *Airport Compliance Manual*, App. Z (2009).

Self-Fueling and Self-Service—"Self-fueling means the fueling or servicing of an aircraft (i.e., changing the oil, washing) by the owner of the aircraft with his or her own employees and using his or her own equipment. Self-fueling and other self-services cannot be contracted out to another party. Self-fueling implies using fuel obtained by the aircraft owner from the source of his or her preference. As one of many self-service activities that can be conducted by the aircraft owner or operator by his or her own employees using his or her own equipment, self-fueling differs from using a self-service fueling pump made available by the airport, an FBO, or an aeronautical service provider. The use of a self-service pump is a commercial activity and is not considered self-fueling as defined here. In addition to self-fueling, other self-service activities that can be performed by the aircraft owner with his or her own employees includes activities such as maintaining, 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." FAA Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, App. 1 (2006).

Specialized Aviation Service Operator or SASO—"SASOs are sometimes known as single-service providers and special FBOs performing less than full services. These types of companies differ from a full service FBO in that they typically offer only a specialized aeronautical service such as aircraft sales, flight training, aircraft maintenance, and avionics services, for example." FAA Advisory Circular 150-5190-6, App. 1.

Sponsor Assurances or Grant Assurances—"A Federal grant assurance is a provision within a Federal grant agreement to which the recipient of Federal airport development assistance has agreed to comply in consideration of the assistance provided." FAA Advisory Circular 150-5190-6, App. 1.

APPENDIX F—Samples of Airport Minimum Standards

The research, analysis, survey, and interviews conducted in preparing this digest revealed considerable variation in Minimum Standards from airport to airport. This diversity is further evidenced by examination and comparison of airport-specific Minimum Standards.

The following references provide some illustrative samples of the diversity of airport Minimum Standards. These references should not be taken as an endorsement of these or any other airport-specific Minimum Standards. Compliance with the Sponsor Assurances demands that Minimum Standards must be relevant to the circumstances at each airport.

In FAA Order 5190.6B, Appendix O, the FAA provided two sample Minimum Standards, from Livingston County Airport, Michigan, and from Knox County Regional Airport, Maine (http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/media/5190_6b_appO.pdf).

Other publicly-available samples of Minimum Standards include the following:

- Ft. Lauderdale Executive Airport, Florida, http://ci.ftlaud.fl.us/fxe/pdf/minimum_standards.pdf.
- Phoenix Deer Valley Airport, Arizona, http://phoenix.gov/deervalleyairport/tenants/min_op_stds_fixed_base_operator.pdf.
- McKinney Airport, Texas, http://www3.mckinneytexas.org/www/uploadedFiles/Departments/Airport/Min%20Stds%20and%20Rules%20and%20Regs%20Nov%202008.pdf.
- Snohomish County Airport—Paine Field, Washington, http://www.painefield.com/pf_pdf/PAE_Minimum_Standards.pdf.
- King County International Airport—Boeing Field, Washington, http://your.KingCounty.gov/airport/tenants/minimum_standards.pdf.

ACKNOWLEDGMENTS
This study was performed under the overall guidance of the ACRP Project Committee 11-01. Members are PATRICIA A. HAHN, Patricia A. Hahn Consulting, Washington, DC; TIMOTHY KARASKIEWICZ, General Mitchell International Airport, Milwaukee, Wisconsin; CARLENE MCINTYRE, Port Authority of New York & New Jersey, New York, New York; E. LEE THOMSON, Clark County, Las Vegas, Nevada; and KATHLEEN YODICE, Yodice Associates, Aircraft Owners and Pilots Association, Washington, DC.

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ISBN 978-0-309-15544-1

9 780309 155441 90000

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