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5190.6B Change 3

exclusively used by the leaseholders while airfield facilities are used in common by all aeronautical users.

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

If fair market rent for nonaeronautical uses results in surplus revenue, the sponsor may elect to use that surplus revenue to subsidize aeronautical costs of the airport, such as, a residual rates agreement. Subsidization by nonaeronautical revenues benefits aviation and the traveling public because aeronautical users can use the airport at rates and charges below the cost of providing the aviation facilities and services. See, for example, *Bombardier Aerospace, et al. v. City of Santa Monica*, FAA Docket No. 16-03-11, January 3, 2005, (available online) where the FAA noted that it promotes the practice of using nonaviation revenues to subsidize aeronautical activities since it reduces the economic impact on aviation users and the aviation public.

17.11. Fair Market Value. Fair market fees for use of the airport are the required minimum for nonaeronautical use of the airport. Fair market pricing of airport facilities can be determined by reference to negotiated fees charged for similar uses of the airport or by appraisal of comparable properties. Appraisers should account for airport-specific circumstances (e.g., limits on the use of airport property, height restrictions), when comparing on-airport with off-airport commercial nonaeronautical properties in making fair market value determinations. The market rate for nonaeronautical users should be different from, and usually higher than, the aeronautical rates.

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

17.13. Exceptions to the Self-Sustaining Rule: General. While the general rule requires market rates for nonaeronautical uses of the airport, several limited exceptions to the general rule have been defined by Congress and through agency policy based on longstanding airport practices and public benefit. These limited exceptions include providing property for (a) public community purposes, (b) not-for-profit aviation organizations, (c) military aeronautical units, (d) transit projects, and (e) private transit systems. (See FAA *Revenue Use Policy*, Sections VII.D - H)

These are exceptions to the self-sustaining rule requirement and are further described in the paragraphs below. In addition, airport sponsors must ensure that they are using the land in accordance with their grant obligations and property conveyance restrictions. More information is available in [Chapter 22](#).

17.14. Exceptions to the Self-Sustaining Rule: Providing Property for Public Community Purposes. A sponsor may make airport property available for community purposes at less than fair market value on a limited basis provided all of the following conditions exist: (a) the property is not needed for an aeronautical purpose, (b) the property is not producing airport revenue and there are no near-term prospects for producing revenue, (c) allowing the community

purpose will not impact the aeronautical use of the airport, (d) allowing the community purpose will maintain or enhance positive community relations in support of the airport, (e) the proposed community use of the property is consistent with the Airport Layout Plan (ALP), and (f) the proposed community use of the property is consistent with other requirements, such as certain surplus and nonsurplus property federal obligations requiring the production of revenue by all airport parcels.

In addition to the statutory exception under 49 U.S.C. § 47107(v)³, the circumstances in which below-market rental rates of airport land for community purposes will be considered consistent with the grant assurances are listed below.⁴ Agreements for community use of airport land should incorporate these requirements as conditions of use:

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

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

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

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

d. No Use of Airport Revenue. The sponsor may not use airport revenue to support the capital or operating costs associated with the community use. (See FAA's [Revenue Use Policy](#), section VII.D.4.).

NOTE: As explained in [chapter 22 of this Order, Releases from Federal Obligations](#), airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the

³ FAA will not find airport sponsors in non-compliance if a community use agreement existed prior to February 16, 1999, providing the sponsor is acting in accordance with the conditions set forth in 49 U.S.C. § 47107(v).

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