

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

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GFK Flight Support, Inc.)	
)	
Complainant)	
v.)	
Grand Forks Regional Airport Authority)	Docket No. 16 - 01- 05
)	
Respondent)	
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DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the above-referenced complaint filed under *FAA Rules of Practice for Federally-Assisted Airport Proceedings*, Title 14 Code of Federal Regulations (CFR) Part 16 (FAA Rules of Practice).

GFK Flight Support, Inc. (hereinafter GFK/Complainant), filed the complaint (Complaint) against the Grand Forks Regional Airport Authority, (Authority/Respondent), which owns and operates Grand Forks International Airport (GFIA/Airport).¹ The Complainant is a full service commercial service provider known as a fixed-based operator (FBO).²

In its complaint, GFK alleges that by not requiring Nodak Flying Club (Flying Club/Club), a North Dakota Non-Profit Corporation, to meet the applicable Minimum

¹ While the Complaint originally was filed against the Grand Forks International Airport, the actual airport sponsor, responsible for complying with Federal obligations, is the Grand Forks Regional Airport Authority. The complaint was also filed against the Nodak Flying Club, Inc, however, Nodak Flying Club is not a proper respondent in this Part 16 proceeding. Part 16 contains the rules of practice for complaints against the sponsor of a federally-assisted airport. [14 CFR 13.3(d)] Also, "respondents" under Part 16 are persons named in the complaint who are also responsible for the alleged noncompliance with the grant agreements. [14 CFR 16.3] Therefore, since Nodak Flying Club is neither the sponsor of the airport nor responsible for compliance with the grant agreements, it cannot be a respondent.

² A fixed-based operator (FBO) is a commercial entity, providing aeronautical services, such as maintenance, storage, ground and flight instruction, fueling, etc., to the public. [FAA Order 5190.6A, Appendix 5].

Standards for conducting commercial aeronautical activities at GFIA and by not taking enforcement actions against the Flying Club³, the Authority is in violation of 49 USC § 47107(a)(1) regarding unjust economic discrimination.

The Respondent contends that except for two specific complaints dealing with conducting aerial photography and the Flying Club holding itself out to the public as an aircraft rental business, the allegations made by the GFK "have never been substantiated by any credible evidence."⁴

Under the particular circumstances existing at the Airport and the evidence of record, as discussed below, we conclude that the Authority, as the sponsor of GFIA, is in violation of 49 USC § 47107(a) (1) and related grant assurance 22, and or 49 USC §§ 40103 (e) and 47107(a)(4) and related grant assurance 23 with respect to the aircraft leasing practices used by the Nodak Flying Club and allowed under the Authority's Minimum Standards.

Our decision in this matter is based on the applicable Federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties, which comprise the administrative record reflected in the attached FAA Exhibit 1.⁵

II. THE AIRPORT

Grand Forks International Airport (GFIA) is a public-use airport owned and operated by the Grand Forks Regional Airport Authority, Grand Forks, North Dakota.⁶ The facility is a commercial service airport.⁷

The Airport is the base of operations for 110 aircraft and accounts for approximately 222,900 operations each year,⁸ including flight training.

FAA records indicate that the planning and development of the airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 USC § 47101, *et seq.* Since 1982, the Airport has received a total of \$25,413,866 in Federal airport development assistance.⁹

³ FAA Order 5190.6A, Chapter 3, Section 3-9 (g) "Flying Clubs" defines Flying Clubs as nonprofit entities (corporations, associations or partnerships) organized for the express purpose of providing its members with an aircraft or aircraft for their personal use and enjoyment only.

⁴ FAA Exhibit 1, Item 3, p. 1, 2-3.

⁵ FAA Exhibit 1 provides the Index of the Administrative Record in this proceeding.

⁶ FAA Form 5010 "Airport Master Record" for GFK. Date: 09/11/2001 (FAA Exhibit 1, Item 8).

⁷ National Plan of Integrated Airport Systems (NPIAS), 1998-2002.

⁸ FAA Form 5010 "Airport Master Record" for GFK. Date: 09/11/2001 (FAA Exhibit 1, Item 8).

⁹ Airport Sponsor AIP Grant History dated 09/11/01 (FAA Exhibit 1, Item 9).

III. BACKGROUND

On October 1, 1991, the Flying Club entered into an Airport Use Agreement with the Authority.¹⁰ The agreement defines a flying club as “a nonprofit entity (corporation, association, or partnership) organized for the express purpose of providing its members with an aircraft, or aircraft, for their personal use; to foster and promote flying for pleasure; develop skills in aeronautics including pilotage, navigation, and an awareness and appreciation of aviation requirements and techniques.”

The agreement authorizes Flying Club to base its operations and activities at Grand Forks International Airport and to use the airport facilities in accordance with the Airport’s Rules and Regulations, Minimum Standards and the following terms and conditions in the Airport Use Agreement, in relevant part, as may be amended by the Authority from time to time:¹¹

1.02 Ownership of Aircraft:

The ownership, or exclusive lease, of the aircraft, must be vested in the name of the flying club (or owned ratably by all of its members).

1.03 Property Rights of Members/Generation of Revenues:

The property rights of the members of the club shall be equal and no part of the net earnings of the club will inure to the benefit of any member in any form (salaries, bonuses, etc.). The club may not derive greater revenue from the use of its aircraft than the amount necessary for the operations, maintenance, and replacement of its aircraft.

1.04 Non-Commercial Operation ONLY:

A. Flying clubs may not offer or conduct charter, air taxi, rental of aircraft, flight instruction or other commercial (for profit) operations. Only members of the flying club may operate club aircraft. Regular members of flying clubs may use club aircraft to receive flight instruction from a qualified instructor authorized to conduct commercial pilot training activities on the airport.

B. The Club shall not permit its aircraft to be utilized for the giving of flight instruction to any person, including members of the club owning the aircraft, when such person pays or becomes obligated to pay for such instructions, except when instruction

¹⁰ FAA Exhibit 1, Item 3, p. 1.

¹¹ FAA Exhibit 1, Item 1, p. 2., FAA Exhibit 1, Item 3, p. 1, FAA Exhibit 1, Item 1, Attachment C.

is given by a commercial operator authorized by the Authority to provide flight training on the Airport in accordance with Section 2 of the Authority's Minimum Standards.

C. Any qualified mechanic or pilot, who is a registered club member and part owner of the aircraft owned and operated by a flying club, may do maintenance work on aircraft owned by the club provided that the club does not become obligated to pay for work performed. Maintenance must be conducted in designated areas of the Airport as directed by Airport Operations.

D. While the Club, or any member, does not become obligated to pay for such maintenance work or flight instruction, club members who are mechanics, or instructors, may be compensated by credit against payment of dues or flight time.

E. The Club, and its members, are prohibited from leasing or selling any goods or services whatsoever to any person or firm other than a member of the Club at the airport except that the flying club may sell or exchange its capital equipment.

1.06 Compliance with Laws

The Club, and its members, shall abide by and comply with all Federal, State, and local laws, ordinances, regulations, and the rules and regulations/minimum standards of the Authority. Violations of laws by individual members shall be considered a personal/individual matter unless the individual member violates the flying club minimum standard provisions contained in this Section.

1.07 Loss of Exemption

The Club, violating any of the foregoing, including violations by one or more members, will be required to terminate all operations and activities at the Airport upon receipt of written notice of such termination from the Executive Director.

The above-mentioned terms and conditions are generally similar to the guidance provided by FAA Order 5190.6A with respect to the use of a federally funded airport by flying clubs. FAA Order 5190.6A provides special guidance regarding flying clubs, such as definitions, organizational structure, operations and limitations, as discussed more fully in Section V "*Applicable Law and Policy*" below.

The initial term of Flying Club's Airport Use Agreement with the Authority was for one year commencing on October 1, 1995. In accordance with its express terms, the

agreement was automatically renewed for additional one-year terms on the anniversary date of the agreement, with the most recent renewal occurring on October 1, 2001.

On or about May 1, 1994, the Authority entered into a Full Service FBO Operating/Lease Agreement with GFK. The agreement authorizes GFK to establish Full Service Fixed Base Operations on the Grand Forks International Airport for a term of 20 years. The agreement requires that GFK provide the following aeronautical services as a Full Service Fixed Base Operator: (1) aircraft maintenance and repair services, (2) pilot training, (3) charter service, (4) aircraft rental, (5) commercial fuel sales/line services, and (6) aircraft hangar/tie-down services. In addition, GFK is required to provide or arrange for avionics repair, propeller repair, aircraft painting, and aircraft engine rebuilding services. The agreement also requires that GFK lease a minimum of 45,000 square feet of land to accommodate buildings, aircraft, equipment, and customer parking, including, among other things, hangars, shops, offices, and classrooms.¹²

On January 3, 1995, GFK first complained of several "bootleg" operators at the airport, including charter operators, independent flight instructors and flight instructors that used the Flying Club to conduct commercial operations. GFK asked that these issues be addressed as part of the new Rules and Regulations.¹³

On May 8, 1995, GFK advised the Airport that it witnessed flight instruction being conducted by the Flying Club's instructors. GFK inquired whether these individuals or the Flying Club met the applicable fee and minimum insurance standards.¹⁴

On June 21, 1995, GFK complained again that individuals are using the Flying Club to dodge the Authority's minimum standards.¹⁵ The Complainant stated that it had offered the Flying Club to conduct the Club's commercial activities, and that subsequently, the Flying Club refused that offer.¹⁶ According to the record, a similar arrangement already existed between GFK and another flying club at the airport.¹⁷ Additionally, as a possible solution to the problem GFK has with the Flying Club, GFK proposed that the commercial aspect of the Flying Club operations be conducted under the auspices of single service operator standards.

On August 1, 1995, the Authority adopted the Minimum Standards and the Rules and Regulations for commercial service providers at the airport.¹⁸ Section 2 of the Minimum Standards sets forth the requirements that must be met by any person desiring to provide

¹² FAA Exhibit 1, Item 3, p. 1, FAA Exhibit 1, Item 1, p. 2. and Attachment B, FAA Exhibit 1, Item 3, p. 1-2.

¹³ FAA Exhibit 1, Item 1, Attachment D, letter dated January 3, 1995.

¹⁴ FAA Exhibit 1, Item 1, Attachment D, letter dated May 8, 1995.

¹⁵ FAA Exhibit 1, Item 1, Attachment D, letter dated June 21, 1995.

¹⁶ FAA Exhibit 1, Item 1, Attachment D, letters dated June 21, 1995, October 13, 1995 and September 12, 1996.

¹⁷ FAA Exhibit 1, Item 1, Attachment D, letter dated June 21, 1995.

¹⁸ FAA Exhibit 1, Item 1, p. 2.

one or more commercial aeronautical services to the public at the Airport. The Minimum Standards permit, among other things, "Single Service Operator" (i.e. a person providing only one aeronautical service to the public, such as aircraft sales) and "Multiple Commercial Aeronautical Services" (i.e. a person providing a combination of services, such as aircraft sales and flight training).¹⁹

Under the Minimum Standards, multiple commercial aeronautical service providers can provide services as a "Limited Service Operator" by providing 2 or more aeronautical services, or as a "Full Service" FBO by providing the following aeronautical services: (1) aircraft maintenance and repair services, (2) pilot training, (3) charter service, (4) aircraft rental, (5) commercial fuel sales/line services, and (6) aircraft hangar/tie-down services. "Full Service" FBOs are also required to provide or arrange for avionics repair, propeller repair, aircraft painting, and aircraft engine rebuilding services. In accordance with the Minimum Standards, only "Full Service" FBOs may sell aviation fuels and petroleum products, and provide flight line services.²⁰

Section 4 of the Minimum Standards sets the requirements that must be met by flying clubs desiring to base their aircraft and operate at GFIA. The Minimum Standards require, among other things, that the flying club must enter into an operating agreement with the Authority that specifies compliance with the Minimum Standards for Flying Clubs. The Minimum Standards also provide that flying clubs will be exempt from meeting the commercial operating requirements and Minimum Standards for commercial providers of aeronautical services upon satisfactory fulfillment of specific conditions.²¹

On October 13, 1995, GFK complained of unfair advantage and that the Flying Club conducted aircraft rental using the Club's own aircraft.²² On November 11, 1995, GFK wrote to the Authority stating that it was not able to maintain a profit with regards to pilot training and aircraft rental because it could not compete with operators like the Flying Club, which do not follow applicable minimum standards. GFK further complained that it lost students to the Flying Club.²³ GFK asked to be relieved from the obligation, under the applicable lease, to provide those services to the public.

On January 30, 1996, the Flying Club launched an advertising campaign for aircraft rental. GFK protested, claiming that such an action amounted to an unauthorized commercial activity for aircraft rental and that the Flying Club was effectively holding itself out to the public. The record shows that the Authority agreed with GFK and consequently took action. This, in turn, resulted in the ad being cancelled.²⁴ In a February 7, 1996 letter to the Flying Club, the Authority clearly stated that such a commercial activity was not within the scope of the legitimate activities of the Flying Club.²⁵

¹⁹ FAA Exhibit 1, Item 1, Attachment A.

²⁰ FAA Exhibit 1, Item 1, Attachment A.

²¹ FAA Exhibit 1, Item 1, Attachment A.

²² FAA Exhibit 1, Item 1, Attachment D, letter dated October 13, 1995.

²³ FAA Exhibit 1, Item 1, Attachment D, letter dated November 16, 1995.

²⁴ FAA Exhibit 1, Item 3, p. 3 and Attachment A-6.

²⁵ FAA Exhibit 1, Item 3, Attachment A-6.

On July 11, 1996, GFK complained that a Flying Club member and aircraft were being used to engage in commercial operations, namely aerial photography, under a contract with the United States Department of Agriculture (USDA).²⁶ The record indicates that once again, the Authority agreed with GFK and took action.²⁷ In a July 17, 1996 letter to the Flying Club, the Authority stated with regards to using Flying Club aircraft for other than Flying Club activities, that aircraft "leasing arrangements must be exclusive" and "that the Flying Club has the exclusive and sole use of the aircraft for the duration of the lease. Stated another way, the Flying Club does not have the right or the power to lease an airplane for its own use and then sublet the airplane to one of its members for a commercial purpose."²⁸ The Authority further stated that the Use Agreement prohibited such practices and that such a violation was grounds for termination of the Agreement.

Also on July 17, 1996, the Authority notified the pilot responsible for the unauthorized commercial activity and demanded that such activities cease immediately. The Authority also noted that if the activities were not stopped, it would take further action.²⁹ The Authority also notified the USDA that the services it had contracted for were not authorized and requested that USDA refuse to accept contract services from the operator in question.³⁰ The record shows that the affected aircraft was in fact removed from Flying Club operations after GFK complained.³¹

On August 5, 1996, GFK complained to the Airport that a Flying Club member was providing commercial pilot service.³²

On September 12, 1996, GFK reiterated its concerns relative to operators being required to abide by the airport's minimum standards and its' inability to afford to compete with the Flying Club when it does not have expenses required by the minimum standards, including facilities, overhead, or insurance.³³ The Authority investigated GFK's allegations that leasing practices by Flying Club members, constituted an unauthorized commercial activity, and consequently should be subjected to minimum standards.³⁴

On October 30 1996, GFK complained of aircraft rental and flight instruction being conducted by the Flying Club. GFK continued to complain that the Flying Club was conducting flight instruction just as a flight school would and that certain Flying Club members were profiting from providing instruction.³⁵

²⁶ FAA Exhibit 1, Item 1, Attachment D, letter dated July 11, 1996, FAA Exhibit 1, Item 3, Attachment A-5.

²⁷ FAA Exhibit 1, Item 3, p. 3, FAA Exhibit 1, Item 1, Attachment D, letter dated July 11, 1996.

²⁸ FAA Exhibit 1, Item 3, Attachment A-4.

²⁹ FAA Exhibit 1, Item 3, Attachment A-5.

³⁰ FAA Exhibit 1, Item 3, Attachment A-6.

³¹ FAA Exhibit 1, Item 1, Attachment D, letter dated June 4, 1997, FAA Exhibit 1, Item 3, p. 3.

³² FAA Exhibit 1, Item 1, Attachment D, letter dated August 5, 1996.

³³ FAA Exhibit 1, Item 1, Attachment D, letter dated September 12, 1996.

³⁴ FAA Exhibit 1, Item 3, p. 3, FAA Exhibit 1, Item 1, Attachment D, letters dated September 12 and October 30, 1996.

³⁵ FAA Exhibit 1, Item 1, Attachment D, FAA Exhibit 1, Item 1, Attachment D, letter dated October 30, 1996.

On January 7, 1997, the Authority wrote to the Flying Club in reference to a meeting that took place on October 1996. The subject of both the October 1996 meeting and the January 7, 1997 letter was the Authority's review of the Flying Club's structure. The Authority found the organizational documents of the Flying Club to be in order. Although not determining that any violations of the Use Agreement or Minimum Standards, the Authority identified possible concerns related to aircraft leasing practices, flight instruction, including compensation, and the status of students.³⁶

On January 27, 1997, GFK informed the Airport that a member of the Flying Club was not complying with the Minimum Standards and was conducting commercial aircraft leasing operations at the airport without a Part 135 certificate.³⁷ While the Complainant claims that the FAA's Flight Standards District Office agreed that the operations in question required some type of certification, the record does not include such FAA determination nor supporting documentation on the exact nature of the operation described in this correspondence other than a reference to a company named Custom Aeronautical Services in a June 4, 1997 complaint letter by GFK to the Authority.³⁸

On June 4, 1997, GFK stated that the Flying Club had an unfair commercial advantage over it by avoiding commercial operating fees and not having to meet the Minimum Standards. In general, it was alleged that the Flying Club conducts and allows for-profit commercial operations in the form of aircraft leaseback and flight and ground instruction.³⁹

Some of GFK's complaints and allegations were reviewed by the Bismarck Airports District Office (ADO) per a request from the Authority. In 1997, the ADO provided the Authority with guidance relating to flight training and flying club operations. The response provided by the Authority to the Complainant addressing flight training at the flying club was deemed adequate by the ADO, and no further action was taken at the time.⁴⁰ The guidance provided by ADO stated that "flying clubs shall not allow its aircraft to be utilized for the giving of flight instruction where the person being instructed pays or becomes obligated to pay unless the instruction is given by an entity holding a lease with the airport in which the lease allows them to provide flight instruction."⁴¹

FAA notes that the record references litigation, a Writ of Mandamus Action - GFK Flight Support vs. Grand Forks Regional Airport Authority, Civil No. 18-97-C-836, between the Complainant and the Respondent. The Complainant initiated this action in July 1997, in order to compel the Authority to enforce its own minimum standards and rules, and covered the same issues presented in the Part 16 Complaint.⁴² The Complaint states that

³⁶ FAA Exhibit 1, Item 3, Attachment A-9.

³⁷ FAA Exhibit 1, Item 1, Attachment D, letter dated January 27, 1997.

³⁸ FAA Exhibit 1, Item 1, Attachment D, letter dated June 4, 1997.

³⁹ FAA Exhibit 1, Item 1, Attachment D, letter dated June 4, 1997.

⁴⁰ FAA Exhibit 1, Item 3, p. 3, and Attachments A-1 and A-2.

⁴¹ FAA Exhibit 1, Item 3, Attachment A-1.

⁴² FAA Exhibit 1, Item 3, Attachment A-10, 1/18/01 extract

the Mandamus Action was dismissed without prejudice, by agreement to enable the issue to be brought through existing administrative procedures.⁴³

On September 18, 1997, GFK complained to the Authority of commercial activities of the Flying Club and included copies of FAA documents addressing Minimum Standards and explaining that the ownership of aircraft must be on a pro-rata share. It also stated that the Authority must enforce existing standards that it has continuously asked to be enforced.⁴⁴

On April 3 1998, GFK advised the Authority of its belief that the Flying Club was not member owned. GFK claimed that members of the Flying Club were profiting from leasing their aircraft back to the Flying Club and from providing flight instruction.⁴⁵

On July 21, 1998, and a follow-up letter dated August 4, 1998, the Complainant corresponded with the Authority complaining that the Flying Club had lowered the membership fee from \$85 to \$25. GFK questioned the Authority on whether the \$25 fee to receive flying club status at the airport was adequate and whether such terms would be offered to other entities at the airport.⁴⁶ GFK also argued that ownership of the Flying Club aircraft should be vested in a pro-rata share and not vested in various board members and rented to other Club members on an hourly basis. The Complainant also stated that it is inappropriate for the Flying Club to reward members with a \$12/hr. credit towards their club dues for flight instruction provided to other members.⁴⁷

On August 4, 1998, GFK raised the concern that the issues related to the Flying Club were not getting sufficient attention by the Authority. Furthermore, GFK again questioned the Authority on whether the \$25 fee to receive flying club status at the airport was adequate.⁴⁸

On April 20 1999, GFK requested the Authority to adopt aircraft leasing minimum standards to assure all aircraft leasing is being conducted by the same standard.⁴⁹ A similar concern and request was made in writing on May 20, 1999.⁵⁰ GFK recommended that sections of the current minimum standards applicable to Single Service Operator be used in addressing the issue of aircraft leasing.⁵¹ The record indicates that the Authority took the request for leasing standards under consideration when it stated in one of its Board of Commissioners' meeting that "the process to develop a leasing standard would be initiated."⁵² Furthermore, the proposed New Section 11 "Flying Clubs" to be added to

⁴³ FAA Exhibit 1, Item 1, p. 1.

⁴⁴ FAA Exhibit 1, Item 1, Attachment D, letter dated September 18, 1997.

⁴⁵ FAA Exhibit 1, Item 1, Attachment D, letter dated April 3, 1998.

⁴⁶ FAA Exhibit 1, Item 1, Attachment D, letter dated July 21 and August 4, 1998.

⁴⁷ FAA Exhibit 1, Item 1, Attachment D, letter dated July 21, 1998.

⁴⁸ FAA Exhibit 1, Item 1, Attachment D, letter dated August 4, 1998

⁴⁹ FAA Exhibit 1, Item 1, Attachment D, letters dated April 20 and May 20, 1999.

⁵⁰ FAA Exhibit 1, Item 1, Attachment D, letters dated April 20 and May 20, 1999.

⁵¹ FAA Exhibit 1, Item 1, Attachment D, letter dated April 20, 1999.

⁵² FAA Exhibit 1, Item 3, Attachment A-1.

the Airport's Rules and Regulations,⁵³ includes special requirements for aircraft leasing with regards to its applicability to flying clubs.⁵⁴

On February 17, 2000, GFK complained that Flying Club was advertising pilot ground school in its newsletter, conducting flight and ground instruction and aircraft rental operations, and allowing non-pilots to join the club. GFK, once again, requested minimum standards for aircraft leasing.⁵⁵

On February 22, 2000, GFK via an electronic message to the Authority stated that aircraft leasing, as conducted by the Flying Club, should be subjected to minimum standards and that the leasing of aircraft by private individuals should be considered just as a business conducting aircraft rental or sales.⁵⁶

On March 16, 2000, the Authority's board voted to terminate the Flying Club's Use Agreement. The Complainant claims that this action was taken because the Flying Club was conducting commercial activities at the airport and that subsequently, the Authority failed to enforce the termination.⁵⁷ In its Answer, the Authority, although admitting to the termination vote, states that the termination was part of the process to amend the Rules and Regulations for aircraft leasing.⁵⁸ The Authority attests that it identified certain problems areas with the Flying Club's operations, including conflicts related to the the Minimum Standards, and whether the Flying Club should be allowed to lease rather than own its aircraft and whether the Flying Club instructors can be allowed to give flight instruction.⁵⁹

On April 25, 2000, as part of drafting the amendments to the Rules and Regulations⁶⁰, and in dealing with the complaints filed by GFK, the Authority requested FAA's guidance in the areas of exclusive lease versus ownership, lease payments, revenue derived from aircraft leasing, flying club flight instruction and compensation.⁶¹

On May 12, 2000, the Bismarck ADO provided the requested guidance via e-mail. The guidance provided by FAA stated that an exclusive lease of an aircraft or aircraft for a flying club is equal to the flying club owning their aircraft, provided the lease contains specific conditions, such as exclusive use, minimum of one-year lease, and that the flying club, and not an individual, be named as lessor of the aircraft.⁶³

⁵³ We note that the Authority's proposal is to move the requirements for Flying Clubs currently under the Minimum Standards to a new section in the proposed Rules and Regulations.

⁵⁴ FAA Exhibit 1, Item 3, Attachment A-12.

⁵⁵ FAA Exhibit 1, Item 1, Attachment D, letter dated February 17, 2000.

⁵⁶ FAA Exhibit 1, Item 1, Attachment D, e-mail dated February 22, 2000.

⁵⁷ FAA Exhibit 1, Item 1, p. 4.

⁵⁸ FAA Exhibit 1, Item 3, p. 2.

⁵⁹ FAA Exhibit 1, Item 3, Attachment A-11, A-12.

⁶⁰ We note that the Authority's proposal is to move the requirements for Flying Clubs currently under the Minimum Standards to a new section in the proposed Rules and Regulations.

⁶¹ FAA Exhibit 1, Item 3, Attachment A-8, A-10.

⁶² FAA Exhibit 1, Item 3, Attachment A-8.

⁶³ FAA Exhibit 1, Item 3, Attachment A-8.

With respect to lease payments and member payments, the ADO concluded that all members of the flying club would need to pay equally toward the base lease fee for the hours of operation for which the aircraft is leased. The ADO guidance also advised that: " if the lease included an additional fee for hours of usage, the hours of usage would need to be paid initially by the flying club, but then could be charged to each individual based on their usage of the aircraft."⁶⁴

In response to the inquiry regarding flight instruction, the ADO accepted that Appendix 8 of the FAA Order 5190.6A allows flying clubs to "conduct aircraft flight instruction to their regular members", but that the Order does not authorize a flying club to "permit its aircraft to be utilized for the giving of flight instruction to any person including members of the club, when such person pays or becomes obligated to pay for such instruction."⁶⁵

As a result of the consultations with FAA, the Authority on May 16, 2000, submitted to FAA proposed flying club regulations for FAA comment. The Authority continued to ask for clarification on several issues, including specifics in determining a base lease amount. The Authority was concerned that the base lease principle, identified by FAA on the May 20 correspondence, if not properly applied, could result in a commercial aircraft rental operation masquerading as a flying club.⁶⁶

At the May 25, 2000, Board of Commissioners' meeting the Authority stated that contact with GFK was ongoing, that correspondence had been exchanged with FAA, and that while progress was being made, the parties involved were not any closer to an agreement. It also noted that the termination date for the Flying Club's operating agreement had been extended for another 60 days.⁶⁷

An extract of the August 17, 2000 meeting of the Authority's Board of Commissioners shows that more contacts with FAA had occurred regarding the complaints filed by GFK.⁶⁸ By December 21, 2000, while the parties and the Flying Club were involved with pretrial issues dealing with the aforementioned Writ of Mandamus, there were still expectations that FAA would provide a final decision on the issues apparently raised by GFK to the agency.⁶⁹

On April 3, 2001, GFK filed a formal Part 16 complaint with the FAA. The complainant contends that Grand Forks Regional Airport Authority violated 49 USC §47107 (a)(1) in that the Authority's interpretation and enforcement of its Minimum Standards constitutes unjust discrimination against GFK. According to allegations in the Complaint, the Flying Club conducts commercial activities without satisfying the Minimum Standards applicable to the Complainant as a FBO.⁷⁰

⁶⁴ FAA Exhibit 1, Item 3, Attachment A-8.

⁶⁵ FAA Exhibit 1, Item 3, Attachment A-8.

⁶⁶ FAA Exhibit 1, Item 3, Attachment A-9.

⁶⁷ FAA Exhibit 1, Item 3, Attachment A-10, May 25, 2000 extract.

⁶⁸ FAA Exhibit 1, Item 3, Attachment A-10, August 17, 2000 extract.

⁶⁹ FAA Exhibit 1, Item 3, Attachment A-10, November 16, 2000 and December 14, 2000 extracts.

⁷⁰ FAA Exhibit 1, Item 1, p. 1.

On May 22, 2001, the Grand Forks Regional Airport Authority filed its answer to the Complaint (Answer). While the Authority admits factual information, such as the dates in which Minimum Standards were established and leases were executed, it denies each of the allegations in the Complaint, including the claim that Flying Club has engaged in commercial business practices in violation of the minimum standards.⁷¹

On June 5, 2001, the Complainant filed a reply to the Answer (Reply). GFK states in reply to the Answer that it has provided sufficient documentary evidence regarding commercial activities and re-asserts its views that aircraft rental, flight training and club members leasing aircraft to the club are unauthorized commercial activities in violation of the GFIA's Minimum Standards.⁷²

On June 12, 2001, the Authority filed a rebuttal to the Complainant's reply (Rebuttal). In its Rebuttal, the Authority states that it did take action when confronted by credible evidence of inappropriate activities, namely aerial photography and advertisements. The Authority further states that it does not consider aircraft rental and flight training conducted within a flying club by the club's members to be commercial activity, but nevertheless it is in the process of amending the Rules and Regulations to clarify its position on those activities.⁷³

It is noted that as result of FAA guidance, the Authority elected in April and May 2000, to initiate the process of revising Rules and Regulations as well as Minimum Standards to incorporate conditions related to aircraft leasing by a flying club. This process was still ongoing when the Part 16 was filed and continues to this day.⁷⁴

IV. ISSUES

Upon review of the allegations made by the Complainant and the relevant airport-specific circumstances, summarized above in the Background Section, the FAA has determined that the following issues require analysis in order to provide a complete review of the Authority's compliance with applicable Federal law and policy:

A. Economic Non-Discrimination

Whether the Authority by, not requiring Flying Club to meet the airport's minimum standards, allowing Flying Club to conduct commercial activities at the airport and not taking enforcement actions against the Flying Club,⁷⁵ the Authority is in violation of 49 USC § 47107(a)(1) and Federal grant assurance 22 regarding unjust economic discrimination.

⁷¹ FAA Exhibit 1, Item 3, p. 1-3.

⁷² FAA Exhibit 1, Item 5.

⁷³ FAA Exhibit 1, Item 6. We note that the Authority's proposal is to move the requirements for flying clubs currently under the Minimum Standards to a new section in the proposed Rules and Regulations.

⁷⁴ FAA Exhibit 1, Item 3, p. 3, FAA Exhibit 1, Item 3, Attachment A-8, A-9, A-10, March 22, 2000 and April 19, 2001 extracts.

⁷⁵ See FAA Exhibit 1, Item 1, p. 1.

B. Exclusive Rights

Whether the Authority, by not requiring Flying Club to meet the airport's minimum standards, by allowing Flying Club to conduct commercial activities at the airport and by not taking enforcement actions against Flying Club,⁷⁶ is violating its Federal obligations regarding the prohibition against exclusive rights, 49 USC §§ 40103(e), 47107(a)(4) and related Federal grant assurance 23.

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The following is a discussion pertaining to the FAA's enforcement responsibilities; the FAA compliance program; statutes, sponsor assurances, and relevant policies; and the complaint process.

A. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 USC § 40101, et. seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Various legislative actions augment the Federal role in encouraging and developing civil aviation. These authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and efficiently, and in accordance with specified conditions.

Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance as well as ensuring the public fair and reasonable access to the airport. Pursuant to 49 USC § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their sponsor assurances.

B. The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport sponsors comply with their Federal obligations through its Airport Compliance Program. Sponsor obligations are the basis for the FAA's airport compliance effort. The airport owner accepts these obligations when receiving Federal grant funds or when accepting the transfer of Federal property for airport purposes. The FAA incorporates these obligations in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports which airport sponsors operate in a manner consistent with their Federal obligations and the public's

⁷⁶ See FAA Exhibit 1, Item 1, p. 1.

investment in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights which airport sponsors pledged to the people of the United States in exchange for monetary grants and donations of Federal property, to ensure that airport sponsors serve the public interest.

FAA Order 5190.6A sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather, it establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of these assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

As indicated in FAA Order 5190.6A, Sec. 5-6, "Analyzing Compliance Status," the judgment to be made in all cases is whether the airport owner is reasonably meeting the Federal commitments. It is the FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program is in place which in the FAA's judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out.

C. Statutes, Sponsor Assurances, and Relevant Policies

As a condition precedent to providing airport development assistance under the Airport and Airway Improvement Act of 1982 (AAIA), the Secretary of Transportation receives certain assurances from the airport sponsor.

The AAIA, 49 USC § 47107, *et seq.*, sets forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance. Section 511(b) of the AAIA, 49 USC § 47107(g)(1) and (2) as amended by Pub. L. No. 103-305 (August 23, 1994) authorizes the Secretary to prescribe project sponsorship requirements to ensure compliance with Sections 511(a), 49 USC 47107(a) and (b) as amended by Pub. L. No. 103-305 (August 23, 1994).

These sponsorship requirements are included in every AIP agreement as set forth in FAA Order 5100.38A, Airport Improvement Program Handbook for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended. 49 USC § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal government.

1.) Use of the Airport, and Not Unjustly Discriminatory Terms

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination.

Assurance 22, Economic Nondiscrimination, of the prescribed sponsor assurances implements the provisions of 49 USC § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport

"...will make its 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." Assurance 22(a)

"...may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport." Assurance 22(h)

Subsection (h) qualifies subsection (a). The intent is to permit the sponsor sufficient control over the airport to preclude unsafe and inefficient conditions, which would be detrimental to the civil aviation needs of the public.

Additionally, subsection (c) provides that the airport sponsor:

"...will ensure that each fixed-based operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities." Assurance 22(c)

FAA Order 5190.6A describes the responsibilities under Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination.⁷⁷

The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.⁷⁸

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds

⁷⁷ See FAA Order 5190.6A, Secs. 4-14(a)(2) and 3-1.

⁷⁸ See FAA Order 5190.6A, Sec. 3-8(a).

and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination.⁷⁹

(a) Minimum Standards

The FAA encourages airport management, as a matter of prudence, to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at the airport. It is the prerogative of the airport owner to impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must, however, be reasonable and not unjustly discriminatory. They must be relevant to the proposed activity, reasonably attainable, and uniformly applied.⁸⁰

The FAA ordinarily makes an official determination regarding the relevance and/or reasonableness of the minimum standards only when the effect of a standard denies an aeronautical activity access to a public-use airport. Such determinations often include consideration of whether failure to meet the qualifications of the standard is a reasonable basis for such denial and/or whether the application of the standard results in an attempt to create an exclusive right.⁸¹

The airport owner may quite properly increase the minimum standards from time to time in order to ensure a higher quality of service to the airport users. Manipulating the standards solely to protect the interest of an existing tenant, however, is unacceptable.⁸²

FAA Order 5190.1A, *Exclusive Rights at Airports*, provides that an airport sponsor may impose minimum standards on those engaged in aeronautical activities; however, an unreasonable requirement or any requirement that is applied in an unjustly discriminatory manner could constitute the granting of an exclusive right.⁸³ As discussed below, an airport may elect to not subject flying clubs to minimum standards.⁸⁴

(b) Flying Clubs

FAA Order 5190.6A, Chapter 3, Section 3-9 (g) "Flying Clubs" defines flying clubs as nonprofit entities (corporations, associations or partnerships) organized for the express purpose of providing its members with an aircraft or aircraft for their personal use and enjoyment only. The ownership of the aircraft, or aircraft, must be vested in the name of the flying club or owned ratably by all its members. The property rights of the members of the club shall be equal and no part of the net earnings of the club will inure to the benefit of any form (salaries, bonuses, etc.).

The club may not derive greater revenue from the use of its aircraft than the amount for the operation, maintenance and replacement of its aircraft. A flying club qualifies as an

⁷⁹ See FAA Order 5190.6A, Sec. 4-13(a).

⁸⁰ See FAA Order 5190.6A, Sec. 3-12.

⁸¹ See FAA Order 5190.6A, Sec. 3-17(b).

⁸² See FAA Order 5190.6A, Sec. 3-17(c).

⁸³ See FAA Order 5190.1A, Para. 11.c.

⁸⁴ See FAA Order 5190.6A, Appendix 8.

individual under the grant assurances and, as such, has the right to fuel and maintain the aircraft with its members. The airport owner has the right to require the flying club to furnish such documents, insurances policies, and maintain a current list of members as reasonably necessary to assure that the flying club is a nonprofit organization rather than a FBO masquerading as a flying club. In FAA Order 5190.6A, Appendix 8 "Flying Clubs," FAA suggests, several definitions and items as guidance for inclusion by airports in their guidance documents. The guidance in part states:

- While all flying clubs desiring to base their aircraft and operate at an airport must comply with the applicable provisions of airport specific standards or requirements, they shall be exempt from regular FBO requirements upon satisfactory fulfillment of the conditions contained in said standards or requirements.
- Flying clubs may not offer or conduct charter, air taxi, or rental of aircraft operations. They may not conduct aircraft flight instruction except for regular members, and only members of the flying club may operate the aircraft.
- No flying club shall permit its aircraft to be utilized for the giving of flight instruction to any person, including members of the club owning the aircraft, when such person pays or becomes obligated to pay for such instruction, except when instruction is given by a lessee based on the airport and who provides flight training. Any qualified mechanic who is a registered member and part owner of the aircraft owned and operated by a flying club shall not be restricted from doing maintenance work on aircraft owned by the club and the club does not become obligated to pay for such maintenance work except that such mechanics and instructors may be compensated by credit against payment of dues or flight time.
- All flying clubs and their members are prohibited from leasing or selling any goods or services whatsoever to any person or firm other than a member of such club at the airport, except that said flying club may sell or exchange its capital equipment.
- A flying club, at any airport controlled by this same airport management, shall abide by and comply with all Federal, State and local laws, ordinances, regulations and the rules and regulations of this airport management.
- A flying club which violates any of the foregoing, or permits one or more members to do so, will be required to terminate all operations at all airports controlled by this airport management. A public hearing should be held for the purpose of considering such termination.

2.) Exclusive Rights

Title 49 USC § 40103(e), provides, in relevant part, that "[a] person does not have an exclusive right to use an air navigation facility on which Government money has been expended." In accordance with 49 USC § 40102(a)(4), (9), and (28), an "air navigation facility" includes an "airport."

Title 49 USC § 47107(a)(4) similarly provides, in pertinent part, that “a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport...”

Assurance 23, "Exclusive Rights", of the prescribed sponsor assurances implements the provisions of 49 USC § 40103(e) and 47107(a)(4), and requires, in pertinent part, that the sponsor of a federally obligated airport "...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public." The sponsor further agrees that it “will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities...”

In FAA Order 5190.1A, Exclusive Rights, the FAA published its exclusive rights policy and broadly identified aeronautical activities as subject to the statutory prohibition against exclusive rights. While public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, FAA has taken the position that the application of any unreasonable requirement or standard that is applied in an unjustly discriminatory manner may constitute a constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. See e.g. Pompano Beach v FAA, 774 F.2d 1529 (11th Cir, 1985).

FAA Order 5190.6A provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports.⁸⁵

VI. ANALYSIS AND DISCUSSION

In this complaint, the role of the FAA is to determine whether the Authority is in compliance with its Federal obligations, including those required under grant assurance 22 Economic Nondiscrimination and grant assurance 23 Exclusive Rights.

As set out in Section V Applicable Federal Law and FAA Policy, grant assurance 22 provides protection from unjust economic discrimination to aeronautical activities. Under grant assurance 22

... a sponsor is permitted to exercise control of the airport sufficient to preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public. Sponsors may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

In reviewing the Authority’s compliance herein, the FAA will take into consideration FAA Order 5190.6A under which as a matter of prudence, airport management is

⁸⁵ See FAA Order 5190.6A, Chapter 3.

encouraged to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at the airport. In accordance with the grant assurance 22 requirement, the FAA encourages minimum standards, but recognizes it is the prerogative of the airport owner to impose conditions on users of the airport to ensure its safe and efficient operation. Any such conditions must, however, be reasonable and not unjustly discriminatory, and relevant to the proposed activity, reasonably attainable, and uniformly applied. [See FAA Order 5190.6A, Sec. 3-12.]

Long-standing FAA policy permits, but does not require airport sponsors to exempt flying clubs from regular FBO requirements upon the satisfactory fulfillment of specific conditions.⁸⁶ Those conditions include, among other things, that the flying club be a non-profit entity (i.e. not derive greater revenue from the use of its aircraft than the amount necessary for operations, maintenance and replacement of its aircraft), and be prohibited from leasing or selling any goods or services whatsoever to any person or firm other than a member of the flying club. [See FAA Order 5190.6A, Appendix 8.] These conditions are designed to ensure that FBO's do not masquerade as flying clubs in order to evade an airport sponsor's minimum standards for commercial operators providing aeronautical services to the public.

The Complainant, an FBO providing aeronautical services to the public at the Airport, contends that the Respondent unjustly discriminates against the Complainant, in violation of grant assurance 22, when it allows the Flying Club to conduct commercial operations in violation of the Airport Use Agreement and without complying with existing Minimum Standards.

Additionally, the FAA notes that an exclusive right may 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 in violation of 49 USC §§ 40103(e) and 47107(a)(4), and related grant assurance no. 23. [See FAA Order 5190.6A, Appendix 5, Para. i.] Accordingly, these two issues, unjust economic discrimination and exclusive rights, are analyzed below.

A. Economic Non-Discrimination

In general, the Complainant alleges that the Respondent's interpretation and enforcement of its Minimum Standards constitutes unjust discrimination against the Complainant. Specifically, the Complainant contends that by permitting the Flying Club to engage in commercial activities in direct competition with the Complainant, and without requiring the Flying Club to comply with the Airport's Minimum Standards imposed on the Complainant as an FBO providing aeronautical services to the public, the Complainant is at a competitive disadvantage to the Flying Club.⁸⁷

⁸⁶ We note that if an airport sponsor chooses to subject flying clubs based at the airport to its Minimum Standards, those standards must be, among other things, relevant to the proposed activity and reasonably attainable. See FAA Order 5190.6A, Sec. 3-12.

⁸⁷ FAA Exhibit 1, Item 1, p. 1 and 4, and Attachment D, several letters.

To support its allegation, the Complainant alleges that the Respondent's interpretation of its Minimum Standards is not consistent with the intent of FAA policy; the Respondent failed to investigate the complaints filed by the Complainant regarding alleged commercial activities by the Flying Club; and the Respondent failed to enforce its termination of the Flying Club's Airport Use Agreement for violations of said agreement.⁸⁸

The FAA accepts the Complainant's assertion that if the Flying Club is permitted to provide its commercial services to the public without meeting the Airport's Minimum Standards, the Complainant will be at an economic disadvantage to the Flying Club. A review of the Respondent's Minimum Standards establishes that FBOs providing aeronautical services to the public are required to make economic commitments not required of flying clubs based at the Airport. For example, a full-service FBO is required to lease a minimum of 45,000 sq.ft. of land on airport property, and is required to construct or lease a minimum of 17,000 sq.ft. of building space. The Minimum Standards also include requirements for aircraft rental activities.⁸⁹ Flying clubs are exempt from this requirement.

With respect to the Flying Club's alleged commercial activities, the Complainant contends that the Flying Club (a) permits its club members to be compensated for providing flight instruction for compensation, (b) permits non-pilots to join the Flying Club, (c) leases aircraft from its members, (d) permitted a Flying Club member to operate a pilot supply business, and (e) permitted a Flying Club member to use a club aircraft to conduct commercial aerial photography operations.⁹⁰ The Complainant contends that these activities are inconsistent with FAA requirements for permitting flying clubs to operate at a Federally-obligated airport.

The Respondent denies that the record evidence establishes that the Flying Club is generally providing commercial aeronautical services to the public; or that the Respondent permitted the Flying Club to conduct commercial activities at the airport.⁹¹

1.) Respondent's Rules, Regulations and Policies Regarding Commercial Operations by the Flying Club

The following is a discussion of the Respondent's policies, rules and regulations with respect to the alleged commercial activities of the Flying Club, and their consistency with FAA's requirements.

⁸⁸ FAA Exhibit 1, Item 1 p. 4 and Attachment A.

⁸⁹ FAA Exhibit 1, Item 1, Attachment D, letters dated September 18, 1997 and August 4, 1998.

⁹⁰ FAA Exhibit 1, Item 1, p. 1- 4, Attachment D, several letters.

⁹¹ FAA Exhibit 1, Item 3, p. 1, 2-3.

(a) Flight and Ground Training Instruction

The record reflects that since the Respondent's adoption of the Minimum Standards in August 1995, the Complainant alleged in several letters to the Respondent that certain members of the Flying Club are profiting from flight instruction.⁹²

The Respondent's Airport Use Agreement with the Flying Club would appear to prohibit Flying Club members from profiting from flight instruction. Specifically, the Airport Use Agreement provides that "[w]hile the club, or any member, does not become obligated to pay for such maintenance or flight instruction, club members who are mechanics, or instructors, may be compensated by credit against payment of dues or flight time."⁹³ However, in its Rebuttal, the Respondent affirmatively states that "[t]he Authority does not generally consider ... flight training conducted within a flying club by that club's members to be a commercial activity. That broad interpretation notwithstanding, a new section of Rules and Regulations is under consideration by the Authority's Board of Commissioners that will further clarify its position on those activities."⁹⁴

We agree with the Complainant that if a member of a flying club is directly compensated by a student pilot, the member is profiting from flight instruction and the Flying Club is acting inconsistent with the intent of FAA requirements to be imposed on flying clubs that are exempt from an airport sponsor's minimum standards. As discussed in FAA Order 5190.6A, a sponsor should condition a flying club's use of the airport on an agreement that the flying club will not "...permit its aircraft to be utilized for the giving of flight instructions to any person, including members of the club owning the aircraft, when such person pays or becomes obligated to pay for such instruction, except when instruction is given by a lessee based on the airport and who provides flight training." (See FAA Order 5190.6A, Exhibit 8).

That said, we do not agree with the Complainant's interpretation of our requirements in its July 1998 letter to the Respondent. Specifically, the Complainant appears to have provided the Respondent with a Flying Club newsletter indicating that the Flying Club has initiated instructor incentives. According to the Complainant, in its July 21, 1998 letter, the newsletter establishes that the Flying Club is rewarding instructors \$12 per hour towards their flying club dues for each hour of instruction they provide.⁹⁵ The Complainant contends that the Flying Club is not supposed to be compensating flight instructors in any form.

Allowing a flying club to credit flying club members' dues and flight time for flight instruction provided to other club members is consistent with FAA requirements. As

⁹² See FAA Exhibit 1, Item 1, Attachment D, several letters.

⁹³ FAA Exhibit 1, Item 1, Attachment C, p. 2.

⁹⁴ FAA Exhibit 1, Item 6, p. 1.

⁹⁵ FAA Exhibit 1, Item 1, Attachment H, July 21, 1998. The FAA notes that the newsletter was not included in the record evidence provided to the FAA.

discussed in FAA Order 5190.6A, a sponsor should condition a flying club's use of the airport on an agreement that the flying club will not

. . . permit its aircraft to be utilized for the giving of flight instruction to any person, including members of the club owning the aircraft, when such person pays or becomes obligated to pay for such instruction . . . except that such . . . instructors may be compensated by credit against payment of dues or flight time. (See FAA Order 5190.6A, Appendix 8, Section b.)

Against this background, we find the Respondent's Airport Use Agreement with the Flying Club, as it relates to the club members providing flight instruction to other club members, to be consistent with FAA requirements. Nonetheless, we encourage the Respondent to adopt the amendments it has proposed to its rules and regulations. Those amendments more accurately reflect the Respondent's understanding of FAA requirements as compared to the Respondent's affirmative statement that it "does not generally consider . . . flight training conducted within a flying club by that club's members to be a commercial activity."⁹⁶

(b) Non-Pilots as Flying Club Members

A related issue to conducting instruction is the issue of allowing non-pilots to join the Flying Club. The Complainant argues that one of the basic requirements in order to join the flying club should be that members be pilots.⁹⁷

Neither the Respondent's Minimum Standards nor its Airport Use Agreement with the Flying Club expressly prohibit non-pilots from becoming members of the Flying Club. Additionally, there is no specific FAA guidance recommending that non-pilots be prohibited from joining a flying club.⁹⁸

The FAA generally finds it unnecessary for flying clubs to prohibit non-pilots from joining the club based on the concerns raised by the Complainant in the instant complaint. Under a properly structured flying club, its members are required to invest equally in the assets of the flying club. This investment would ordinarily deter members of the public seeking occasional, on-demand aeronautical services (i.e., individuals not interested in becoming a pilot that would regularly use club aircraft for their personal enjoyment), from seeking membership in a flying club.

Additionally, one of the fundamental purposes of the FAA's policy regarding flying clubs is to foster and develop skills in aeronautics, including pilotage, navigation, and an awareness and appreciation of aviation requirements and techniques. [See FAA Order 5190.6A, Appendix 8] Prohibiting non-pilots from joining flying clubs, such as student

⁹⁶ FAA Exhibit 1, Item 6, p. 1.

⁹⁷ FAA Exhibit 1, Item 1, Attachment D, letter dated February 17, 2000. By pilots, the Director understands the Complainant to mean pilots holding at least a Private Pilot's certificate.

⁹⁸ FAA Exhibit 1, Item 3, Attachment A-7, A-8.

pilots, would be contrary to the very intent of the FAA's policy. That said, we note that non-pilots must be subject to the same fees applied to all other club members. They must also be subject to the same rules.

(c) Aircraft Leasing

The Complainant alleges that certain members of the Flying Club personally own aircraft and "lease" the aircraft to the Flying Club on an hourly basis.⁹⁹ In turn, the Flying Club rents the aircraft by the hour to members within the club. The Complainant contends that this practice constitutes a commercial business practice of aircraft rental subject to the requirements in the Minimum Standards. The Complainant further contends the practice directly conflicts with FAA Order 5190.6A which clearly states that the ownership of the aircraft must be vested in the name of the club or owned ratably by its members and that the practice creates an unlevel playing field by relieving the Flying Club from the Minimum Standards. According to the Complainant, this leasing arrangement allows the Flying Club to hold itself out to the general public for aircraft rental because it enables the Flying Club to require only a small enrollment fee of as little as \$25 for access to the rental of aircraft within the Flying Club.¹⁰⁰ The Complainant believes that FAA policy requires that the Flying Club own, and not lease aircraft to be used by Flying Club members.¹⁰¹

The Respondent's Airport Use Agreement with the Flying Club permits the Flying Club to lease aircraft used by its members. Specifically, the Minimum Standards and Airport Use Agreement provide that "[t]he ownership, or exclusive lease, (sic) of the aircraft, (sic) must be vested in the name of the flying club (or owned ratably by all of its members)."¹⁰²

In its Answer, the Respondent admits that certain members of the Flying Club personally own aircraft and lease their aircraft to the Flying Club.¹⁰³ However, the Respondent denies that such a practice constitutes a commercial business practice in violation of the Minimum Standards. The Respondent explains that it has been its position not to condemn a leasing arrangement as such, but to look at the nature of the lease, realizing that many installment purchase agreements can resemble a lease just as surely as many leasing arrangements can resemble an installment purchase agreement.¹⁰⁴ According to the Respondent, based on e-mail advice from the FAA's Bismarck Airport District Office regarding this issue, it has undertaken the process of revising its Rules and Regulations and Minimum Standards to incorporate the conditions relative to aircraft leasing by a flying club.¹⁰⁵

⁹⁹ FAA Exhibit 1, Item 1, p. 4.

¹⁰⁰ FAA Exhibit 1, Item 1, p. 4.

¹⁰¹ FAA Exhibit 1, Item 1, p. 5.

¹⁰² FAA Exhibit 1, Item 1, Attachment C.

¹⁰³ FAA Exhibit 1, Item 3, p. 2.

¹⁰⁴ FAA Exhibit 1, Item 3, p. 3.

¹⁰⁵ FAA Exhibit 1, Item 3, p. 3.

While we agree with the Complainant that FAA Order 5190.6A indicates that flying clubs should own the aircraft used by their members, the FAA interprets ownership to include a long-term, exclusive use agreement if the lease is vested in the name of the flying club. This interpretation of FAA policy is evidenced by the FAA Bismarck ADO's e-mail of May 12, 2000.¹⁰⁶ To interpret this provision otherwise would effectively prohibit a flying club from leasing an aircraft directly from an aircraft manufacturer, for example, that was not located at an airport upon which a flying club is based. It would not be prudent or practical to disallow a long-term exclusive leasing arrangement since we believe this to be a common industry practice. Moreover, we find little difference between the types of payments that a flying club would make for a typical long-term, exclusive use lease of aircraft and on a loan payment for an aircraft it owns.

However, this case is distinguishable in that the Respondent current Minimum Standards and Rules and Regulations permit the Flying Club to lease its aircraft directly from members of the Flying Club at an hourly rate. This leasing structure, we find, could allow the Flying Club to avoid fixed costs that are associated with typical long-term, exclusive-use leases of aircraft, and mimic a retail transaction between the Flying Club member owning the aircraft and the Flying Club member using the aircraft. Consequently, we find that the Respondent's current Minimum Standards and Rules and Regulations, as discussed above are not adequate to ensure that the Flying Club does not mimic a commercial aeronautical operator providing aircraft rental services to the public.

To this end, the Respondent asserts, and the record shows, that the Respondent has proposed amendments to its Minimum Standards and Rules and Regulations that are relevant to the leasing of aircraft. Specifically, the Authority proposes to move the requirements for flying clubs currently under the Minimum Standards to a new section in the proposed Rules and Regulations. Section 11 of the new rules and regulations, if adopted, would require, in relevant part, that:¹⁰⁷

1. The lease must be exclusive. Only the lessee (the club) shall have right to use the aircraft during the term of the lease.
2. The lease must be for at least one year. The lease may contain default and termination provisions should the aircraft be destroyed or become otherwise unflyable.
3. The lease must specify a "base lease" payment. The base lease payment represents the value of maintaining custody and control of the aircraft for the lease period irrespective of hours it is flown. The club and lessor shall negotiate the base lease payment, however, in no case shall the base lease payment be less than 5% of the "blue book" or fair market value of the aircraft, times the number [of] years in the term of the lease. If the lessor pays for

¹⁰⁶ See FAA Exhibit 1, Item 3, Attachment A-8.

¹⁰⁷ See FAA Exhibit 1, Item 3, Attachment A-12.

insuring the aircraft during the lease period and/or pays hangar or tiedown expenses of the aircraft, the minimum base lease payment must be increased to reflect the value of those added services.

4. The lease may provide for additional payments based on hourly use of the aircraft or as otherwise agreed.

Additionally, Section 11.04 of the Rules and Regulations would require that “[a]ll aircraft use members are required to make equal payment toward base leases,” and Section 11.06, *et al*, would prohibit the possibility of the member-owners’ share of the “base lease fee” from being abated by any credits for providing flight instruction to club members and/or maintenance performed on club aircraft.

The record reflects that the amendments proposed by the Respondent incorporate the principles established in the ADO’s guidance of May 12, 2000. This guidance establishes that the aircraft must be leased exclusively to a flying club for at least one year; the aircraft lease agreement must contain a “base lease fee”; and the “base lease fee” must be shared equally by all members of the Flying Club.¹⁰⁸ The “base lease fee” must be equal to or greater than the “fair market rental value” of the aircraft.

To further clarify the ADO’s guidance, we note that exclusive use means that the aircraft cannot be used by anyone other than the flying club and its members at any time during the term of the lease, and may not be used by any member of the flying club to provide aeronautical services to the public. With respect to the terms of the lease, we also note that although the guidance provided by the Bismarck ADO states that an exclusive lease of an aircraft should be for a minimum of one-year, the appropriate term for a long-term lease may vary depending on the type of operations, type of aircraft, investment or financing level involved, tax or liability implications, or other parameters.¹⁰⁹ That said, we agree with the ADO that the term of the lease of an aircraft to a flying club cannot, in any case, be less than one year. Since the Complainant has not raised the issue of the length of aircraft leases in this complaint, we decline to address the reasonableness of the Respondent’s rules and regulations requiring only that the lease be for a length of one year.

Against this background, we conclude that the Respondent’s proposed amendments appear to set forth sufficient requirements to effectively correct the current leasing arrangements in use by the Flying Club and ensure that future aircraft leasing practices do not constitute a special privilege to the Flying Club placing a significant economic burden or economic disadvantage on the Complainant FBO. However, the Respondent provides no evidence in the record to establish that it has adopted proposed changes to its

¹⁰⁸ FAA Exhibit 1, Item 3, Attachment A-8.

¹⁰⁹ It appears that current industry practices regarding term of leases suggests that the term of a long-term lease varies and depends upon the type of operation in question, type of aircraft, investment or financing level involved, tax and liability implications, or other specific arrangements or requirements. Taking these conditions into consideration, we note that the use of a leasing term longer than one year is not automatically an unreasonable term in violation of the grant assurances or applicable FAA policy.

Minimum Standards and Rules and Regulations, even though it received the ADO's guidance more than one year before its final pleading in this case. Consequently, we cannot find that the Respondent is currently in compliance with Federal obligations regarding unjust discrimination.

In order to correct the Respondent's inadequate Minimum Standards and Rules and Regulations, and to return the Respondent to compliance with 49 USC § 47107(a) (1) and related grant assurance 22, the FAA has determined that the Authority should implement the proposed amendments to its rules and regulations as soon as practicable.

(d) Aviation Supplies Sales

The Complaint alleges that certain members of the Flying Club operated a pilot supply business providing pilot supplies and services to the general-public.¹¹⁰

The Respondent's existing Minimum Standards and its Airport Use Agreement with the Flying Club would appear to prohibit Flying Club members from providing pilot supplies and services to the public. Specifically, the Minimum Standards and Airport Use Agreement provide that "[f]lying clubs may not offer or conduct . . . commercial (for profit) operations."¹¹¹ Commercial services are defined by the Minimum Standards as "certain commercial activities conducted at or from the Airport for the purpose of securing earnings, income, compensation, or profit, whether or not such objectives are actually accomplished."¹¹²

The FAA considers the sale of aviation products by a flying club to the public to be inconsistent with its policy. However, FAA policy makes a distinction between a flying club selling products to its members at no profit, which is an acceptable practice, and a flying club or individual members selling products to non-members, which is an unacceptable practice. This distinction is discussed in FAA Order 5190.6A, Appendix 8 which states that "All flying clubs are prohibited from leasing or selling any goods or services whatsoever to any person or firm other than a member of such club at the airport...", and "The Club may not derive greater revenue from the use of its aircraft than the amount necessary for the operations, maintenance and replacement of its aircraft."

Since the record does not provide sufficient evidence demonstrating that the Flying Club or its members sell aviation products to the public, and it does indicate that the Authority's policies and rules and regulations with regards to the sale of pilot supplies is consistent with FAA policy, we find the Authority's actions regarding pilot supplies to be consistent with its Federal obligations.

¹¹⁰ FAA Exhibit 1, Item 1, Attachment D, letter dated June 4, 1997.

¹¹¹ FAA Exhibit 1, Item 1, Attachment A and C.

¹¹² FAA Exhibit 1, Item 1, Attachment A, p. 1.

(e) Aerial Photography

The Complainant contends that Flying Club members provided for-profit, aerial photography services to the public with Flying Club aircraft.¹¹³

The Respondent's Minimum Standards and its Airport Use Agreement with the Flying Club would appear to prohibit Flying Club members from providing aerial photography services to the public for the same reasons discussed in subsection (d), above. Moreover, the record reflects that on July 17, 1996, the Respondent sent a letter to both the Flying Club and an individual Flying Club member regarding the Complainant's allegations. Specifically, the Respondent informed the Flying Club that

... our information is that a leased Nodak Flying Club airplane is, or at least was until it was removed from Nodak Flying Club [s]ervice, being used by the contract operator, Mr. Nelson, to perform his commercial flying services for USDA. The significance of this situation is that the Airport Authority presently authorizes Nodak Flying Club to obtain the use of an aircraft under a leasing arrangement, however, the leasing arrangement must be exclusive. This means that the Flying Club has the exclusive and sole use of the aircraft for the duration of the lease. Stated another way, the Flying Club does not have the right or power to lease an airplane for its own use and then sublet or underlet the airplane to one of its members for a commercial purpose. This is prohibited by your lease (actually called Airport Use Agreement), pursuant to the provisions of Article 2. d. which state that the Club, its members, and their aircraft are prohibited from being used for commercial (for profit) pilot training, aircraft rental, or other aviation services to the general public.¹¹⁴

Based on the aforementioned letter prepared by the Respondent, we find that its policies and rules and regulations are consistent with FAA policy.

2.) Respondent's Alleged Complicity in Flying Club's Commercial Activity

With respect to FAA's enforcement responsibilities in this proceeding – i.e. to determine whether the Respondent is compliant with its Federal obligations – the gravamen of the Complaint is the allegation that the Respondent failed to enforce its Minimum Standards. As discussed in the "Background Section" above, it is the FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program is in place which in the FAA's judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out. See FAA Order 5190.6A, Sec. 5-6(a)(2).

¹¹³ FAA Exhibit 1, Item 1, p. 2. Also see correspondence in FAA Exhibit 1, Item 1, Attachment D.

¹¹⁴ FAA Exhibit 1, Item 3, Attachment A-3.

To this end, the Complainant alleges that the Respondent's interpretation of its Minimum Standards is not consistent with the intent of FAA policy,¹¹⁵ as discussed above in subsection I; the Respondent failed to investigate the complaints filed by the Complainant regarding alleged commercial activities by the Flying Club; and the Respondent failed to enforce its termination of the Flying Club's Airport Use Agreement for violations of said agreement.¹¹⁶

The Respondent generally denies that its interpretation of the Minimum Standards is inconsistent with FAA policy.¹¹⁷ Additionally, the Respondent asserts that the Complainant has not substantiated its allegations of commercial activity with any credible evidence; and that in two instances when the Complainant provided credible evidence, the Respondent has taken the appropriate corrective actions.¹¹⁸ Finally, the Respondent admits that it voted to terminate the lease of the Flying Club, but states that such termination was part of a process to incorporate in its revised Rules and Regulations the conditions under which the Flying Club could lease aircraft.¹¹⁹

With respect to the Respondent's understanding of its Federal obligations, we note that the Respondent has included in its Airport Use Agreement with the Flying Club the exact conditions prescribed by FAA Order 5190.6A. Although the Respondent did not fully understand these conditions as they relate to a flying club's ability to lease its aircraft from its members, we note that the Respondent ultimately sought assistance from the FAA's Bismarck ADO in understanding the conditions.¹²⁰ Furthermore, upon receiving clarification from the FAA, the Respondent proposed amendments to its rules and regulations¹²¹ that we find to be satisfactory in addressing our concerns once they are implemented.¹²²

However, as discussed more fully above, the FAA cannot yet determine that a program is, in fact, in place that is adequate to reasonably carry out these commitments since the record does not reflect that the proposed amendments to the Respondent's airport rules and regulations have been formally adopted. Consequently, the FAA finds that the Respondent's program as implemented by its existing Minimum Standards and Rule and Regulations is not consistent with the Respondent's Federal Obligations.

Finally, we have considered the issue whether the Respondent has demonstrated that an effective compliance program is being carried out. In support of its' assertion relative to this issue, the Complainant contends that the Respondent failed to investigate the Complainant's complaints regarding alleged commercial activities by the Flying Club

¹¹⁵ FAA Exhibit 1, Item 1, p. 4.

¹¹⁶ FAA Exhibit 1, Item 1, p. 4.

¹¹⁷ FAA Exhibit 1, Item 3, p. 2.

¹¹⁸ FAA Exhibit 1, Item 3, p. 2 and 3.

¹¹⁹ FAA Exhibit 1, Item 3, p. 2.

¹²⁰ FAA Exhibit 1, Item 3, p. 3 and Attachment A-8.

¹²¹ FAA Exhibit 1, Item 3, p. 3 and Attachment 12.

¹²² We note that the Authority's proposal is to move the requirements for flying clubs currently under the Minimum Standards to a new section in the proposed Rules and Regulations.

and the Respondent failed to enforce its termination of the Flying Club's Airport Use Agreement for violations of said agreement.¹²³

Notwithstanding the Respondent's uncertainty regarding FAA's policy on the topic of the ownership of flying club aircraft, the record reflects that a compliance program was being attempted. Specifically, the record reflects that in October 1996, the Respondent conducted a review of the Flying Club's structure. While the review did not specifically substantiate the numerous allegations made by the Complainant, it is apparent that those allegations were discussed with the Flying Club.¹²⁴ For example, in its January 7, 1997 letter, the Respondent states:

Another matter that we discussed during our meeting involved flight instruction given by members of the Nodak Flying Club, Inc. ... I would hope that the Flying Club would take a look at the provisions of FAA Order 5190.6A and in particular, paragraph B of Appendix 8 . . . From the Flying Club's perspective, I think it is important to note that the above regulation places the burden on the Flying Club to make sure that its aircraft are not used in connection with flight instruction where the person receiving the instruction pays, or becomes obligated to pay, for instruction ... I hope you will take a look at this because this is a recurring issue.¹²⁵

Regarding the Complainant's allegations that the Respondent failed to terminate the Flying Club's tenancy at the airport, we 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. The record establishes only two instances in which the Respondent found the Flying Club to have violated its Airport Use Agreement. The Respondent acted on the Flying Club's two violations and made reasonable efforts to correct and prevent the problems from reoccurring. The Respondent exercised its airport management discretion by concluding that such violations did not rise to a level requiring termination of the Flying Club's lease agreement.

B. Exclusive Rights

The Complainant has alleged, as discussed previously, that the Respondent requires it to comply with the Authority's Minimum Standards but does not require the Flying Club to comply even though allegedly, the Flying Club is in direct competition with the

¹²³ FAA Exhibit 1, Item 1, p. 4.

¹²⁴ FAA Exhibit 1, Item 3, Attachment A-7.

¹²⁵ FAA Exhibit 1, Item 3, Attachment A-7.

Complainant. This allegation has implications for the grant assurance prohibiting the granting of an exclusive right, for the reasons set forth above.

As stated in the Applicable Law and Policy Section, in order to sustain an exclusive rights violation, the FAA would have to find that the Respondent granted special privileges or rights to the Flying Club which placed a significant burden on the Complainant FBO resulting in the Respondent granting a constructive exclusive right to the Flying Club. Specifically, the FAA would have to find, at the very least, that the Respondent permitted the Flying Club to directly compete with the Complainant's FBO activities sufficient to be deemed a grant of an exclusive right to the FBO contrary to grant assurance 23.

Since the FAA has determined that the Authority, by failing to take corrective action with respect to the Flying Club's aircraft leasing practices, is in violation of its Federal obligations to establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport, as stipulated under 49 USC § 47107(a) (1) and related grant assurance 22, the FAA is persuaded that the Respondent has granted an exclusive right in violation of 49 USC 40103 (e) and 47107(a)(4) and related grant assurance 23.

Therefore, in order to correct the Flying Club's current aircraft leasing practices and to return the Respondent into compliance with 49 USC § 40103(e), 49 USC § 47107 (a)(4) and related Federal grant assurance 23, the FAA has determined that the Authority should implement the proposed amendments to its rules and regulations as soon as practicable.

VIII. FINDINGS AND CONCLUSIONS

Upon consideration of the submissions and responses by the parties and the entire record, herein, and the applicable law and policy and for the reasons stated above, we conclude that:

1. The Respondent, by failing to take corrective action with respect to the Flying Club's aircraft leasing practices, is in violation of the obligation to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination as set forth in 49 USC § 47107(a) (1) and related Federal grant assurance 22.
2. The Respondent, by failing to take corrective action with respect to the Flying Club's aircraft leasing practices, is in violation of the obligation regarding the prohibition against exclusive rights, 49 USC § 40103(e), 49 USC § 47107 (a)(4) and related Federal grant assurance 23.
3. The remaining allegations in the Complaint have not been established and are dismissed.

ORDER

ACCORDINGLY, it is ordered that:

- (1) The Respondent implement, within 60 days and without undue delay, the proposed new Section 11 of the Rules and Regulations affecting flying club operations, and delete Section 4, "Flying Clubs", from its Minimum Standards as explained in this decision. If no such plan is implemented within this period, and FAA determines that the apparent violation continues, the FAA may proceed to take appropriate action to bring the Authority into compliance with its Federal obligations.
- (2) All motions not expressly granted herein are denied.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute a final agency action subject to judicial review under 49 USC § 46110. See 14 CFR 16.247(b)(2). Any party to this proceeding adversely affected by the Director's Determination may appeal this initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's Determination.



David L. Bennett
Director

Office of Airport Safety and Standards

March 22, 2002

Date