



[4910-13]

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Chapter I**

#### **Notice of Policy on Evaluating Disputed Changes of Sponsorship at Federally Obligated Airports**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of policy.

**SUMMARY:** This document clarifies the FAA's legal authority and policy for addressing disputed changes of sponsorship at federally obligated, publicly owned airports. This document also explains the requirements for state or local government entities to coordinate with the FAA when contemplating actions that may impact an airport's ownership, sponsorship, governance, or operations.

**DATES:** [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kevin C. Willis, Manager, Airport Compliance Division, ACO-100, Federal Aviation Administration, 800 Independence Avenue, SW. Washington, DC 20591, telephone (202) 267-3085; facsimile: (202) 267-4629.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

This document clarifies the FAA's legal authority and policy for monitoring and approving requests to change the sponsorship of, and/or operational responsibility for, an airport from one public agency to another public agency when there is a dispute surrounding the proposed

change.<sup>1</sup> This document also describes the requirements for coordination between the FAA and state or local governments contemplating actions that may impact an airport's ownership, sponsorship, governance, or operations, to ensure that such actions are consistent with Federal requirements. Where the current sponsor/operator and the proposed new sponsor/operator agree to a change of sponsorship and/or operational control, Section IV of this document does not apply.

## **II. FAA Legal Authority and Responsibility**

While state or local legislative action, or a judicial action, as the case may be, may seek to change an airport's ownership, sponsorship, governance, or operations, only the FAA has the authority to determine sponsor eligibility, approve and formally change airport sponsorship, and approve and issue a new Airport Operating Certificate pursuant to 14 CFR part 139. The FAA has a statutory obligation to ensure that an airport sponsor/operator is capable of assuming all grant assurances, safety compliance, and other Federal obligations, and has the expertise to operate the airport. Specifically, an airport sponsor/operator must meet the requirements set out in title 49 U.S.C. 44706, as implemented by 14 CFR part 139, for obtaining an Airport Operating Certificate, (if applicable) or in 49 U.S.C. 47102, as implemented by FAA Order 5100.38D (which includes provisions governing sponsor eligibility for Airport Improvement Program (AIP) funding) and/or 14 CFR part 158 (which governs the Passenger Facility Charge (PFC) program pursuant to 49 U.S.C. 40117).

The FAA's obligation extends to reviewing sponsor/operator eligibility when state and local governments propose a change in the airport governance structure to ensure that there is no ambiguity regarding responsibility for Federal obligations and that any proposed changes will not impact compliance with Federal law. (In the event of a local or state dispute regarding

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<sup>1</sup> The policy does not apply to a change of sponsorship or ownership of a privately-owned airport, transfers under the Airport Privatization Pilot Program, or changes when the Federal Government exercises its right of reverter.

sponsorship/operation of the airport, the FAA will apply the policy set out in Section IV below.) If any proposed changes give rise to such concerns by the FAA, the agency will work with state and/or local government(s) to resolve the concerns or, if the concerns cannot be addressed, deny the request.

Airport sponsors and operators are required to maintain compliance with Federal requirements at all times, and this document does not preclude the FAA from taking enforcement action if a sponsor or operator fails to fulfill its obligations, even if the FAA has approved the transfer.

### **III. Coordination of Potential Actions to Change Sponsorship/Operations**

Any state or local legislative body or public agency considering whether to take an action, such as drafting legislation, that would impact airport ownership, sponsorship, governance, or operations should (1) consult with and obtain the consent of the current sponsor/operator (absent extraordinary circumstances, such as substantial evidence of mismanagement on the part of the current sponsor/operator);<sup>2</sup> and (2) request technical assistance from the FAA about the interrelationship between Federal and state or local requirements, and seek the FAA's review and comment as early in the deliberative process as is practicable. A failure to consult may cause FAA to deny a proposed change to airport sponsorship and/or operating authority. In all cases, final decisions regarding the proposed change will be made by FAA's Office of Airport Compliance and Management Analysis.

In seeking technical assistance, representatives of the existing and/or proposed sponsors and operators must contact the appropriate Regional Office or Airport District Office (ADO) as early

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<sup>2</sup> Consent from the current sponsor/operator before a change of sponsorship or operational authority is a critical factor for the FAA in determining whether safety, efficiency, and compliance with grant assurances as required by Federal law will be fully satisfied prior to, during, and after any transition period between sponsors/operators. Even when consent is obtained, the FAA independently will determine whether the proposed sponsor/operator is able to satisfy Federal requirements for airport sponsorship or operation.

in the process as practicable. The Regional Office or ADO will inquire as to whether the proposed change is disputed, and the FAA will not act upon the proposed change until the dispute is resolved in accordance with Section IV below. In the absence of a dispute or upon final resolution of a dispute, the Regional Office or ADO will work with prospective airport sponsors and operators to ensure understanding of and compliance with the legal obligations associated with being an airport sponsor or operator (including those under part 139 as well as the AIP grant assurances and the PFC program requirements).

As soon as Regional Offices and ADOs become aware of a proposed change in ownership, sponsorship, governance, or operations, they must alert the FAA Office of Airport Compliance and Management Analysis, which will advise the Office of Airport Safety and Standards and Office of Airport Planning and Programming. The Office of Airport Compliance and Management Analysis is responsible for approving all changes to an airport's ownership, sponsorship, governance, or operations. The Office of Airport Safety and Standards is responsible for administering 14 CFR part 139. The Regional Airport Safety and Standards Offices are responsible for approving changes to the part 139 Airport Certification Program Handbook. The Office of Airport Planning and Programming also plays a role in determining sponsor eligibility, and administers the AIP and PFC programs, as well as several associated programs and requirements.

#### **IV. FAA Policy on Disputed Changes to Airport Sponsorship or Operations**

The determination of whether to seek a new applicant for airport sponsorship is a state or local decision. The FAA expects that all disputes about whether to change airport sponsorship and/or operating authority will be resolved through a legally-binding agreement between the parties involved in the dispute or a final, non-reviewable legal decision. While parties should seek technical assistance from the FAA as early as practicable, parties are encouraged to wait

until a dispute has been resolved before submitting an application to the FAA seeking the agency's approval of a change in sponsorship of, and/or operational responsibility for, an airport. In matters in which a proposed change is contested by a current sponsor or operator, the FAA will not act on a part 139 application or a change of airport sponsorship and/or operating authority until the dispute is definitively resolved to the satisfaction of the FAA. Resolution may be demonstrated by issuance of a final, non-reviewable judicial decision requiring such a change, by the issuance of a consent letter between the existing airport sponsor and/or operator and the proposed new sponsor and/or operator, or by other legally definitive means deemed acceptable to the FAA.

The FAA will accept an application for a change in airport sponsorship/operation only upon a legally definitive resolution of a dispute. At that time, the FAA will evaluate whether an application is complete and whether the proposed airport sponsor/operator is capable of assuming all grant assurances, safety compliance, and other Federal obligations, and has the expertise to operate the airport as required by law.

#### **V. Reimbursement of Airport Investments**

In circumstances in which a change in sponsorship or operation of an airport is approved and effectuated, the new airport sponsor and/or operator should reimburse the prior sponsor for investments that have been made by the prior sponsor of the airport but have not been fully recouped at the time of the change in airport sponsorship. Any such reimbursements must be consistent with the FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 FR 7696 (Feb. 16, 1999).

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Associate Administrator for Airports.

