

NOTICE OF PROPOSED GUIDANCE DOCUMENT

DTIMBOA50

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIMBOA50, a proposed guidance document.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIMBOA50>

2. Mailing written comments to:

Division of Transportation Investment Management
Wisconsin Department of Transportation
4822 Madison Yards Way
PO Box 7913
Madison, WI 53707-7913

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at wisconsin.dot.gov to allow for ongoing comment.

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Chapter Trans 55

CONDITIONS OF STATE AID FOR AIRPORT IMPROVEMENT

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Trans 55.01 Purpose. The purpose of this chapter is to identify the conditions necessary to the granting of state aid as required in s. 114.31, Stats. This chapter describes owner responsibilities at airports developed with state funding assistance. These conditions protect the public investment and assure that airport improvements developed with state funds are managed to provide maximum public benefit.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.02 Definitions. The words and phrases defined in ch. 114, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Airport improvement project" means a physical improvement to an airport.

(2) "Airport owner" means a county, city, village or town, either singly or jointly with one or more counties, cities, villages or towns, or an owner of a public-use airport desiring to sponsor an airport improvement project to be constructed with state aid.

(3) "Conditions" means the requirements listed in s. Trans 55.06.

(4) "FAA" means federal aviation administration.

(5) "Finding" means a document prepared by the secretary and approved by the governor which authorizes funds for an airport improvement project.

(6) "Force account" means airport construction work that is accomplished through the use of material, equipment, labor, and supervision provided by the sponsor or by another public agency pursuant to an agreement with the sponsor.

(7) "Runway protection zone" means an area off the end of the runway, the use of which is restricted in order to enhance the protection of people and property on the ground.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.03 Applicability. The conditions set forth in s. Trans 55.06 apply to airport owners who sponsor a project developed with state aid.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.04 Duration. (1) Conditions of state aid shall commence on the date of issuance of a finding by the governor providing state funds for an airport improvement project and shall remain in effect for 20 years.

(2) There is no limit on the duration of conditions with respect to real property interests acquired with state funds.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.05 Request for state aid. (1) An airport owner may request state aid by resolution of the airport owner's governing body or board of directors as provided in s. 114.33 (2), Stats.

(2) The secretary may enter into an agreement with an airport owner in accordance with s. 114.32, Stats., for the following:

(a) To accept and disburse federal, state and local funds for a project and to make arrangements for the development of the project by contract, agreement, force account or otherwise.

(b) To acquire property.

(c) To administer the project including the execution of documents and contracts.

(3) The secretary may require a written commitment of required airport owner funds before forwarding a finding to the governor for approval.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.06 Conditions of state aid. (1) **GOOD TITLE TO AIRPORT.** (a) An airport owner shall maintain good title to the airport and may not dispose of or encumber its fee title or other property interests as shown on the exhibit "A", or airport property map, for the duration of these conditions without the written approval of the secretary. Ordinary airport tenant leases for direct, supportive or complementary aviation activities are not considered an encumbrance by the secretary and not subject to review.

(b) An airport owner may dispose of land when it is no longer needed for airport purposes, after receiving approval from the secretary. The airport owner shall dispose of the land at fair market value. The secretary may authorize that portion of the proceeds, which is proportionate to the state's share of the cost of acquisition of such land, shall be invested in an airport improvement project or be paid to the secretary for deposit in the transportation fund. Disposition of land shall be subject to the retention or reservation of an interest or right necessary to ensure that the land shall only be used for purposes which are compatible with the operation of the airport.

(2) **AIRPORT OPERATION AND MAINTENANCE.** (a) An airport owner shall safely operate and maintain all airport facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States.

(b) An airport owner may not permit an activity on airport property that would interfere with air transportation provided that nothing contained in this chapter shall be construed to require that an airport be operated during temporary periods when snow, flood or other conditions beyond the control of the owner prevent its use.

(c) An airport owner shall promptly notify pilots of conditions affecting the safe aeronautical use of the airport.

(d) An airport owner shall establish and maintain a program of both preventative and remedial pavement maintenance. The program shall contain, as a minimum, all of the following:

1. An inventory of pavements.
2. A pavement inspection schedule.
3. A systematic repair schedule to maintain performance and extend pavement life.
4. A budget sufficient to accomplish the repair schedule.

(e) An airport owner shall operate the following minimum airfield lighting during periods of darkness, when such facilities exist at the airport:

1. Low-intensity lighting on one runway.
2. Airport beacon.
3. Windsock lighting.
4. Obstruction lighting.

(3) **MAINTAIN CLEAR AND SAFE APPROACHES.** (a) An airport owner shall maintain clear and safe runway protection zones as

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described in FAA advisory circular 150/5300-13, Airport Design, as amended, except for runway lighting fixtures, markers and meteorological instruments whose locations are fixed by their functional purposes or a structure approved by the FAA. The owner shall establish positive control of the runway protection zones through the acquisition of fee title or avigation easement. The owner shall prevent the erection or creation of a structure or place of public assembly in the runway protection zone.

Note: The FAA advisory circular may be obtained from the United States Department of Transportation, Distribution Unit, TAB 443.1, Washington, D.C. 20590, and is on file with the Attorney General's office and the Revisor of Statutes Bureau.

(b) An airport owner shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(4) ORDINANCES. (a) A public airport owner shall adopt the following ordinances within 6 months after receipt of a sample ordinance from the secretary:

1. A height limitation zoning ordinance adequately restricting the height of objects near the airport in accordance with s. 114.136, Stats.

2. An ordinance to provide for the control of vehicular and pedestrian traffic on the surface of the airport.

(b) A private airport owner shall:

1. Adopt and enforce a rule to provide for the control of vehicular and pedestrian traffic on the surface of the airport.

2. Make application for and pursue the passage and acceptance of a compatible ordinance using s. 114.136, Stats., as the primary guide.

(5) SURVEYS. An airport owner shall cooperate with the secretary in surveys which may be conducted on topics that include the following:

(a) Airport rates and charges.

(b) Airport operations.

(c) Based aircraft.

(6) PUBLIC ACCESS. An airport owner shall provide suitable aircraft parking areas so that aircraft and passengers, scheduled and general aviation, have reasonable access to the airport facilities consistent with security requirements.

(7) LEGAL RELATIONS. An airport owner shall indemnify and hold harmless the state and all its officers, employees, and agents from and against a suit, cause, action, claims costs, and expenses, including legal fees, and the state's attorneys fees, in connection with bodily injury to a person or damage to property caused directly or indirectly by failure, malfunction, lack of maintenance, or construction of the airport and its facilities.

(8) AIRPORT LAYOUT PLAN. An airport owner shall maintain a current layout plan showing all of the following:

(a) The boundaries of the airport and all proposed additions, together with the boundaries of all off-site areas owned or controlled by the airport owner for airport purposes and proposed additions.

(b) The location and nature of all existing and proposed airport facilities and structures, such as runways, taxiways, aprons, termi-

nal buildings, hangars and roads, including all proposed extensions and reductions of existing airport facilities.

(c) The airport layout plan and each amendment, revision or modification to the plan shall be subject to the approval of the secretary, which approval shall be evidenced by the signature of a duly authorized representative of the secretary on the face of the airport layout plan. The airport owner may not make or permit a change or alteration in the airport or in any of its facilities other than in conformity with the airport layout plan as approved by the secretary if the changes or alterations might adversely affect the safety, utility or efficiency of the airport.

(9) PRESERVING AIRPORT RIGHTS AND POWER. (a) An airport owner may not enter into transactions which would deprive it of the rights and powers necessary to perform these conditions without the written approval of the secretary. The owner shall act to acquire, extinguish or modify outstanding rights or claims of the right or rights of others which would interfere with such performance by the airport owner.

(b) The obligation to perform these conditions may be assumed by another public agency found by the secretary to be eligible to assume such obligations and having the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the airport by an agency or person other than the airport owner or an employee of the owner, the owner shall reserve sufficient rights and authority to ensure that the airport shall be operated and maintained in accordance with these conditions.

(10) SPECIAL CONDITIONS. In addition to the conditions under this section, the secretary may establish, by written agreement, special conditions in the public interest where required by specific project or airport site circumstances.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 55.07 Compliance assistance. If the department becomes aware of an instance where an airport owner is not in compliance with this chapter, the following steps shall be taken:

(1) The department shall initiate an informal meeting with the airport owner to clarify the compliance issue and recommend corrective action, if required.

(2) If the informal meeting fails to resolve compliance disputes, the secretary shall issue a notice to the airport owner detailing such alleged disputes and requesting corrective action.

(3) An airport owner shall have 45 days to resolve discrepancies or reply in writing explaining a proposed course of action to resolve the discrepancy in a timely fashion.

(4) If an airport owner's response does not resolve the issue, the secretary shall then make a compliance determination and issue an appropriate order. The department may pursue appropriate administrative or legal action including suspension from state airport aid eligibility and the recovery of state funds invested in the airport.

(5) Airport owners in disagreement with the secretary's order may request an administrative hearing in accordance with ch. 227, Stats.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.