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GENERAL AVIATION AIRPORTS

Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement



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Resources, Community, and
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May 7, 1999

The Honorable Bud Shuster
Chairman
The Honorable James L. Oberstar
Ranking Democratic Member
Committee on Transportation and Infrastructure
House of Representatives

The Honorable John J. Duncan, Jr.
Chairman
The Honorable William O. Lipinski
Ranking Democratic Member
Subcommittee on Aviation
Committee on Transportation and Infrastructure
House of Representatives

To increase the capacity of the nation's airport facilities and maintain the aviation infrastructure, the federal government has made financial grants or transferred federal land to about 2,000 of the almost 18,000 general aviation airports in the United States.¹ Since 1982, the Federal Aviation Administration (FAA) has provided about \$4.7 billion in financial grants to general aviation airports. About 350 such airports have received land that is surplus to federal needs, while about 100 have received land that was not considered surplus but was transferred to support the airports' needs. To receive this federal assistance, airports must agree to abide by a number of requirements designed to ensure that the public interest is served. Among other things, airports must obtain approval from FAA before altering the use or ownership of airport land and must use airport revenues only for their operation, maintenance, or development. FAA is responsible for monitoring airports' compliance with these requirements and, when requirements are not met, for enforcement.

As requested in the House Transportation and Infrastructure Committee Report on the Airport Improvement Program Reauthorization Act of 1998,² this report evaluates (1) FAA's monitoring of general aviation airports' compliance with federal land-use requirements and (2) FAA's use of enforcement tools to resolve cases of noncompliance. To obtain information on FAA's oversight of land at general aviation airports, we

¹While commercial service airports handle regularly scheduled commercial airline traffic, general aviation airports primarily support noncommercial aviation traffic.

²House Transportation and Infrastructure Committee Rept. No. 105-639 (July 20, 1998), pp. 41-42.

visited 14 and surveyed the remaining 9 FAA field offices responsible for overseeing airports' compliance.

Results in Brief

FAA does not adequately monitor general aviation airports' compliance with federal requirements and does not have the internal controls in place to protect the federal government's investment in the airports from mismanagement, fraud, waste, and abuse. Although FAA's compliance policy clearly calls for monitoring airports to ensure they meet federal requirements, only 4 of FAA's 23 field offices monitor compliance. This monitoring, however, relies primarily on airports themselves certifying that they are complying with federal requirements. In 1994, the Department of Transportation's Inspector General concluded that relying on such certifications was insufficient for ensuring compliance with federal requirements on revenue use, noting that 14 of the 15 airport owners identified as not complying with revenue use requirements had previously certified that they were in compliance. One result of FAA's lack of monitoring is that airports' unauthorized use of land has gone undetected in some cases for over a decade. Unauthorized use has resulted in the loss or diversion of millions of dollars in airport revenues from general aviation airports, typically owned by a local government. In some cases, increased risks to aviation safety also resulted. For example, FAA determined that birds attracted by an unauthorized landfill at Hesler-Noble Field in Laurel, Mississippi, posed a possible danger to aircraft.

FAA generally addresses airports' noncompliance with federal requirements through negotiation and settlement rather than the use of available enforcement actions. When negotiations are unsuccessful and persistent noncompliance occurs, FAA has not always taken appropriate enforcement action—such as withholding transportation grants, taking back the title to airport land, or taking action through the courts. This report makes recommendations on improving FAA's compliance monitoring and enforcement efforts.

Background

To promote aviation, FAA provides grants and land to airports. Grants for airport development were authorized under the Federal Airport Aid Program from 1946 through 1970 and the Airport Development Aid Program from 1971 through 1981. During 1982 through 1997, more than \$20.5 billion in grants was awarded to commercial service and general aviation airports under the current program, the Airport Improvement

Program.³ About 45 percent of these grants, totaling almost \$4.7 billion, was made to general aviation airports for airport development, including more than \$800 million for land acquisition. While commercial airports provide scheduled airline passenger service, general aviation airports primarily serve noncommercial aviation traffic, including business and recreational aircraft.

FAA's Office of Airports administers the Airport Improvement Program and oversees both commercial and general aviation airports' compliance with federal grant and land transfer requirements. In December 1997, FAA established an Airports Compliance Division within the Office of Airports in Washington, D.C. While 10 full-time compliance policy specialists are currently assigned to the Compliance Division to advise field offices on airport land and revenue issues, 23 field offices provide day-to-day oversight of about 2,000 general aviation airports that have received grant funds or land from the federal government.⁴

This oversight responsibility includes ensuring that the airports use airport land in accordance with federal statutes and regulations by monitoring airports' activities and taking enforcement actions, when necessary. Enforcement begins with a formal notification to an airport of its noncompliance and can include such actions as withholding aviation grants or other transportation funds and filing a lawsuit.

Federal Requirements on Airports' Use of Land and Revenues

In order to receive federal grants, airports must certify that they will abide by the federal requirements contained in the grant agreements by providing written assurances pertaining to the airports' operation and maintenance. For example, an airport must ensure that it will be available for public use and that airport users will be charged comparable fees. Generally, grant requirements remain in effect throughout the useful life of the facilities developed under the grant but do not exceed 20 years.⁵ However, for land acquired with grant funds, these requirements remain in effect as long as an airport is on the land.

³The Airport Improvement Program is funded by the Airport and Airway Trust Fund. The fund is financed by taxes on domestic and international airline travel, domestic cargo transported by air, and noncommercial aviation fuel.

⁴FAA's Office of Airports has nine regions. Four regions—Alaska, Central, New England, and Western Pacific—oversee some or all of the airports in the region. For the purposes of this report, we refer to these four regions, along with the 19 airport district offices in the remaining five regions, as the 23 FAA field offices.

⁵49 U.S.C. 47107(d).

In addition to providing financial assistance, federal agencies can transfer deeds to federal land to airports. Since World War II, the federal government has transferred land that is considered excess to the federal government's needs to about 350 general aviation airports under the Surplus Property Act. Land that is not excess to a federal agency's current needs—called nonsurplus land—can also be transferred for airport purposes; about 100 general aviation airports have received nonsurplus land.⁶ Unlike financial grant obligations that are a part of a contract related to the operation and maintenance of airport facilities, the statutory authorities for the transfer of surplus or nonsurplus federal land place conditions on an airport owner's title to the land. If these conditions are not met, title to the land may be reverted to (i.e., be reclaimed by) the federal government.⁷

Both financial grants and land transfers restrict the use of airport land and airport revenues to airport purposes. An airport purpose is any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to the operation of aircraft, such as the use of aircraft hangars, repair facilities, or runways. An approved Airport Layout Plan reflects the agreement between FAA and the airport owner on the allocation of airport areas for specific operational and support functions. In general, land designated in the plan cannot be used, leased, or sold for purposes other than airport purposes without the consent of the Administrator of FAA. If the airport wishes to alter the use of any land designated in the plan—for city parks or departments or industrial parks, for example—FAA must agree that the land is not needed for present or foreseeable airport purposes and must grant permission regardless of whether the land was acquired by federal grant or land transfer or without federal assistance. If the altered use generates revenues, the airport must agree to reinvest the proceeds in the airport. With the consent (called a "release" of the land) of the Administrator, airport land not needed for aviation purposes may be sold or leased so that the airport can use the resulting revenues to support airport development, improvement, maintenance, and operations.⁸

⁶Surplus and nonsurplus land is transferred under section 47151 and section 47125 of title 49, United States Code, respectively.

⁷See 49 U.S.C. 47152(1) and 14 C.F.R. part 155.

⁸The exception to this is nonsurplus land, which cannot be used for nonairport purposes or to generate revenues; if nonsurplus land is not developed or used for an airport purpose, the title to this land reverts to the federal government, at the option of the Secretary of Transportation.

FAA has released land from restrictions on its use for airport purposes at an estimated 205 airports since 1990. About 75 percent of these releases involved fewer than 20 acres of land, and about 50 percent involved fewer than 10 acres. Appendix I provides more information regarding our estimate of releases nationwide. Most releases we reviewed involved such issues as using unneeded land to generate revenues for the airport by developing an industrial park, for example, or by using the land as easements for roadways. If an airport has altered the use of (or sold) airport land without FAA's authorization, the agency may require the airport to return the land to its former use and condition or approve the new use of the land after the fact.

In general, all airport revenues must be expended for the airports' operating expenses and other nonoperating expenditures, such as capital development. The purpose of the restriction on revenue uses is to prevent revenue losses or diversions by ensuring that airports receiving federal assistance use airport revenues for operation and development. The goal is to make airports as self-sustaining as possible and minimize the need for further federal assistance. Therefore, when FAA approves the use of land for nonairport purposes to generate revenues for an airport, its policy requires that the airport receive fair market value for the sale or lease of the land.⁹ Generally, if an airport sells or leases land for less than fair market value, the revenues are considered to be lost, or forgone.

Revenues are considered to be "diverted" when an airport fails to use revenues generated from activities that take place on airport land for airport purposes. In addition, if an airport owner, typically a local government, uses airport land for nonairport purposes, such as for city parks or departments, and does not pay rent to the airport account, the revenues are also considered to be diverted from the airport. Since 1992, the Department of Transportation's Inspector General has reported lost or diverted revenues of over \$18 million at 11 general aviation airports. FAA closed eight of these cases involving about \$15 million, as reported by the Inspector General—recovering \$1.7 million in three cases. FAA officials noted that all cases were resolved with the Inspector General's concurrence.

To assist operators in avoiding revenue diversion, on February 16, 1999, FAA published a policy statement on the appropriate use of funds generated by airports. FAA's new policy requires audits of some airports to

⁹For the sale of grant-acquired land, the amount to be reimbursed corresponds to the amount of federal participation in the land acquisition. 49 U.S.C. 47107(c)(2)(B).

determine if revenue diversion has occurred. In addition, the policy allows FAA to select airports to be audited where there are indications that revenue diversion may have occurred. According to an official in the Department of Transportation, this new compliance tool will allow FAA to target the airports most likely to have substantial revenue diversion—primarily commercial service airports.

FAA'S Internal Controls Are Inadequate to Ensure Land-Use Compliance

Only four FAA field offices have implemented internal controls to ensure that general aviation airports comply with federal requirements to use airport land for airport purposes. These offices use periodic self-certifications or limited on-site monitoring, and all the field offices rely primarily on third-party complaints to identify noncompliance. FAA headquarters staff cited an agencywide emphasis on voluntary compliance in the early 1990s and staffing reductions as reasons for not implementing FAA's compliance policy. When airports are not monitored, the unauthorized use of airport land is more likely to occur and can lead to the loss or diversion of airport revenues and increased risks to aviation safety.

Few Field Offices Monitor Compliance

Of the 23 FAA field offices that are responsible for monitoring general aviation airports' compliance with federal requirements, only four—FAA's field offices in Kansas City, Missouri; Renton, Washington; Denver, Colorado; and Helena, Montana—regularly monitor and document airports' compliance with land-use requirements. Combined, these offices oversee 426—or 21 percent—of the approximately 2,000 general aviation airports that have received grant funds or land from the federal government.

FAA's compliance policy handbook—FAA Order 5190.6A, Airport Compliance Requirements—clearly requires field offices to monitor airports for compliance with federal requirements. This requirement serves as an internal control to provide assurance that the federal government's investment in airports is protected from mismanagement, fraud, waste, and abuse. According to the handbook, FAA field offices must be continuously aware of which airports are not in compliance and conduct limited surveillance of each airport every 4 years to detect recurring deficiencies, system weaknesses, or individual abuses of federal requirements. The surveillance requirement may be met through site visits or by obtaining a written certification by the airport that it is complying with federal requirements. The handbook was last updated in 1990, and FAA officials said they are working on an update, as discussed below.

The four field offices that meet FAA's monitoring requirement did so by obtaining airport self-certifications. As required by the handbook, at least once every 4 years, the four offices require each airport to certify in writing that it is abiding by federal requirements. In addition, according to FAA officials, staff in the Renton, Helena, and Denver field offices occasionally review airports' compliance with land-use requirements during on-site safety reviews, conducting 27 such on-site compliance inspections in 1998 (17, 7, and 3, respectively) out of about 350 airports they oversee.

FAA headquarters staff cited an agencywide emphasis on voluntary compliance in the early 1990s and staffing reductions as reasons why field offices might choose not to implement FAA's compliance policy. However, these reasons do not fully explain why the majority of FAA's field offices chose not to monitor compliance. Despite an emphasis on voluntary compliance, the compliance handbook clearly states the requirement to have a monitoring system in place, as noted above. Furthermore, Airports Division staffing levels have not changed significantly since 1985 and have actually increased. For example, in 1985, Airports was authorized 476 positions. In 1990, Office of Airports staffing was 473, and by 1998 the office was authorized 485 positions.

Staff in the 14 field offices we visited said that they rely primarily on informal and formal third-party complaints to identify noncompliance and that third-party complaints are sufficient to identify the few cases of inadvertent noncompliance. Field offices reported that nine formal third-party complaints have been made regarding land use at general aviation airports since 1990.

Relying on airports' self-certifications and third-party complaints does not ensure compliance. For example, in 1994, the Department of Transportation's Inspector General reported revenue losses at the Malden Municipal Airport in Malden, Missouri and found that the airport had incorrectly responded to the Kansas City field office's self-certification questionnaire regarding the use of surplus property.¹⁰ In summarizing its reviews of airports' revenue use in a separate effort, the Inspector General reported material weaknesses in FAA's monitoring of commercial and general aviation airports' revenues and concluded that relying on self-certifications and third-party complaints was insufficient for ensuring

¹⁰Monitoring of Accountability and Use of Airport Revenues at the Malden Municipal Airport, R9-FA-4-010 (July 20, 1994).

compliance with federal requirements on revenue use.¹¹ The report indicated that 14 of the 15 general aviation and commercial airport owners identified as not complying with revenue use requirements had previously certified they were in compliance, and third-party complaints had been filed against only 2 of the 15 airports.

FAA officials consider noncompliance with federal land-use requirements to be a problem, but they believe the incidence of the problem is limited. However, without a monitoring system in place, FAA may not know when unauthorized use of airport land occurs.

Unauthorized Land Use Has Gone Undetected

Because FAA lacks an effective compliance monitoring program, the extent of unauthorized land use at general aviation airports is unknown. However, information supplied by field offices on the releases of land at general aviation airports contained 24 instances of unauthorized land use that have occurred since 1990. Some of these cases went undetected for over a decade. These examples involved 15 states under the oversight of 12 different FAA field offices. The seriousness of the land-use violations ranged from minor isolated infractions to periods of repeated unauthorized use spanning more than two decades without correction.

Unauthorized land use may lead to the loss or diversion of revenues or increased safety risks at an airport. For example, the Inspector General identified almost \$6.8 million in lost or diverted revenues at 5 of the 24 airports where the unauthorized use of airport land occurred, and FAA said it had recovered about \$184,000 from 3 of the other general aviation airports where unauthorized use occurred. Safety problems can also result from the unauthorized use of airport land, as when a landfill attracts wildlife and thereby increases the risk of "birdstrikes" by landing and departing aircraft.

In discussing the 24 cases, FAA officials concluded that the small number of cases did not indicate that FAA's compliance program was inadequate or that a reallocation of resources by the Office of Airports was warranted. However, as stated previously, without a monitoring system in place, the extent of noncompliance is unknown and FAA has no assurance that airports are complying with federal requirements. The following three examples illustrate how unauthorized land use can continue undetected for long periods of time when airports' compliance is not actively

¹¹Interim Summary Report on the Audit of Monitoring Airport Revenue: Federal Aviation Administration, R9-FA-4-004 (Mar. 7, 1994).

monitored and how unauthorized use can result in lost or diverted revenues or safety risks. All three airports obtained surplus land and grants from the federal government that restrict the use of airport land and revenues to airport purposes, and the unauthorized use of airport land went undetected or uncorrected for decades at all three airports.

Hesler-Noble Field, Laurel,
Mississippi

According to FAA field staff, from about 1970 until 1981, Laurel, Mississippi, constructed police and fire training centers, a building to house street maintenance equipment, a dog pound, a fire station, a water plant, a little league park, and a landfill on airport land without FAA's authorization and without reimbursing the airport. FAA field staff identified the unauthorized use in 1981 and reported that birds attracted by the landfill constituted a safety hazard in 1982 but waited until 1994 to restrict dumping at the landfill. In July 1998, FAA allowed the city to offset the lost revenues with the value of city services provided to the airport. FAA field staff could not explain why it had not addressed the safety problems and land and revenue use issues for more than 12 years and 17 years, respectively.

Venice Municipal Airport,
Venice, Florida

Between approximately 1972 through 1992, Venice, Florida, constructed a mobile home facility, little league parks, and a senior center and developed the airport's coastal land for public use without obtaining FAA's authorization or reimbursing the airport. In response to a complaint, the Inspector General reported in 1993 that \$2.4 million in revenues was lost over a 4-year period and that almost 300 acres of federal land was inappropriately used.¹² FAA approved an after-the-fact release of airport land in June 1998 and, according to a field staff, required the city to charge fair market rent on future leases but recovered no lost revenues (estimated to be at least \$25 million) from leases that were below market value because the agency had no authority to terminate the leases.

Stuttgart Municipal Airport,
Stuttgart, Arkansas

In 1995, in response to a complaint, the Inspector General reported that Stuttgart, Arkansas, used a hangar for a mosquito control unit and established a landfill on airport land without obtaining FAA's authorization or reimbursing the airport and leased large tracts of airport land for \$1 per year. Although the Inspector General identified \$47,000 in diverted revenues over a 3-year period, an FAA official said that the total amount diverted was much greater because the unauthorized use spanned two decades.¹³ Furthermore, because the leases of airport land were legally binding, no amounts could be recovered. The city agreed to pay \$6,250 per

¹²Report on Audit of Airport Revenue Accountability: City of Venice, Florida, R4-FA-3-724 (July 22, 1993).

¹³Airport Revenues, Stuttgart Municipal Airport, Arkansas, R6-FA-6-002 (Nov. 2, 1995).

year for the landfill, and FAA officials said that future leases will obtain fair market rents. In addition, the Inspector General found that FAA approved airport leases that allowed hunting and farming on airport land. These activities created a safety hazard because crops were planted to attract ducks to the airport. As a result, an aircraft struck a bird in 1990. Although the city subsequently banned hunting on the airport land, another birdstrike occurred in 1994, causing \$20,000 damage to one plane. And in March 1995, the Inspector General found three duck blinds at the airport as well as duck decoys near the blinds.

FAA's Compliance Guidance Is Outdated

FAA has not revised its compliance and enforcement guidance to keep it current. FAA Order 5190.6A, *Airports Compliance Requirements*, was last updated in October 1989, and the section on enforcement was last updated in August 1973. While field offices rely on the handbook as a primary source of guidance, FAA officials said that numerous policy changes have been made and that they informally convey changes through training and action memos. They noted that they had drafted a policy guidance letter in March 1999 for distribution to the field offices to update information on FAA's enforcement policy, which dates to 1973. However, these informal efforts do not provide a consolidated record of FAA's compliance policy. FAA's lack of timely action to publish compliance policy for airports' revenue use was identified by the Inspector General in 1998 as a contributing factor to airports' noncompliance.¹⁴ FAA's Airports Compliance Division staff said they planned to issue a revised compliance policy order in 1999.

FAA's order listing airports that are subject to federal requirements from land and grant agreements, last revised in April 1990, is similarly outdated.¹⁵ As a result, FAA headquarters does not have ready access to current summary data on the government's interests in general aviation airports nationwide, and information that could be useful in quantifying field offices' monitoring workloads and making resource allocation decisions is not available. In response to our request, field offices gathered data showing that since the order was issued in 1990, 14 listed general aviation airports had closed, while 81 others had become subject to federal requirements.

¹⁴Airport Financial Reports: Federal Aviation Administration, AV-1998-201 (Sept. 11, 1998).

¹⁵FAA Order 5190.2R, *List of Public Airports Affected by Agreements with the Federal Government*.

FAA Emphasizes Negotiation Over Enforcement

FAA has a variety of statutory and administrative alternatives for resolving airports' noncompliance but has generally chosen not to use them. Instead, FAA prefers to address noncompliance through negotiation and settlement. However, in several instances FAA's attempts at negotiation have been unsuccessful, and airports' lack of willingness to comply with federal requirements justified greater efforts to enforce compliance. Furthermore, FAA has not followed its policy of obtaining fair market value for airport land when it knows the use will change, as in the case of a Kansas City, Missouri, general aviation airport now being closed.

FAA Has Numerous Enforcement Tools but Generally Fails to Use Them

The federal government is entitled to the same legal remedies as any other party to a contract that has been breached, and FAA's enforcement policy calls for FAA officials to seek injunctions or judgments in the courts should the circumstances warrant. However, FAA officials do not believe it is generally practical to take legal actions. They said that these matters must be referred to the Department of Justice for prosecution and that the dollar amounts involved are usually too low to be a high priority for Justice.

Alternatively, FAA may assess civil penalties of up to \$50,000 without going to court.¹⁶ FAA has not used this power for unauthorized land or revenue use. For example, FAA allowed the closure of a small general aviation airport in Fall River, Massachusetts, in February 1996 but required the airport to reinvest the residual value of federal grant funding (approximately \$30,000) in a nearby general aviation airport in New Bedford, Massachusetts. However, at the time of our review, almost 2 years after the agreement was signed, Fall River had not provided the funds and FAA had not pursued legal action or civil penalties. FAA headquarters staff said they had not pursued legal action because they believed that ongoing negotiations might prove to be successful.

The Congress has strengthened FAA's enforcement powers to resolve revenue diversion cases by including restrictive language in appropriations and transportation laws. For fiscal years 1994 and 1995, the Congress specified that transportation funds could be withheld from any local government that diverts revenues generated by a public airport.¹⁷ The Airport Revenue Protection Act of 1996 made this enforcement action permanent, giving the Secretary of Transportation the authority to withhold aviation, transit, and rail funds from local governments that fail

¹⁶49 U.S.C. section 46301.

¹⁷P.L. 103-122 section 328 and P.L. 103-331 section 325.

to reimburse airports for illegally diverted funds and to assess civil penalties against those that fail to reimburse the federal government.¹⁸ FAA headquarters officials said that the agency has never recommended that transportation funds be withheld under these laws.

FAA also has special enforcement remedies that are inherent in various types of airport agreements, such as returning to the federal government the ownership of land it provided if an airport does not comply with federal requirements. FAA officials said that FAA has never had the title to surplus or nonsurplus land revert to the agency because it could not manage the day-to-day operations of an airport.

FAA also may take administrative actions, such as denying requested land releases or withholding funds provided under the Airport Improvement Program. For example, FAA field staff denied the airport's request to release land at Scholes Field in Galveston, Texas, in May 1998 because of unresolved issues identified by the Inspector General, including lost revenues and continued attempts by the city to sell off and/or lease airport land at less than fair market value.¹⁹ FAA also informed the airport that a failure to take corrective action could result in the city's becoming ineligible for federal grants. However, FAA field staff and headquarters officials noted that withholding grant funds is not a significant deterrent for communities that would rather close an airport or support it to a lesser extent.

FAA's compliance handbook requires that staff first attempt to have an airport voluntarily correct compliance deficiencies. FAA officials told us that airports are generally willing to take corrective action and FAA prefers to exhaust all avenues of voluntary corrective action and negotiate a settlement of the noncompliance before undertaking enforcement actions. For example, in September 1998 at the Waterville-R. LaFleur general aviation airport in Waterville, Maine, the airport began excavation for construction of an industrial park before requesting a release of the land from FAA. However, once airport officials realized they needed FAA's approval, they voluntarily stopped work until the release was approved. FAA said that a confrontational approach using its enforcement authority would be justified only if it resulted in a higher level of compliance than maintaining a cooperative relationship with airports.

¹⁸P.L. 104-264 section 805.

¹⁹Airport Revenues: Galveston Municipal Airport Scholes Field, Galveston, Texas, AV-1998-011 (Nov. 7, 1997). According to FAA officials, they had recovered \$142,663 and were still pursuing recovery of funds for the use of airport land as a golf course at the time of our review.

FAA resolves unauthorized use of airport land by obtaining airports' assurances that future revenue diversion or losses will not occur; allowing cities to apply the value of services they provided to the airport, such as police and fire protection, to offset the lost or diverted airport revenues; requiring that future leases call for fair market value; or working out other solutions. For example, FAA field staff drove by Frederick Municipal Airport in Maryland and discovered an 11-acre public works facility constructed on airport land. FAA arranged for the city to provide another land parcel adjoining the airport in exchange for the unauthorized conversion of the 11 acres of airport land subject to federal restrictions on its use.

If an airport does not voluntarily make corrections, the handbook requires FAA to place the airport in pending noncompliance status and notify the airport of the right to a hearing. As a result of the hearing (or if no hearing has been requested), the FAA field manager is to determine whether the airport is in noncompliance and whether FAA should take appropriate sanctions or civil penalties. However, we found that FAA field offices very rarely place airports in pending noncompliance or noncompliance status. For example, out of the 24 cases of unauthorized land use we reviewed, only 2 had been placed in noncompliance status.²⁰ In the following two cases—Queen City Municipal Airport in Allentown, Pennsylvania, and Bader Field in Atlantic City, New Jersey—FAA has not initiated the enforcement process by placing the airports in pending noncompliance status despite long-standing compliance problems at both airports.

Queen City Municipal Airport, Allentown, Pennsylvania

In 1965, FAA approved the city's request to use an airport hangar located on 6 acres of airport land as a vehicle maintenance facility without releasing the land or requiring the city to reimburse the airport, as required by the federal surplus land transfer agreement signed in 1948. FAA officials could not explain the reason for the inappropriate 1965 decision. In 1984, FAA denied the city's request to release the land and advised the city that it had violated federal surplus property requirements. In 1987, FAA released airport property for a highway right-of-way and between 1989 and 1992, FAA awarded four grants totaling \$2.3 million to repair runways and develop a master plan. FAA officials stated that the land release and grants were provided to persuade the city not to proceed with plans to close the airport, an important regional reliever airport.²¹

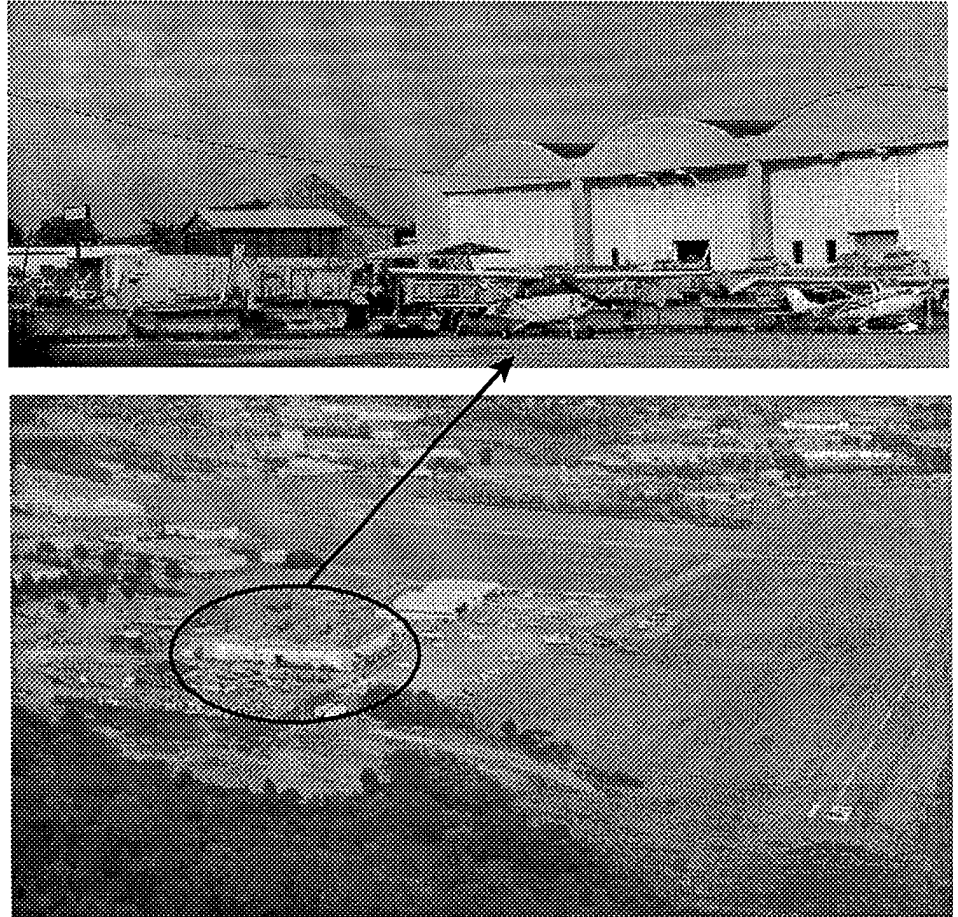
²⁰Pompano Beach Airpark in Pompano Beach, Florida and Benton Airport in Saline County, Arkansas.

²¹Reliever airports are those general aviation airports located in metropolitan areas that FAA has designated to reduce congestion at large commercial airports and to provide access to general aviation.

In response to a complaint, the Inspector General reported in January 1997 that the city owed the airport about \$2.8 million for the nonpayment of rent for the maintenance facility from 1984 through 1995.²² Nonetheless, the airport was scheduled to receive an Airport Improvement Program grant for almost \$300,000 in February 1999. After we discussed the airports' continuing noncompliance with FAA headquarters officials in December 1998, they sent a letter to Queen City on March 5, 1999, informing the city that FAA would consider taking steps to collect a portion of the \$2.8 million. FAA officials said they took steps to delay the award of the \$300,000 grant until the airport's noncompliance was resolved. Figure 1 shows an aerial view of the airport and the unauthorized use of airport hangars for a vehicle maintenance facility.

²²Accountability and Use of Airport Revenues, Queen City Municipal Airport, R3-FA-7-002 (Jan. 30, 1997).

**Figure 1: Vehicle Maintenance Facility
at Queen City Municipal Airport,
Allentown, Pennsylvania**



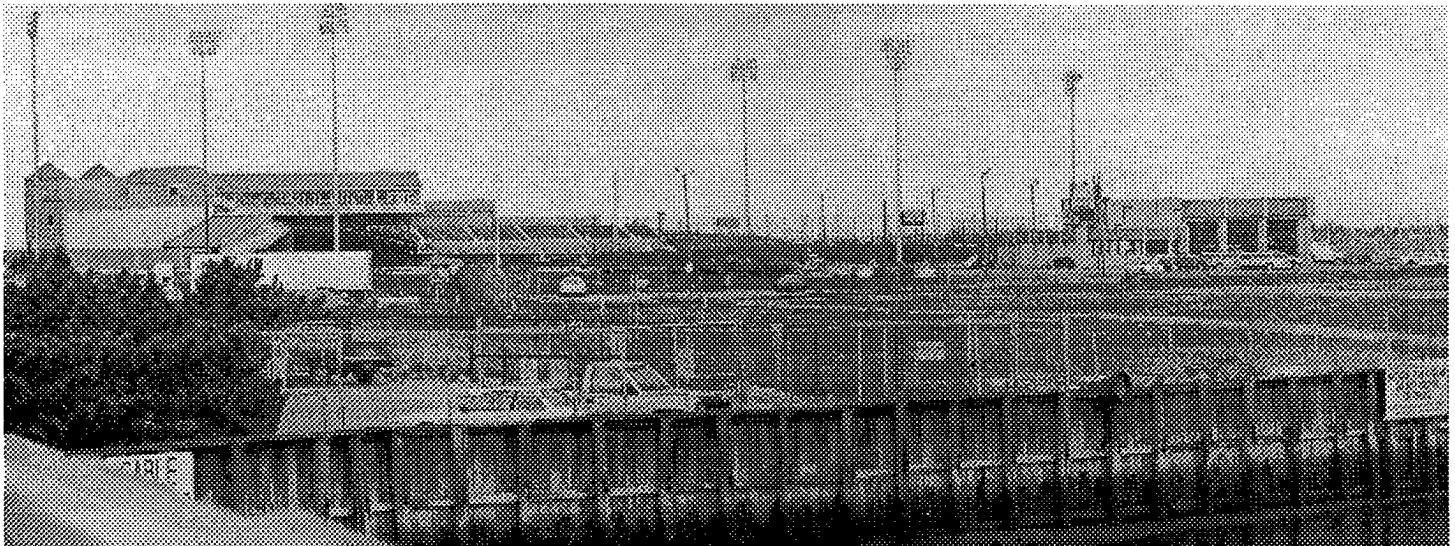
Source: Aircraft Owners and Pilots Association.

**Bader Field, Atlantic City, New
Jersey**

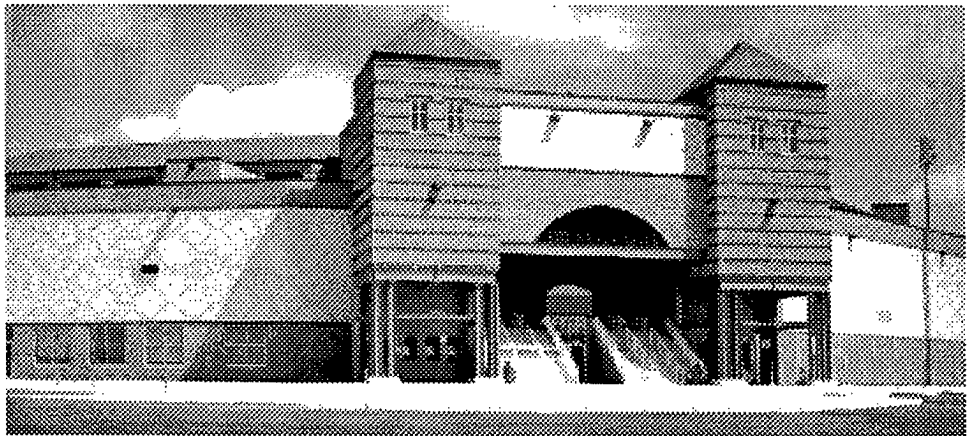
According to FAA officials, since the early 1970s, Atlantic City has used airport property without obtaining FAA's approval or reimbursing the airport as required by federal grants that expire in 2006. Specifically, the city constructed a high school football field on airport land and used airport buildings for a police annex and fire station without approval or reimbursement. Furthermore, the airport's condition has gradually deteriorated during the 1990s, and the city claims that the airport is unsafe and therefore should be closed. Safety issues have resulted from unauthorized use. In May 1996, after the city allowed the unauthorized excavation of an aircraft parking area for a minor league baseball stadium being constructed on the airport land, an aircraft accident occurred. A

plane hit an unmarked and unlighted excavation hole at night. No injuries occurred. In addition, during the stadium's construction, land survey spikes were driven into the airport runways and left for an unknown period of time while the airport was still open. In 1997, in defiance of FAA's explicit instructions that FAA's approval was required to build the stadium on the airport land, the Mayor of Atlantic City informed FAA that construction of the baseball stadium would proceed. FAA subsequently signed a memorandum of agreement that allowed the stadium to be built, hoping that through cooperation, the city would make needed safety improvements and not close the airport. The agreement required the city to reimburse the airport for the fair market value of the baseball stadium land but did not resolve the city's unauthorized use of and lack of compensation for airport buildings and the land for the high school football stadium. Figures 2 and 3 show the unauthorized minor league baseball stadium, police annex, and aircraft operations area at Bader Field in Atlantic City, New Jersey.

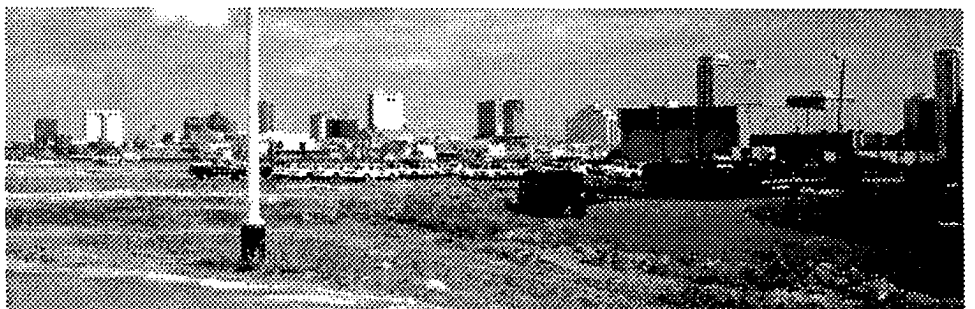
Figure 2: Use of Airport Land at Bader Field, Atlantic City, New Jersey



Minor league baseball stadium surrounded by floodlights. Atlantic City Police Department annex on the right behind the airport runway.



Ticket booth and entrance to minor league baseball stadium.

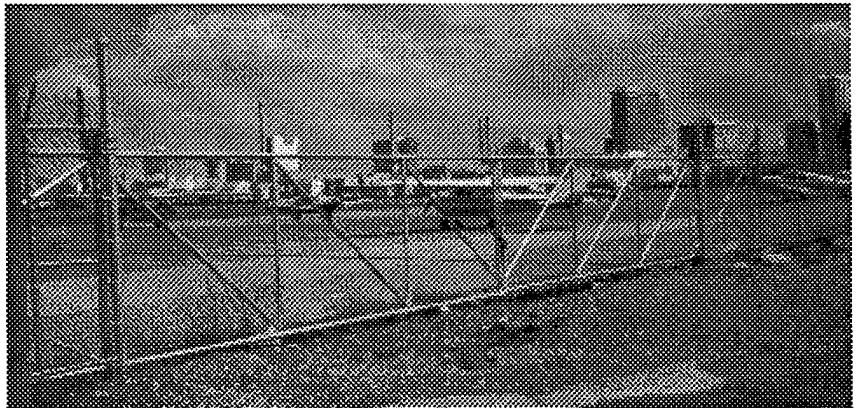


View of the airport with the skyline of Atlantic City in the background. Airplanes are parked on the left. Police cars are parked in the middle. The police annex once used as a terminal building for commuter airlines is on the right.

Figure 3: Aircraft Operations Area at Bader Field, Atlantic City, New Jersey



Entry to the runway and aircraft parking area, which are surrounded by a chain-link fence. Public notice posted by Atlantic City advising that the airport is "active".



Airport services are limited to parking--there are no fuel, telephone, or restroom facilities within the airport for use by pilots and passengers. Atlantic City skyline is in the background.

Although almost 2 years had passed without corrective action at the time of our review, FAA had not cited the airport for official noncompliance, requested the Inspector General to investigate the overt revenue diversion, or used other stronger enforcement methods. In December 1998, we discussed the noncompliance with FAA headquarters officials, who agreed to determine if the situation was serious enough to warrant enforcement action. On January 8, 1999, FAA requested the city to provide financial reports showing that rent from the baseball stadium was being deposited into an airport account. However, the city did not respond to the request or repeated phone calls, and a follow-up letter was sent on March 19, 1999. We referred this matter to the Inspector General in March 1999.

FAA Has Not Enforced Revenue Use Policy for a Proposed Airport Closure in Kansas City, Missouri

Even when FAA is aware of changes to an airport before they occur, it has not always followed its own policies and required that airports recoup the fair market value for the sale of surplus property. For example, in July 1998, FAA signed a memorandum of agreement to release the Richards-Gebaur Memorial Airport from grant assurances and surplus land deed requirements once Kansas City, Missouri, and the Kansas City Southern Railroad agree to establish an intermodal rail-highway depot on the runway. FAA's agreement with Kansas City required an estimated \$15 million to be reinvested in other area airports over a 20-year period. By

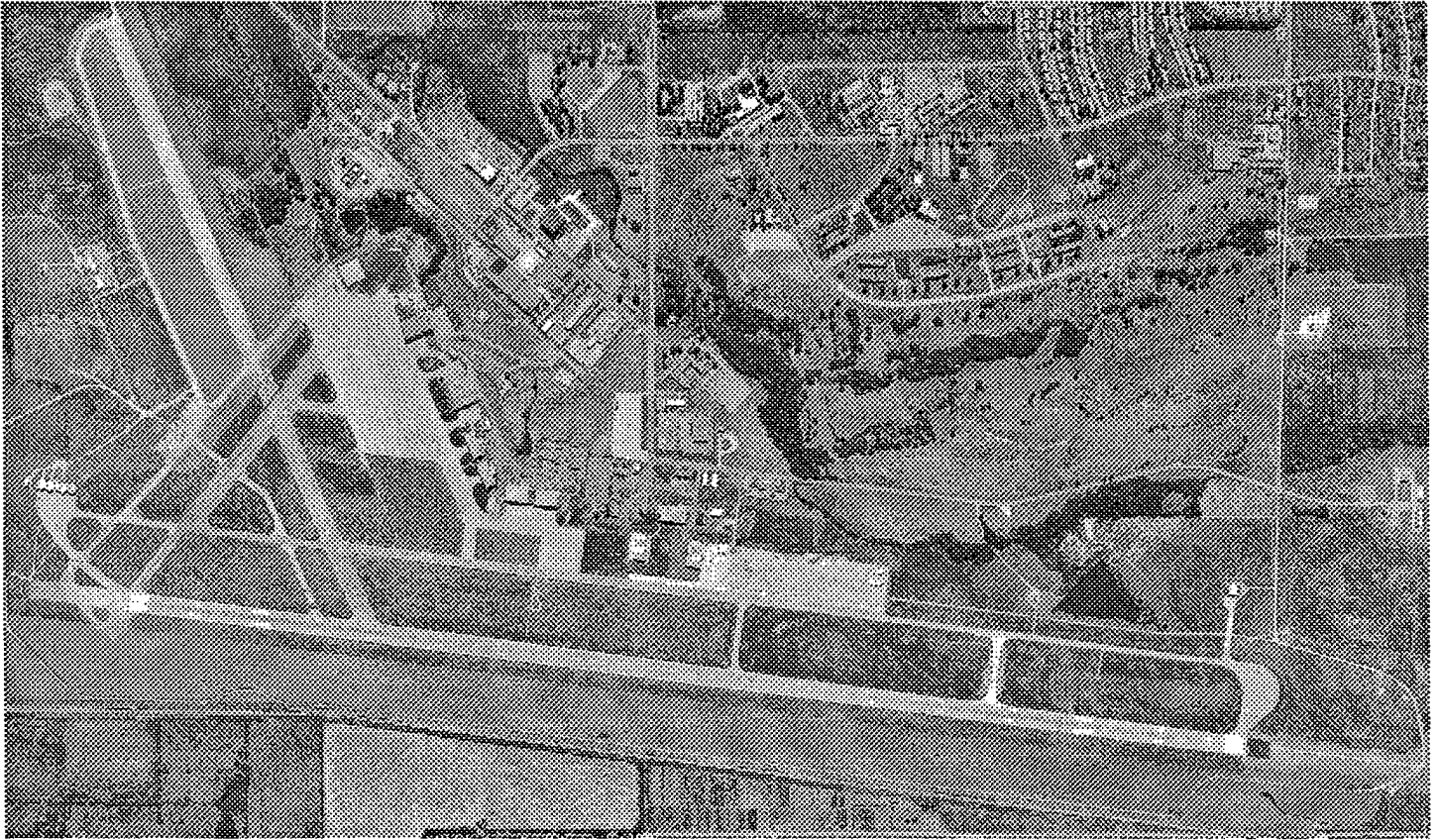
signing the agreement, FAA did not follow its policy requiring an independent appraisal to determine fair market value of the airport property. The only indication of the value of the 1,300-acre property was a \$33 million estimate cited in field office files, but FAA officials did not provide an appraisal to support or refute the estimate.

According to FAA officials, the compliance handbook provides that the Associate Administrator for Airports consider requests to release an entire airport from federal requirements on a case-by-case basis and that the Associate Administrator's authority is not limited by FAA's policies for releasing parcels of land. However, this provision in the handbook applies only to those federal requirements related to federal grants and does not apply to federal requirements related to airport land that was acquired as surplus land from the federal government. All but a few acres of the airport were provided to Kansas City as surplus land when the former Richards-Gebaur Air Force Base was closed in 1985. FAA's compliance policy clearly states that releases of land provided under the Surplus Property Act must clearly accrue a benefit to civil aviation and that

"This objective is not met unless an amount equal to the net sale proceeds based on the current FMV [fair market value] of the property is realized as a consequence of the release and such amount is committed to airport purposes . . . A sale and disposal of airport property for less than its FMV is inconsistent with the intent of the statute."

FAA's decision to allow Kansas City to sell the Richards-Gebaur Memorial Airport without conducting an appraisal or ensuring that fair market value is obtained was improper. In commenting on our preliminary findings in March 1999, FAA headquarters officials said that they are carefully reviewing the proposed leases of the airport and will consider amending the memorandum of agreement or rejecting the deal entirely. Figure 4 shows an aerial view of the airport. The railroad tracks are parallel and to the left of the 8,700 foot runway that is to be converted to an intermodal rail/truck facility. Figure 5 shows some of the facilities on the airport land.

Figure 4: Aerial View of Richards-Gebaur Memorial Airport, Kansas City, Missouri



Source: Aircraft Owners and Pilots Association.

Figure 5: Facilities at Richards-Gebaur Memorial Airport, Kansas City, Missouri



Air traffic control tower, parking area, and hangars.



View of the terminal building (front) and aircraft hanger (back) and aircraft parking ramp.



Another view of airport from the air traffic control tower.

Source: Aircraft Owners and Pilots Association.

Conclusions

FAA's compliance program is intended to ensure that the public interest and investment in general aviation airports receiving federal assistance are protected. This is not currently the case. Because none of FAA's 23 field offices conduct regularly scheduled on-site visits to monitor general aviation airports' compliance with federal requirements, FAA does not know the extent of noncompliance at these airports nationwide. Nor does FAA always effectively enforce federal requirements. Not surprisingly, therefore, we found unauthorized land and revenue uses and increased

risks to aviation safety. These problems are compounded by the lack of current policy guidance and current summary information on the nature of airports' federal requirements nationwide. Overall, FAA's failure to effectively implement its compliance program leaves the nation's federally assisted general aviation airports vulnerable to mismanagement, fraud, waste, and abuse. Although our review focused on FAA's land-use requirements for general aviation airports receiving federal assistance, FAA's lack of an effective compliance and enforcement program leaves compliance with other federal requirements, such as the requirement to keep airports available for public use and to charge airport users comparable fees, vulnerable as well.

Addressing noncompliance after it occurs is often difficult. Therefore, prevention is key to ensuring compliance with federal requirements. Airports' self-certifications can also serve to educate airports about their requirements. However, self-certifications alone are not a sufficient internal control because, in some instances, noncompliance may be deliberate, suggesting the need for a more hands-on monitoring approach than that provided by self-certifications. Consequently, on-site monitoring and enforcement action are also essential elements of any preventative compliance strategy.

In instances in which negotiations with an airport are unsuccessful, FAA has not used its available enforcement actions effectively to deter violations or recoup losses to the federal government. It has not withheld transportation grants, taken back the title to airport land, or taken action through the courts. When such actions are not taken, even in cases of long-standing noncompliance, the lack of action becomes a de facto policy of permissiveness. This de facto policy has occurred in two cases we identified—Bader Field and Queen City Municipal Airport. In the case of Richards-Gebaur Memorial Airport, however, FAA still has time to adhere to its own policy of obtaining fair market value for the land being sold for other purposes.

Recommendations

To effectively implement the internal controls contained in FAA's compliance policy, we recommend that the Secretary of Transportation direct the Administrator of FAA to revise current compliance policy guidance to airports to require regularly scheduled monitoring methods that provide for periodic on-site visits. In conjunction with periodic on-site visits, the monitoring component could include requiring periodic self-certifications of compliance from all airports and formally

coordinating with interested parties who may have information about airports' compliance, such as general aviation organization field representatives.²³ In addition, FAA should provide specific criteria for initiating enforcement action and set reasonable time frames for taking progressively stronger enforcement actions in cases in which efforts to achieve voluntary corrective action are unsuccessful.

In those cases of noncompliance that FAA cannot resolve in a reasonable period of time, we further recommend that the Secretary of Transportation direct the Administrator of FAA to apply the enforcement tools already provided by the Congress by holding field offices accountable for taking enforcement actions, particularly in cases of long-term, repeated, or willful unauthorized land or revenue use.

Until FAA develops and implements a compliance and enforcement program that provides adequate internal control over airports' compliance with federal requirements, the FAA Administrator should determine whether the internal control weakness disclosed in this report should be included when providing information to the Secretary for inclusion in the Secretary's annual report to the President and the Congress, as required by the Federal Managers' Financial Integrity Act of 1982.

Finally, the FAA Administrator should resolve long-standing instances of noncompliance and revenue diversion by taking enforcement action to protect the public investment in aviation at the Queen City Municipal Airport and at Bader Field. FAA should also require that Kansas City obtain a fair market appraisal of the value of airport land and, upon closing Richards-Gebaur Memorial Airport, reinvest an amount equal to the appraised value in local area airports to promote aviation, as required by FAA's policy.

Agency Comments and Our Evaluation

We provided copies of a draft of this report to the Department of Transportation and the Federal Aviation Administration (FAA) for review and comment. We met with FAA officials including the Director, Office of Airport Safety and Standards. We also met with Department of Transportation officials from the Office of Acquisition and Grant Management and the Office of General Counsel. FAA officials had several concerns about the information in the report but did not comment specifically on the report's recommendations.

²³In 1997, the Aircraft Owners and Pilots Association announced a program to have volunteers monitor public-use airports to identify concerns.

FAA officials said that over the last several years FAA has been working to enhance its oversight of airport owners' compliance with federal obligations. For example, FAA recently issued a revised airport revenue use policy that requires audits of some airports to determine if revenue diversion has occurred and allows FAA to select airports to be audited where there are indications that revenue diversion may have occurred. It also established an Airports Compliance Division within the Office of Airports in December 1997 and assigned 10 full-time compliance policy specialists to advise field offices on airport land and revenue issues and provide procedural support for compliance personnel in the field. The FAA officials said that, using the new policy and staff, the agency is working to ensure that it provides effective oversight to the airports in the national airport system. FAA officials also said that, over the past several years, the agency has enhanced its airport industry outreach and educational efforts by providing agency-sponsored seminars and participating in conferences sponsored by airport industry and airport owner associations. The efforts to improve oversight of airports' compliance described in FAA's comments are included in this report, and, therefore, we made no changes in response to these comments. Because FAA said that it has enhanced its airport industry outreach and educational efforts, we deleted from our recommendations a reference to a need to improve these educational efforts.

The agency officials did not dispute the report's findings on the level of monitoring and enforcement, but offered a number of reasons for why monitoring and enforcement efforts are not more extensive. FAA officials told us that providing effective oversight requires that the agency prioritize its use of the limited available staff. FAA officials indicated that its financial compliance activities are most appropriately focused on commercial service airports that receive the majority of federal funding. While the FAA officials agreed that it may be possible to further strengthen compliance oversight activities with general aviation airports, they believe that the draft report did not provide sufficient context in which to understand the relative scope of the issues described in the report. Although there are over 2,000 general aviation airports subject to federal requirements, they account for a relatively small proportion of funding and thus do not warrant a greater expenditure of FAA's limited resources, the officials stated. With approximately one person assigned to compliance duties per region (and many of these people have multiple duties), the FAA officials said that it is appropriate to focus compliance oversight efforts on the 840 commercial service airports that account for about 80 percent of Airport Improvement Program funding. The draft report included information

placing general aviation airports in context within all airports receiving federal funding. Therefore, we made no changes in response to these comments. While we acknowledge that the oversight of commercial service airports is important, this does not relieve FAA from its responsibility for ensuring that all airports comply with the requirements associated with the federal funding or land they receive.

Scope and Methodology

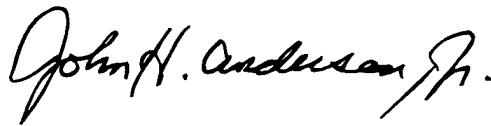
We visited 14 and surveyed 9 of the 23 FAA field offices responsible for overseeing general aviation airports. The 14 offices we visited represent seven of the nine FAA regions and manage airports in 33 of the 50 states, or about two-thirds of all public airports with land subject to federal requirements in the United States. Specifically, we visited the following field offices to discuss implementation of the compliance program: Atlanta, Georgia; Burlingame, California; Burlington, Massachusetts; Camp Hill, Pennsylvania; Detroit, Michigan; Dulles, Virginia; Garden City, New York; Jackson, Mississippi; Kansas City, Missouri; Lawndale, California; Orlando, Florida; and three field offices in Fort Worth, Texas.

We obtained information regarding compliance monitoring and cases of noncompliance with the federal requirements for land and revenue use, complaints and investigations, and land releases and airport closures from each of the 23 FAA field offices. We took a random sample of 506 general aviation airports and obtained data for each airport in the sample in the 23 field offices to estimate the incidence of releases on a nationwide basis. With general aviation interest groups, including the Aircraft Owners and Pilots Association, the National Air Transportation Association, and the American Association of Airport Executives, we discussed the issue of airports' compliance. These groups identified a number of issues regarding land use at general aviation airports, including the diversion of airport revenues and safety concerns.

We performed our review in accordance with generally accepted government auditing standards from September 1998 through April 1999.

We are providing copies of this report to the Honorable Rodney E. Slater, the Secretary of Transportation; and the Honorable Jane F. Garvey, Administrator, FAA. We will also make copies available to others on request.

If you or your staff have any questions about this report, please call me at (202) 512-2834. Major contributors to this report are listed in appendix II.

A handwritten signature in black ink, reading "John H. Anderson, Jr." with a stylized flourish at the end.

John H. Anderson, Jr.
Director, Transportation Issues

Sampling Results

As discussed in the “Scope and Methodology” section of the report, we used a probability sample of airports to estimate the incidence of releases on a nationwide basis. Since we used a sample to develop our estimates, each estimate has a measurable precision. This precision can be used to develop upper and lower bounds for each estimate. This range is called a confidence interval. Confidence intervals are stated at a certain confidence level—in this case, 95 percent. For example, a confidence interval at the 95-percent confidence level means that in 95 of 100 instances, the sampling procedure that we use would produce a confidence interval containing the universe value we are estimating. The following table contains the estimates that we made and their upper and lower bounds at the 95-percent confidence level. Note that we found 51 releases in our sample, but we were unable to obtain the number of released acres for 1 of the releases.

	Number or Percentage of Airports		
	Estimate	Lower bound	Upper bound
Total releases	205	156	254
Releases of less than 10 acres	97	73	126
Releases of from 10 acres to less than 20 acres	52	34	78
Releases greater than or equal to 20 acres	52	34	78
Percentage of releases of less than 10 acres	48%	33%	63%
Percentage of releases of less than 20 acres	74%	61%	87%

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