

RULES AND REGULATIONS

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 476]

Minimum Standards for Conducting Fixed Based Operations at Commonwealth-Owned Airports

The Department of Transportation (Department), Bureau of Aviation (Bureau), adopts Chapter 476 (relating to minimum standards for conducting fixed base operations at Commonwealth-owned airports). Notice of proposed rulemaking was published at 24 Pa.B. 5236 (October 15, 1994), with an invitation to submit written comments within 30 days of publication. The Department received three comments.

Comments Received

The Department received comments from the Independent Regulatory Review Commission (IRRC), Harrisburg Jet Center, Inc. and Stambaugh's Air Service. The following is a summary of the comments received and the Department's response:

(1) IRRC did not believe that these minimum standards for fixed base operators (FBOs) should be promulgated and implemented as a regulation, and suggested that these minimum standards instead be contained in a Request for Proposal (RFP). IRRC believed an RFP to be the more appropriate form in which to address these standards since these standards only apply to FBOs that contract with the Department to provide these services. Averring that regulations are more appropriate for situations that apply to multiple locations and govern multiple parties, IRRC strongly recommended the Department withdraw the rulemaking.

According to the Office of the Budget's Manual 215.1, *Contracting for Services*, § 5.2 c(1), an RFP "will be used to obtain consultant, professional, and other services when the work statement is detailed, the agency is seeking a contractor's solution to a management problem, and/or criteria, in addition to cost, will be used in evaluating proposals." The Department does not use the RFP process since FBOs do not provide a service to the Department; FBOs are tenants of the Department who provide services to other airport tenants and airport users. Further, the Department has never requested an FBO to provide services at a Commonwealth-owned airport; instead, FBO applicants have historically approached the Department. In fact, in the last 6 months, the Department has received inquiries from three entities interested in becoming FBOs.

These regulations are similar to FBO minimum requirements of other airports, none of which utilize an RFP process. These airports include the following: Reading Regional Airport; Johnstown-Cambria County Airport; Lancaster Airport; Hazelton Municipal Airport; Wilkes-Barre Scranton Airport; and Northeast Philadelphia Airport. These airports use minimum requirements to ensure compliance with Federal regulations, satisfy grant assurances to the Federal Aviation Administration (FAA), and to ensure that FBOs are treated equally. Obtaining FBOs through the RFP process would prevent the Department from turning down applicants who wish to pick and choose the types of services they wish to provide. Further, the possibility exists that an applicant would want to

provide certain of the services performed by an existing FBO. Moreover, so long as there is property on which to operate, there is no limit to the number of FBOs that may operate at any one time at a particular airport. It is up to the FBO applicant to decide whether there is enough business at an airport to justify operating at that airport.

Section 5301(a) of the Aviation Code, 74 Pa.C.S. § 5301(a) (relating to authority of department), directs the Department to promulgate and enforce regulations as necessary to execute the powers vested in the Department. Further, subsection (b)(2) authorizes the Department to operate and maintain airports which are owned or leased by the Commonwealth. Therefore, the Department believes it has adequate authority to promulgate regulations relating to minimum standards for fixed base operations at Commonwealth-owned airports.

Moreover, the Department, as an airport sponsor, has committed to assurances required by the Airport and Airway Improvement Act of 1982 (49 U.S.C.A. § 47101 et seq.) which requires the Department to make its airport facilities available for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds and classes of aeronautical uses including FBOs who shall be subject to the same rates, fees, rentals and other charges as are uniformly applicable to all other FBOs making the same or similar facilities. This act also requires the Department to agree that it will not, either directly or indirectly, grant or permit any persons, firms or corporations the exclusive right at the airports owned or controlled by the Department. However, Federal grant assurances do authorize an airport sponsor to prohibit or limit any given type, kind or class of aeronautical use of the airport if the action is necessary for the sole operation of the airport or necessary to serve the real aviation needs of the public. Also, an airport sponsor may establish 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.

Over the past 4 years, Harrisburg International Airport has received an average of \$2.15 million of entitlement funds from the FAA each year. The Capital City Airport receives discretionary money from the FAA under 49 U.S.C.A. § 47115 (relating to discretionary fund). The Department uses these grant moneys for key infrastructure improvements at both facilities that are pertinent to the continued economic growth and development of the airports. The economic impact for both facilities includes 13,708 jobs, \$233.4 million in payroll, and annual spending in the community of \$594.3 million. By not providing an impetus to a level playing field to like tenants, the Department may be subjected to Federal sanctions, including repayment of grant moneys and the denial of future grant money. These sanctions would adversely affect airport users, tenants, employees and the surrounding community.

Finally, the Department, on December 19, 1994, sent a copy of IRRC's comments to Harrisburg Jet Center, Inc. and Stambaugh's Air Service. In the accompanying letter, the Department requested comment on whether these regulations should be withdrawn as recommended by IRRC. In a letter dated May 9, 1995, Stambaugh's Air Service commented that they believed the proposed regulations were not stringent enough, however, they supported the Department's efforts to establish minimum

standards. In a letter dated May, 15, 1995, Harrisburg Jet Center, Inc. indicated its support for the promulgation of these regulations. These entities are FBOs at Harrisburg International Airport and Capital City Airport, respectively.

For all of these reasons, the Department believes it is necessary to have these regulations in place. These regulations will help ensure that FBOs, both existing and future, will be dealt with fairly and equitably.

(2) Harrisburg Jet Center, Inc. and Stambaugh's Air Service noted that these regulations do not prohibit persons other than FBOs from entering airport property to engage in services listed under the definition of the term "FBO" located at § 476.2 (relating to definitions). The commentators were concerned that without this prohibition, there will still be no control over unauthorized "pick up truck" services that have historically been rendered on airport grounds. Further, these commentators believe that if a "pick up truck" operator was cited for rendering services seen as FBO services, the operator would assert that he is not an FBO because he does not lease grounds from the airport. Therefore, the operator would be free to continue providing services listed as FBO-rendered services since these regulations do not prohibit the operator's actions.

Pick up truck entities are entities that come onto airport grounds and attempt to provide services to airport users who would otherwise engage the services of an FBO. These entities have not entered into an agreement with the Department to do business on airport property. Further, by providing services that would otherwise be performed by an FBO, these entities take business from FBOs who are authorized to do business on airport grounds. The Department views these entities as commercial enterprises because the types of service they provide are commercial in nature and require compliance with applicable FAA regulations. Therefore, since an FBO is defined as a commercial enterprise that has entered into a lease agreement with the Department to provide specific services, pick up truck entities, by definition, are prohibited from providing FBO services unless they comply with the promulgated regulations. The Department, therefore, believes that these regulations adequately address the concerns of the commentators.

(3) IRRC, Harrisburg Jet Center, Inc. and Stambaugh's Air Service commented on the space allotted for aircraft and automobile parking in §§ 476.11 and 476.12 (relating to minimum facilities—Harrisburg International Airport; and minimum facilities—Capital City Airport). An FBO must provide a minimum of 50,000 square feet of aircraft parking and 10,000 square feet for automobile parking at Harrisburg International Airport, and 40,000 square feet of aircraft parking and 10,000 square feet of automobile parking at Capital City Airport. Harrisburg Jet Center, Inc. and Stambaugh's Air Service noted that the amount of aircraft and automobile parking available to FBOs is governed by the Airport Master Plan of each airport, and suggested the Department acknowledge that the minimum requirements are derived from these plans. IRRC suggested the Department reconcile the amount of automobile parking with the Airport Master Plan of each airport. Further, IRRC believed that, if the amount of parking an FBO must require is controlled by the Airport Master Plan, then this fact should be clarified in these regulations.

The proposed regulations were prepared in accordance with the Airport Master Plan for each airport. An Airport Master Plan is a 20-year planning document that sets

forth the current layout of an airport. Under 49 U.S.C.A. § 47107(a)(16) (relating to project grant application approval conditioned on assurances about airport operations), the plan must be approved by the United States Secretary of Transportation (Secretary). Alterations in the airport or any of its facilities may not be made if they do not comply with the plan approved by the Secretary, and if the Secretary believes the alteration may adversely affect the safety, utility or efficiency of the airport. The Airport Master Plan may be revised or modified, however, any revision or modification must be approved by the Secretary before taking effect. Because of the ever changing environment of aviation, most Airport Master Plans require revision every 4 to 5 years. Revisions to the Airport Master Plan will not affect these regulations, however, since the regulatory requirements will not change, only the physical location of where the services will be performed. These airports have property that has not yet been developed. As demand increases, the Airport Master Plans will be amended to utilize this unused property. The regulatory requirements will be the same for that property as they are for property presently in use. The Department, therefore, believes it unnecessary to amend these sections as requested.

(4) Harrisburg Jet Center, Inc. and Stambaugh's Air Service commented on the building sizes and door heights set forth in §§ 476.11 and 476.12. Harrisburg Jet Center, Inc. suggested that the building should be closer to 10,000 square feet since the services provided by the FBO would require shop, storage and equipment parking space; Stambaugh's Air Service suggested 20,000 square feet. Further, Harrisburg Jet Center, Inc. recommended that the tail height of the door should be a minimum of 24 feet to allow for clearance of smaller aircraft that are over 12,000 pounds; Stambaugh's Air Service suggested 21 feet.

The Department wants to ensure that all entities are treated fairly and equitably. For this reason, the Department has proposed these minimum standards. If an FBO applicant wishes to increase the dimensions of a building or hangar, it may do so. However, if the Department acts on the suggestions of Stambaugh's Air Service and Harrisburg Jet Center, Inc., smaller entities will be precluded from providing FBO services at Commonwealth-owned airports. Smaller entities may not have the capital to involve themselves in all the types of services provided by existing FBOs. That is one of the reasons these regulations provide a choice of services. Constructing buildings and hangars larger than what the FBO applicant needs will result in increased overhead, which will decrease profit. Since the purpose of these regulations is to encourage FBO applicants willing to provide all manner of services, regardless of the applicant's size, the Department has refrained from amending these sections as requested.

(5) Harrisburg Jet Service and Stambaugh's Air Service both commented on the mandatory services in § 476.13 (relating to mandatory services). This section sets forth the services an FBO must provide: namely, aircraft fueling and oil dispensing services, aircraft parking, tie-down and hangar storage services, and two additional services which are to be selected from a pool of five additional services. The commentators believe that future FBO applicants should provide the same types of services provided by current FBOs. Current FBOs provide all the mandatory and selective services provided for in the proposed regulations. By allowing FBO applicants to select certain services, the commentators believe these regulations allow the applicants to pick and choose the

types of services they wish to provide, regardless of whether they are capital intensive. Further, the commentators believe that fuel service generates the income that supports the other required services, which are capital intensive and are employed less frequently. Therefore, the commentators requested the Department amend the mandatory services requirements by requiring fuel service and a repair station certificate, and one other selection from § 476.13.

This section presently requires FBOs to provide aircraft fueling and oil dispensing services, thereby rendering the need to amend this section to require these services unnecessary. Further, these regulations set forth minimum requirements that provide an FBO applicant with the flexibility to decide what choice of services to provide based upon what the market will bear. Since the purpose of these regulations is to attract FBO applicants willing to provide various levels of services, the Department has refrained from amending this section as requested. By providing the FBO applicant with a choice of two of the five additional required services, the Department allows the applicant to determine what services it has experience in providing, and what services it can afford to provide. Amending this section as requested would hinder smaller FBO applicants from providing services at Commonwealth-owned airports since they may be unable to afford providing certain suggested services, or they do not have experience in those areas.

(6) IRRC commented on the use of the term "unsightly aircraft" in § 476.15(1)(iii) (relating to aircraft parking, tie-down and hangar storage services). This subparagraph prohibits the parking of unsightly aircraft and leaves the determination of what is unsightly to the Director of Aviation. IRRC recommended the Department delete this subparagraph, believing that if an aircraft is in proper working condition, there should be no restrictions placed on the aircraft regarding its appearance. Further, if the Department decided to retain this subparagraph, IRRC recommended the Department detail what is considered unsightly, set forth specific criteria the Director will use to make this determination, and explain how an aggrieved person can appeal the Director's decision. Finally, if this subparagraph is retained, IRRC requested the Department justify the harm caused by the presence of an unsightly aircraft.

Upon reviewing this subparagraph, the Department understands the concern of IRRC and has replaced the word "unsightly" with the word "unairworthy." This term is defined at § 476.2 as "an aircraft that does not meet its FAA type certification or is in a condition that is unsafe for operation in the air, and is not under the care and control of an FBO for maintenance." If an aircraft does not meet either of these conditions, then it is an airworthy aircraft, despite its outward appearance. The Department believes that these amendments will help eliminate any confusion caused by the use of the term "unsightly." Moreover, the definition of the term "unairworthy" establishes criteria with which the Director may make his determination as to whether an aircraft is "unairworthy." The Department has refrained from including language explaining how an aggrieved FBO may appeal a decision of the Director since an applicant aggrieved by a decision rendered under any provision of these regulations may file an appeal in accordance with § 476.52 (relating to appeal).

As to IRRC's request for the Department to justify the harm caused by the presence of an unairworthy aircraft, unairworthy aircraft occupies space on already limited

aircraft parking ramp areas. The parking ramp areas are used by many different types and sizes of aircraft. To ensure that all airworthy aircraft have space in which to park, the Department has established these provisions so that unairworthy aircraft is allowed in aircraft parking ramp areas only when absolutely necessary. Further, more aircraft in these areas results in limited maneuverability, which increases the potential for accidents. Ensuring that unairworthy aircraft are not in these areas will help decrease the potential for accidents.

(7) IRRC, Harrisburg Jet Center, Inc. and Stambaugh's Air Service all noted that § 476.16 (relating to airframe, power plant and accessory services) does not require a repair station to be certified. IRRC believed that, as a minimum standard, an FBO providing maintenance services should have a repair station certification. Harrisburg Jet Center, Inc. and Stambaugh's Air Service believed the equipment requirement should be more detailed, and that an FBO should have a repair station certificate. These commentators opined that absent the repair station certificate, these regulations would allow the FBO to employ a minimum number of licensed mechanics yet still be unable to provide the type of maintenance and repair service contemplated by the Department. Further, these commentators noted that § 476.17 (relating to radio and instrument services) does not require necessary FAA licenses, and should specify radio bench and repair equipment. Harrisburg Jet Center, Inc. and Stambaugh's Air Service believe that these regulations will allow an FBO to provide fuel services without competent or comprehensive additional services, thereby not providing the type of even competition these regulations are intended to promote.

The Department respectfully disagrees with the recommendation of IRRC. Section 476.16(1) and (3) requires an FBO to provide comprehensive maintenance services with properly FAA-certified mechanics and FAA-trained personnel. Major repairs require the sign-off of an Inspection Authorization Mechanic and regular maintenance requires the sign-off of an Airframe & Power Plant Mechanic, both of whom are FAA-certified mechanics. While these regulations do not specifically require that an FBO applicant become an FAA-certified repair station, the minimum requirements established by these regulations set forth the types of maintenance and repair services contemplated by the Department. It is not the intent of these regulations to require all FBOs to be certified repair stations. Certified repair stations generally handle heavy aircraft maintenance and an FBO applicant may not want to provide those types of services nor are those services required. If an FBO applicant desires to become a certified repair station, however, these regulations do not preclude this.

(8) Harrisburg Jet Center, Inc. and Stambaugh's Air Service believed that § 476.19 (relating to flight training services) should require compliance with 14 CFR Parts 61 and 141 (relating to certification: pilots and flight instructors; and pilot schools). Section 476.19 requires the FBO to comply with applicable FAA statutes, regulations and advisory circulars. These regulations are merely minimum standards, and the Department is allowing the FBO applicant to determine, to a certain extent, what services it wishes to provide. Because of the numerous FAA regulations applicable to the various services an FBO may provide, the Department has refrained from specifying the particular FAA regulation. The two mentioned by the commentators are just two of many that may be applicable, depending on the circumstances. The applicable FAA regulation depends on the type of service the

FBO wishes to provide. Once the Department is aware of the type of services the FBO wishes to provide, the Department will ensure that the FBO complies with the applicable FAA regulations.

(9) Harrisburg Jet Center, Inc. and Stambaugh's Air Service disagreed with the exclusion of ground transportation for hire and vending machine services from FBO leases. Section 476.23 (relating to specific exclusions applicable to FBOs) lists various concessions excluded from FBO leases. The commentators assert that the remote location of FBO facilities requires that ground transportation be a necessary service. Further, given the layout of the airports, the commentators believe that ground transportation services will not constitute competition with auto rental companies in the terminal area. As for vending machine services, the commentators maintain that these services are expected and necessary adjuncts to a good FBO. Further, they opined that vending services would not provide competition with vendors in the terminal because of the remote location of FBO facilities.

Ground transportation for hire and vending machine services are not FBO services; they are services provided by other entities doing business at the airport. These regulations simply provide that services of this type are not to be considered when applying to provide FBO services. There is nothing, however, to preclude the Department from entering into a separate agreement with the FBO for these types of non-FBO services. The Department has, therefore, refrained from eliminating ground transportation services and vending machine services from the list of concessions excluded from FBO leases.

(10) The IRRC commented on § 476.24 (relating to application procedure for conducting fixed base operations), which requires an FBO applicant to submit a written request to the Bureau. IRRC noted that the proposed language does not indicate what information or documentation an FBO applicant must provide to the Bureau. For this reason, IRRC recommended the Department clarify the information and documentation an FBO applicant must submit as part of the application procedure. Further, if there is an application the Department has developed for this purpose, IRRC recommended the Department reference it in these regulations.

Moreover, IRRC noted that § 476.24(b) does not provide criteria as to how the Department will make a determination on the application. This subsection also does not provide the maximum number of FBOs that may provide services at each airport. Because of this, IRRC recommended the Department amend this section by including criteria used to determine the acceptance of an FBO and the maximum amount of FBOs that will be allowed to provide service at each airport.

After reviewing the proposed language, the Department realized that guidance to the applicant was very limited. Since the Department has not created an FBO service application, the Department has amended § 476.24(a) to clarify for FBO applicants what information they should include in the application: specifically, the applicant must detail how it plans to meet the requirements of this chapter and the proposed timetable for meeting these requirements. Further, § 476.24(b) has been amended as suggested to set forth the criteria upon which the Department will base its decision. The criteria are as follows: 1) the applicant demonstrates that it can meet the requirements of this chapter; 2) the applicant demonstrates its ability to comply with applicable Federal, State and local regulations; and 3) the applicant demonstrates that a

need exists for additional FBO services to meet the continued growth and development of the airport facility. If an applicant satisfies these criteria, then the Department will negotiate a lease agreement with the applicant to provide FBO services at the designated facility. The Department has not established a maximum number of FBOs that may provide service at each airport since this number depends upon the aviation industry and the perceived need for FBO services at each airport.

(11) IRRC questioned why, in § 476.26(b) (relating to existing fixed operating agreements), an airline that provides the same service as an FBO is not subject to these regulations. Believing that there should be a level playing field between FBOs and the airlines, IRRC recommended that, upon expiration of current airline operating agreements, the Department should require airlines to comply with these regulations if the airline provides services that are also provided by an FBO. Further, Stambaugh's Air Service was concerned about airlines that hire out their services to other airlines. Specifically, Stambaugh's Air Service noted that: 1) the services provided by the airlines are not subject to these regulations; 2) investment requirements of FBOs are not required of airlines; and 3) existing FBO operations performed by airlines are not subject to the sunseting imposed on other existing services. Stambaugh's Air Service believes that, by exempting airline operating agreements, these regulations allow airlines to compete with FBOs without having to pay fees to the Department, since they do not have leases.

The rights and privileges afforded signatory airlines are an industry standard. Signatory airlines not only underwrite airfield operation and maintenance expenses through landing fees, they also underwrite the cost and operation of the terminal facility and cannot be put in the same category as an FBO. Further, the signatory airline operating agreement allows the Department to collect reasonable fees or commissions for services or facilities provided by or for an airline in competition with concessionaires and operators operating under an agreement with the Department. Airlines and FBOs are not like entities because airline services are limited in nature in comparison to FBO services. FBOs provide specific services to numerous entities whereas airlines generally provide limited ground handling services to themselves as well as other signatory airlines. New FBO applicants may or may not elect to provide ground handling services. It is because of these differences that the Department has not amended these regulations as recommended by IRRC.

(12) IRRC, Harrisburg Jet Center, Inc. and Stambaugh's Air Service commented on the requirement of § 476.27(b) (relating to compliance inspections) which gives FBOs 24 hours to make corrections indicated on the Department's written report. Harrisburg Jet Center, Inc. and Stambaugh's Air Service both believed that the time frame of 24 hours should be replaced with the word "reasonable." These commentators noted that there may be instances when 24 hours might not be a reasonable time frame in which to make corrections. IRRC also believed the 24-hour time period was too stringent, especially since failure to take action within that time will result in cancellation of the FBO's agreement. As an alternative, IRRC suggested the Department establish time frames for corrections to be completed, based on the severity of the deficiency. Finally, Harrisburg Jet Center, Inc. and Stambaugh's Air Service believed that failure to make correction within the designated time frame should constitute a default under the lease. These commentators made this suggestion because they believe that regulatory

cancellation based on a subjective enforcement clause will only aggravate the legal processes that are employed by both parties in these matters.

Section 476.27(c) addresses deficiencies that require more than 24 hours to correct. In these instances, the FBO must submit a proposed schedule of corrections to the Bureau for approval. The written report provided to the FBO will set forth the time frame in which the proposed schedule is to be submitted to the Bureau. Further, § 476.27(d) addresses the concerns of Harrisburg Jet Center, Inc. and Stambaugh's Air Service. This subsection states that failure to make required corrections within the time frame specified by the Bureau will result in cancellation of the FBO's lease agreement. Since the FBO is given time to submit a proposed schedule of corrections, and the schedule is relied upon by the Bureau in the event corrections are not made according to schedule, the Department does not view this enforcement clause as subjective. Therefore, since these regulations presently address the concerns of the commentators, the Department has refrained from further amending this section as suggested.

(13) IRRC questioned why the Department excluded Grand Canyon Airport, a Commonwealth-owned airport, from these regulations. Although this airport is presently operating efficiently, IRRC believes there is no reason for the FBOs at Grand Canyon Airport not to be subject to the same minimum standards as similarly situated FBOs at other Commonwealth-owned airports. Therefore, IRRC strongly recommended the Department include Grand Canyon Airport in these regulations.

Grand Canyon Airport is a small general service facility which is capable of handling only one FBO. Due to the size of the airport and the amount of business handled, this FBO can provide only limited services in comparison to Capital City Airport and Harrisburg International Airport. The size and amount of business at Grand Canyon Airport have also made it necessary for the FBO to assume the additional responsibilities of airport manager and operator for the Department in order to remain viable. Therefore, the FBO must also oversee the day-to-day operations of the Grand Canyon Airport for the Department. These additional responsibilities are not those typically expected of an FBO.

The minimum standards proposed are designed for a scheduled service facility—an airport that has scheduled commercial airline operations—such as Harrisburg International Airport, and a designated reliever facility—an airport that provides relief from airport congestion of a scheduled service facility—such as Capital City Airport. Imposing similar requirements on Grand Canyon Airport at this time is unnecessary and would impose undue hardship on a facility that does not possess the marketing potential of the other two airports. Further, an FAA Circular, entitled *Minimum Standards for Commercial Aeronautical Activities on Public Airports*, which outlines recommended criteria for minimum standards, suggests that care be taken not to impose standards that could compel a service operator to extend its investment beyond the economic potential of the airport. This could be the result if these minimum standards were imposed at Grand Canyon Airport. Therefore, the Department has refrained from adding Grand Canyon Airport to these regulations.

Additional Changes and Modifications

The final text of these regulations contains modifications, deletions and additions, none of which enlarges the

scope of these amendments as originally proposed, and thus, may be published as final rulemaking. The following represents a summary of the changes:

(1) Section 476.2 has been amended by deleting the word "including" in the definition of the term "FBO" and replacing it with the phrase "which may include the following." The purpose of this amendment is to clarify for affected persons that an FBO does not need to provide all of the listed services to qualify as an FBO. Further, the definition of "tie-down" has been amended to clarify the acceptable methods by which an aircraft may be secured. The originally proposed language included the word "suitable," a subjective term that provided no guidance to an FBO. Moreover, a definition of the term "unairworthy aircraft" has been added. This definition states that an unairworthy aircraft is one that does not meet its FAA type certification or is unsafe for operation in the air, and is not under the care and control of an FBO for maintenance. This criteria in this definition will be used by the Bureau Director when determining whether an aircraft is unairworthy under § 476.15(1)(iii). This definition is the result of comments the Department received from IRRC.

(2) Section 476.11(1) (relating to minimum facilities—Harrisburg International Airport) has been amended by replacing the word "taxiout" with the word "taxi-out." This amendment was necessary to provide consistency between the definition of the term, at § 476.2, and the term as used throughout this chapter. Section 476.12(1) has been similarly amended for consistency purposes.

(3) Section 476.13 has been amended to simplify comprehension of the requirements of this section by dividing the proposed language into two subsections. This section was originally proposed to set forth the mandatory services to be provided by all FBOs. There are two services that all FBOs must provide, namely aircraft fueling and oil dispensing services, and aircraft parking, tie-down and hangar storage services. This requirement has been restructured as subsection (a). The newly-styled subsection (b) requires the FBO to provide two of the five additional services set forth in this section, namely airframe, power plant and accessory services; radio and instrument services; air taxi and charter services; flight training services; and ground handling support services. The Department has separated the originally proposed language into two subsections to ensure that FBOs are aware that there are two levels of mandatory services; the first level consisting of two services that the Department has determined all FBOs must provide, and the second level consisting of five services, two of which the FBO must provide in addition to the first level of services.

(4) Section 476.14(3)(iv) (relating to aircraft fueling and oil dispensing services) has been amended by adding the word "bonding" after the word "grounding" since National Fire Protection Agency addresses bonding in its publication entitled, *Aircraft Fuel Service*. The FAA addresses grounding in its Advisory Circular entitled, *Aircraft Fuel Storage, Handling, and Dispensing on Airports*. Grounding constitutes a three-part procedure: a grounding cable must be connected between the fuel truck and the surface grounding point; a second grounding cable must be connected between the fuel truck and the aircraft; and a third grounding cable must be connected between the aircraft and the grounding surface. Bonding refers to the use of one grounding cable that connects the fuel truck to the aircraft. The bonding procedure is used when an aircraft has a fuel tank fill port on top of the wing. Since both procedures are used when fueling aircraft, the Department believes that both words should be used in

these regulations. Further, to provide consistency throughout this chapter, § 476.14(4)(iii) has been similarly amended.

(5) Section 476.14(3)(vi) has been amended by deleting the specific number of the FAA Advisory Circular and replacing it with the word "entitled." This amendment was considered necessary since FAA Advisory Circulars numbers are prone to change, although their titles are not. To ensure that FBOs refer to the most recent FAA publication, whatever its number, the Department has amended this subparagraph to refer only to the title of the publication. Further, to maintain consistency throughout the chapter, §§ 476.14(4)(v), (5) and (6) and 476.15(1)(ii) and (2) have been similarly amended.

This subparagraph has been further amended for consistency purposes to clarify what type of written records the FBO must keep on file. Sections 476.14(4)(iv) and (v) have been similarly amended. Finally, to clarify how long written records should be kept, this subparagraph has been further amended to require that written records be kept for 1 year. Problems relating to fueling become evident within a short period of time. Therefore, the Department believes that record retention of one year will provide adequate protection for those serviced by FBOs while eliminating the necessity of FBOs retaining these files for an inordinate amount of time. Section 476.14(3)(vii) and (4)(iv) and (v) have been similarly amended for consistency purposes.

(6) Section 476.14(6) has been amended by adding the phrase "(A. C. and D. C.," immediately after the phrase "starting equipment" to clarify that an FBO engaging in aircraft fueling and fuel dispensing services must provide both alternate current and direct current electrical equipment. This amendment was necessary since aircraft use both types of electrical current for operation. These types of current are used to start the aircraft engines, when necessary, and to provide power during aircraft repairs. By specifically setting forth the types of current the starting equipment must be able to handle, the Department hopes to eliminate any possible confusion about the type of starting equipment an FBO must provide.

(7) Section 476.15 (relating to aircraft parking, tie-down and hangar storage services) has been amended at paragraph (1)(iii) by replacing the word "unsightly" with the word "unairworthy." This amendment, along with the associated definition of the term "unairworthy aircraft" located at § 476.2, clarifies what type of aircraft can or cannot be parked on the ramp area. This paragraph has been further amended by adding the phrase "or a designee" immediately after the word "Director," so that, in the Director's absence, a designee may determine whether an aircraft is unairworthy. These amendments are the result of comments received from IRRC, and the Department appreciates its bringing these matters to its attention. Further, paragraph (2) has been amended by deleting the word "suitable" since this word provides no objective guidance for an FBO. The FAA Advisory Circular entitled "Tie-Down Sense," which is referred to in this paragraph, will direct the FBO as to the correct method of securing an aircraft. Finally, paragraph (3)(i) has been amended by deleting the word "proper" since this word does not provide additional guidance to an FBO.

(8) Section 476.16 has been amended at paragraph (3) by deleting the word "adequately" since this word adds nothing to the meaning of this paragraph. Further, paragraph (4) has been amended by inserting the word "FAA-certified" immediately before the word "mechanic." This amendment clarifies that the mechanic who must be

on call and available to respond to emergency customer service requests must be certified by the FAA. By amending this paragraph, the Department will ensure that FBOs are aware of the qualifications their mechanic must have before providing airframe, power plant and accessory services.

(9) Section 476.18(3) (relating to air taxi and charter services) has been amended to clarify that a title or lease agreement must exist for each operated aircraft owned or leased by an FBO. The originally proposed language made it unclear whether a written agreement was necessary for an aircraft owned by an FBO, and did not specify what type of written agreement was needed. The Department is requiring a title or lease agreement for each aircraft as evidence that the FBO has the authority to exercise dominion and control over the aircraft the FBO is operating. This affords the Department and airport users adequate protection against use of an aircraft by someone other than the rightful owner or authorized operator. The amended language will make it clear that a title or lease agreement must exist for each operated aircraft whether it is owned by or leased to the FBO.

(10) Section 476.21 (relating to optional and special services) has been amended to eliminate confusion and promote consistency throughout the section by deleting the word "activities" since this word is not used elsewhere in this section. Further, this section has been amended to clarify that the facilities to be used for optional services must be capable of supporting the optional services proposed. This amendment provides an objective standard for the Director to use when deciding whether to approve an application for the provision of optional or special services.

(11) Section 476.22 (relating to negotiated services) has been amended by replacing the words "this section" with "§§ 476.14—476.21." This amendment was necessary since this section does not contain any specific services, and the referenced sections pertain to the various FBO services which are the subject of these regulations. The Department hopes that this amendment will eliminate any confusion which may have resulted from this error.

(12) Section 476.24(a) (relating to application procedure for conducting fixed base operations) has been amended to clarify for FBO applicants what information they should include in the application to become an FBO. This subsection, as originally proposed, required only that the applicant submit a written request. IRRC, in its comments, noted that this subsection did not provide guidance as to what information the FBO must provide. Realizing this oversight, the Department has amended this subsection to require an application detailing the applicant's plans to meet the requirements of this chapter, and the timetable for meeting these requirements. The Department may request additional information if the application does not contain the schematics necessary to carry out the requirements of this chapter. The Department believes this description will give an FBO applicant guidance as to what information to include in its application. Further, this section has been amended by replacing the phrase "written request" with the word "application" wherever the former term appears. This amendment more accurately reflects the type of document the FBO applicant must submit to the Department. Section 476.25(a) (relating to lease agreements) has been similarly amended to reflect this change.

(13) Section 476.24(b) has been amended to clarify that the Department will submit a written response to the applicant within 30 days of receipt of the application.

Although the originally proposed language also conveyed this intent, the Department believed clarity would be better served by rewording the language to alleviate the possibility of misinterpretation. Further, this section has been amended by establishing the criteria the Department will use to evaluate the FBO applications. The Department will enter into a lease agreement with an FBO applicant if the following criteria are met: the FBO applicant demonstrates that it can meet the requirements of this chapter; the FBO applicant demonstrates its ability to comply with applicable Federal, State and local regulations; and the FBO applicant demonstrates that a need exists for additional FBO services to meet the continued growth and development of the facility.

(14) Section 476.24(c) has been amended by deleting the entire subsection. This subsection was proposed to notify FBO applicants that they have the right to appeal the Bureau's decision, and referenced the appeal provisions at § 476.52. Since § 476.52 provides for the right to appeal any decision made pursuant to these regulations, the Department has since decided that this subsection is unnecessary.

(15) Section 476.25 has been retitled as "lease agreement" and, accordingly, throughout the section where the phrase "written agreement" appears. This amendment more accurately reflects the type of agreement entered into by the Department and the FBO applicant. Further, subsection (c) has been amended by deleting the word "Bureau" immediately preceding the word "Director." This amendment was necessary since the word "Director" is a defined term and the Department deemed the word "Bureau" an unnecessary modifier.

(16) Section 476.27(d) (relating to compliance inspections) has been amended by inserting the word "lease" before the word "agreement" wherever the latter word appears. This amendment is designed to clarify the type of agreement that will be canceled if an FBO fails to make required corrections to its facilities within the time frame specified by the Department.

(17) Section 476.52 has been amended by deleting the phrase "to grant, deny or revoke the FBO's lease." This deletion was necessary since it was not the Department's intent to limit the FBO's ability to appeal any action taken by the Department under these regulations. Removing this language will help clarify for FBOs that they have the right to appeal any action taken pursuant to these regulations, not only the granting, denial or revocation of a lease.

Purpose of this Chapter

The purpose of this chapter is to set forth minimum standards for conducting FBOs operations at Commonwealth-owned airports.

Purpose of these Regulations

The purpose of these regulations is to amend 67 Pa. Code by adding Chapter 476. These regulations set forth minimum standards for conducting FBOs at two of the three Commonwealth-owned airports operated by the Department's Bureau: Harrisburg International and Capital City.

Minimum standards for Grand Canyon Airport are not established in these regulations. Grand Canyon Airport is presently leased to one airport operator who meets the needs of current airport users. However, if development occurs and the airport is expanded and an increased level of service is determined necessary, appropriate minimum standards may be proposed.

An FBO is a commercial enterprise performing aviation-related services for airport customers who desire to utilize the services provided by the FBO. These regulations establish eligibility requirements and minimum criteria for facilities and services including aircraft and automobile parking, buildings, fuel service, repairs, air taxi and charter services, flight training and ground services. These regulations also establish hours of operation determined necessary to provide an adequate level of service to airport customers. The Department reserves the right to impose additional standards in the actual lease agreements negotiated with prospective FBOs.

These regulations are necessary to ensure a minimum level of customer service at Commonwealth-owned airport facilities and are similar to the industry standards for FBOs in place at airports Nationally. These regulations propose minimum standards comparable to other similarly sized airports. Airport users are accustomed to having available standard services such as those mentioned above. The Department, in providing first-class facilities and services, must meet demand of the airport users. Also, in order to run a profitable business and remain competitive, the Department must provide services to attract users who may otherwise divert to nearby airports.

Persons or Entities Affected

These regulations affect persons or entities who apply to conduct FBOs at one of the Commonwealth-owned airports: Harrisburg International in Middletown, Pennsylvania, and Capital City in New Cumberland, Pennsylvania. These regulations also affect persons using these airports.

Fiscal Impact

These regulations will not result in increased costs to the Commonwealth, local governments, agencies or private persons, nor will they require the preparation of additional forms, reports or other paperwork.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 4, 1994, the Department submitted a copy of the notice of proposed rulemaking, published at 24 Pa.B. 5236 to IRRC and to the Chairpersons of the House and Senate Committees on Transportation for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House and Senate Committees on February 1, 1997. IRRC met on February 6, 1997, and approved these regulations in accordance with section 5(c) of the Regulatory Review Act.

Sunset Provisions

The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required under 74 Pa.C.S. Part III (relating to Aviation Code) (code). The Department, however, will continue to monitor these regulations for their effectiveness.

Contact Person

The contact person is Dennis Hamsher, Chief, Programs and Policy Management Division; Bureau of Avia-

tion; 208 Airport Drive; Harrisburg International Airport; Middletown, PA 17057; (717) 948-3935.

Authority

The regulations hereby adopted are adopted under the authority contained in sections 5301(a) and 5903(a)(7) of the code (relating to authority of the department; and authority of department). These statutory provisions, respectively, direct the Department to promulgate and enforce regulations necessary to execute its powers relating to aviation, airport and air safety within this Commonwealth; and authorize the Department to purchase, contract for and maintain equipment, materials, services and supplies necessary to operate or maintain an airport.

Findings

The Department finds that:

(1) Public notice of intention to amend the administrative regulations amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendment of the regulations of the Department in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 67 Pa.Code, are amended by adding §§ 476.1, 476.2, 476.11—476.27, 476.51 and 476.52 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

BRADLEY L. MALLORY,
Secretary

(*Editor's Note:* For the text of the order of IRRC relating to this document, see 27 Pa.B. 972 (February 22, 1997).)

Fiscal Note: Fiscal Note 18-322 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. TRANSPORTATION

Subpart B. NONVEHICLE CODE PROVISIONS

ARTICLE IV. AIR TRANSPORTATION

CHAPTER 476. MINIMUM STANDARDS FOR CONDUCTING FIXED BASE OPERATIONS AT COMMONWEALTH-OWNED AIRPORTS

GENERAL

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ELIGIBILITY REQUIREMENTS AND CRITERIA

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476.14.	Aircraft fueling and oil dispensing services
476.15.	Aircraft parking, tie-down and hangar storage services.
476.16.	Airframe, power plant and accessory services.
476.17.	Radio and instrument services.
476.18.	Air taxi and charter services.
476.19.	Flight training services.
476.20.	Ground handling support services.
476.21.	Optional and special services.
476.22.	Negotiated services.
476.23.	Specific exclusions applicable to FBOs.
476.24.	Application procedure for conducting fixed based operations.
476.25.	Lease agreements.
476.26.	Existing fixed base operating agreements.
476.27.	Compliance inspections.

WAIVER AND APPEAL

476.51.	Waiver and appeal.
476.52.	Appeal.

GENERAL

§ 476.1. Purpose.

This chapter sets forth the minimum standards for conducting fixed base operations at Commonwealth-owned airports.

§ 476.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

AVGAS—Aviation gasoline used in propeller-driven piston aircraft.

Apron—A defined area on an airport intended to accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, parking or maintenance.

Bureau—The Bureau of Aviation of the Department.

Code—74 Pa.C.S. Part III (relating to the Aviation Code).

Department—The Department of Transportation of the Commonwealth.

Director—The Director of the Bureau.

FAA—The Federal Aviation Administration.

FBO—fixed base operator—A commercial enterprise that has entered into a lease agreement with the Department to provide services which may include the following:

- (i) Aircraft fueling and oil dispensing.
- (ii) Aircraft, parking, tie-down and hangar storage.
- (iii) Airframe, power plant and accessory service.
- (iv) Radio and instrument service.
- (v) Air charter and flight instruction for airport users.
- (vi) Ground services.

Ground services—Services provided by the FBO including:

- (i) Aircraft towing.
- (ii) Baggage handling.
- (iii) Deicing—glycol.
- (iv) Power starts—A. C. and D. C.
- (v) Air start.
- (vi) Lavatory service.
- (vii) Potable water.
- (viii) Aircraft cleaning—interior and exterior.
- (ix) Cabin supplies.

NFPA—National Fire Protection Agency.

Taxi-out—The movement of an airplane, under its own power, from its fixed position at an apron or parking position to the runway.

Tie-down—Securing of an aircraft by binding anchors or ropes or other similar methods.

User—An airport customer who desires to utilize a service offered by an FBO.

Unairworthy aircraft—An aircraft that does not meet its FAA type certification or is in a condition that is unsafe for operation in the air, and is not under the care and control of an FBO for maintenance.

ELIGIBILITY REQUIREMENTS AND CRITERIA

§ 476.11. Minimum facilities—Harrisburg International Airport.

The following are the criteria for the minimum facilities an FBO shall provide for the Harrisburg International Airport:

(1) *Aircraft parking—paved apron.* The FBO shall provide a minimum of 50,000 square feet to accommodate aircraft parking and tie-downs, with taxi-out capability including sufficient taxi clearances.

(2) *Automobile parking.* The FBO shall provide 10,000 square feet of space for automobile parking.

(3) *Buildings.* The FBO shall provide a lounge, public restrooms, training and flight planning offices of at least 2,000 square feet, and a hangar of at least 10,000 square feet. The hangar shall be used for aircraft maintenance and storage and have aircraft door openings of at least 60 feet in width and at least 17 feet in height.

(4) *Fuel service.* The FBO shall provide fuel for one grade of AVGAS in addition to appropriate jet fuel. Fuel storage tanks, equipment and personnel shall comply with applicable Federal, State and local regulations.

§ 476.12. Minimum facilities—Capital City Airport.

The following are the criteria for the minimum facilities an FBO shall provide for the Capital City Airport:

(1) *Aircraft parking—paved apron.* The FBO shall provide a minimum of 40,000 square feet to accommodate aircraft parking and tie-downs, with taxi-out capability including sufficient taxi clearances.

(2) *Automobile parking.* The FBO shall provide 10,000 square feet of space for automobile parking.

(3) *Buildings.* The FBO shall provide a lounge, public restrooms, training and flight planning offices of at least 2,000 square feet, and a hangar of at least 10,000 square feet. The hangar shall be used for aircraft maintenance and storage and have aircraft door openings of at least 60 feet in width and at least 17 feet in height.

(4) *Fuel service.* The FBO shall provide fuel for one grade of AVGAS in addition to appropriate jet fuel. Fuel storage tanks, equipment and personnel shall comply with applicable Federal, State and local regulations.

§ 476.13. Mandatory services.

(a) *Primary services.* The FBO shall provide aircraft fueling and oil dispensing services as set forth in § 476.14 (relating to aircraft fueling and oil dispensing services), and aircraft parking, tie-down and hangar storage services as set forth in § 476.15 (relating to aircraft parking, tie-down and hangar storage services).

(b) *Secondary services.* In addition to the services set forth in subsection (a), the FBO shall provide two of the following services:

(1) Airframe, power plant and accessory services as set forth in § 476.16 (relating to airframe, power plant and accessory services).

(2) Radio and instrument services as set forth in § 476.17 (relating to radio and instrument services).

(3) Air taxi and charter services as set forth in § 476.18 (relating to air taxi and charter services).

(4) Flight training services as set forth in § 476.19 (relating to flight training services).

(5) Ground handling support services as set forth in § 476.20 (relating to ground handling support services).

§ 476.14. Aircraft fueling and oil dispensing services.

The minimum requirements for aircraft fueling and oil dispensing services are as follows:

(1) *Compliance with applicable regulations.* Fuel storage and handling, including the storage and handling of hazardous materials, shall be in compliance with applicable Federal, State and local regulations.

(2) *Fuel products.* The FBO shall provide into-plane retail delivery of an industry standard or recognized brand of aviation fuel product required in the operation of all types of aircraft normally frequenting the airport facility. Pumps for dispensing the fuel shall be provided at a location accessible to airport customers. The FBO shall make mobile fuelers available and accessible at all times to ensure that the same grades of fuel are dispensed at any point at the airport facility as may be required to accommodate the needs of other lessees or the general public.

(3) *Fueling facilities—storage area.* The requirements for storage area fueling facilities are as follows:

(i) The area shall be clearly defined and located away from the aircraft parking area.

(ii) Tank filler caps shall be kept locked to avoid the possibility of contamination or sabotage.

(iii) Fillers and pumps shall be color coded and placarded as to octane or fuel grade, or both.

(iv) Electrical grounding/bonding shall be provided for refueling operations.

(v) Fuel hoses and nozzles shall be stored in a clean, sheltered area or protected in some manner from the elements and contaminants.

(vi) Fuel shall be filtered. A regular inspection of the filters shall be conducted in accordance with the most current FAA Advisory Circular entitled, "Aircraft Fuel Storage, Handling and Dispensing on Airports" or NFPA Part 407, "Aircraft Fuel Service," or both. Written records of filter inspections shall be kept on file with the FBO for 1 year and shall be available for review by the Department upon request.

(vii) Fuel tanks shall be checked daily, or prior to the first refueling of the day, for water and contamination. A written record of these inspections shall be kept on file with the FBO for 1 year and shall be available for review by the Department upon request.

(4) *Fueling facilities—mobile fuelers.* The minimum requirements for mobile fueler fueling facilities are as follows:

(i) A truck shall be provided with sufficient capacity to refuel the largest general aviation aircraft likely to be serviced for AVGAS and jet fuel.

(ii) The truck shall be clearly marked and labeled to indicate types and grades of fuel dispensed.

(iii) The truck shall be equipped with adequate and appropriate filling devices, meters and grounding/bonding cables.

(iv) A regular inspection of the filters shall be conducted in accordance with FAA Advisory Circular entitled, "Aircraft Fuel Storage, Handling, and Dispensing on Airports" or NFPA 407 "Aircraft Fuel Servicing," or both. Written records of filter inspections shall be kept on file with the FBO for 1 year and shall be available for review by the Department upon request.

(v) Contamination separation devices shall be checked daily, or prior to the first fueling of the day, for water and contamination. Written records of these inspections shall be kept on file with the FBO for 1 year and shall be available for review by the Department upon request.

(5) *Fueling procedures.* Fueling procedures shall conform to recommendations and standards in the most current FAA Advisory Circular entitled, "Aircraft Ground Handling and Servicing."

(6) *Aircraft service equipment.* Energizers, standard starting equipment (A. C. and D. C.), oxygen, appropriate fire extinguishers, fueling equipment and deicing equipment shall be provided.

(7) *Personnel.* Ramp service personnel trained and qualified in accordance with applicable FAA regulations shall be available during hours of fuel dispensing.

(8) *Hours of operation.* Fueling and oil dispensing services shall be available as follows:

(i) *Harrisburg International Airport.* Fueling and oil dispensing shall be available from 24 hours-a-day, 7 days-a-week.

(ii) *Capital City Airport.* Fueling and oil dispensing shall be available from 6 a.m. to 10 p.m., 7 days a week.

§ 476.15. Aircraft parking, tie-down and hangar storage services.

The minimum requirements for aircraft parking, tie-down and hangar storage are as follows:

(1) *Ramp area.*

(i) The FBO shall provide taxi lines to refuel. Tie-down and hangar areas shall be provided for directional convenience and safety of transient and local based customer aircraft.

(ii) FBO facilities shall comply with the most current FAA Advisory Circular entitled, "Aircraft Ground Handling and Servicing."

(iii) The parking of unairworthy aircraft is not permitted. The Director or a designee will determine if an aircraft is unairworthy.

(iv) The FBO is responsible for providing taxi pavement marking lines and marking for parking transient aircraft upon its leased ramp area. Entrance guidance signs or pavement markings from adjoining taxiway, or both, shall be the responsibility of the airport management.

(2) *Tie-down aircraft.* The securing of an aircraft by means of anchors or ropes shall be conducted as set forth in the most current FAA Advisory Circular entitled, "Tie-Down Sense."

(3) *Hangar storage—aircraft maintenance and storage.*

(i) Sufficient hangar storage space shall be provided for transient and local based customer aircraft. This space shall be heated and shall have fire extinguishers. Employees shall be trained in the use of the fire extinguisher.

(ii) Equipment shall be available for moving aircraft such as two tugs with tow bar attachments to fit general aviation aircraft.

§ 476.16. Airframe, power plant and accessory services.

The minimum requirements for airframe, power plant and accessory services are as follows:

(1) *General.* The FBO shall provide comprehensive maintenance services.

(2) *Equipment.* Sufficient equipment, supplies and parts shall be provided to perform services in accordance with the manufacturer's recommendations or the equivalent thereof.

(3) *Personnel.* Mechanics holding proper FAA certification, along with other personnel—trained in accordance with applicable FAA regulations—as may be required, shall be available to perform maintenance services.

(4) *Hours of operation.* The minimum operating hours shall be from 8 a.m. to 4 p.m., Monday through Friday. At other times, an FAA-certified mechanic or Federal Communications Commission licensed specialist, or both, shall be on call and available to respond to emergency customer service requests.

§ 476.17. Radio and instrument services.

The minimum requirements for radio and instrument services are as follows:

(1) *Personnel.* Personnel trained and qualified in accordance with applicable FAA regulations shall be provided.

(2) *Equipment.* Sufficient equipment required to perform needed services shall be available.

§ 476.18. Air taxi and charter services.

The minimum requirements for air taxi and charter services are as follows:

(1) *General.* The FBO shall hold a current FAA Air Taxi Commercial Operator's Certificate in accordance with the FAA regulations at 14 CFR Part 135 (relating to air taxi operators and commercial operators).

(2) *Personnel.* An FAA-certified crew shall be available to conduct air taxi services for each aircraft.

(3) *Aircraft.* Aircraft shall comply with the requirements of the Air Taxi Commercial Operator Certificate held. Each operated aircraft shall be owned by or leased to the FBO, evidence of which shall be demonstrated by a title or lease agreement. Leased aircraft shall be under the exclusive control of the FBO. Maintenance of the aircraft shall meet the applicable requirements of 14 CFR Part 135.

(4) *Hours of operation.* Air taxi service shall be offered subject to the availability of personnel and aircraft.

§ 476.19. Flight training services.

The minimum requirements for flight training services are as follows:

(1) *General.* The FBO may engage in flight training. Flight and ground school instruction shall be conducted in conformance with FAA laws and regulations and with recommended standards in advisory circulars applicable to the types of training offered.

(2) *Personnel.* FAA-certified flight instructors shall be provided.

(3) *Aircraft.* FAA-certified aircraft shall be utilized and shall be under the exclusive control of the FBO.

(4) *Operation.* Flight instruction shall be offered when weather permits.

§ 476.20. Ground handling support services.

The minimum requirements for ground handling support services are as follows:

(1) *Personnel.* Personnel trained and qualified in accordance with applicable FAA regulations shall be provided.

(2) *Equipment.* Sufficient equipment required to perform services shall be available.

§ 476.21. Optional and special services.

General services or other services not specifically provided for in this section may be conducted by the FBO, subject to application to and approval by the Director. Written terms and conditions for the privilege of engaging in these optional services shall be determined subsequent to application and shall be commensurate with the nature and scope of the services proposed, with consideration given to the availability of facilities capable of supporting the proposed services. Optional services may include:

(1) Aerial advertising.

(2) Aerial photography or survey.

(3) Power line or pipeline patrol.

(4) Aircraft sales. The FBO may offer for sale to the public new and used aircraft. The FBO shall provide for spare parts and repair service necessary to meet the warranties for the make and model of aircraft for which sales privileges are granted. The FBO, as a dealer/distributor/broker, may be authorized to represent one or more major aircraft manufacturers.

(5) Other operations not excluded from the FAA regulations at 14 CFR Part 135 (relating to air taxi operators and commercial operators).

§ 476.22. Negotiated services.

The Department reserves the right to negotiate for specific services provided for in §§ 476.14—476.21, as well as other services not specified in this chapter.

§ 476.23. Specific exclusions applicable to FBOs.

(a) *Excluded operations.* The following concessions and their establishments are specifically excluded from the lease of an FBO:

(1) Ground transportation for hire.

(2) Barber and valet services.

(3) Wholesale or retail sale of nonaviation products including food and beverage sales through vending machines and newspapers.

(4) Automobile gasoline sales.

(5) Automobile maintenance and repair service for vehicular equipment of the public or other tenants of the airport.

(b) *Activities excluded from Harrisburg International Airport.* Aircraft banner, aircraft glider towing and untethered balloon activities are not permitted at Harrisburg International Airport.

§ 476.24. Application procedure for conducting fixed based operations.

(a) *Request to conduct fixed base operations.* A person desiring to conduct fixed base operations at a Commonwealth-owned airport shall submit an application to the Bureau detailing the applicant's plans to meet the requirements of this chapter and the proposed timetable for meeting these requirements. The Department may request additional information from an applicant if the application does not contain the schematics necessary to meet the requirements of this chapter.

(b) *Response to request application.* The Bureau will submit a written response to the applicant within 30 days of receipt of the application. The Department's decision will be based on the following criteria:

(1) The applicant demonstrates it can meet the requirements contained in this chapter.

(2) The applicant demonstrates its ability to comply with applicable Federal, State and local regulations.

(3) The applicant demonstrates the need for additional fixed based operations services to meet the continued growth and development of the airport facility.

(c) *Right to appeal.* If an applicant disagrees with the Bureau's decision, the applicant may elect to exercise appeal rights provided for under § 476.52 (relating to appeal).

§ 476.25. Lease agreements.

(a) *Approval of application.* Once an application to conduct fixed base operations is granted by the Bureau, the FBO and the Department will enter into a lease agreement in accordance with this chapter and other conditions upon which the Department and the FBO may agree.

(b) *Minimum standards.* The standards contained in this chapter are only minimum standards, and the Department reserves the right to impose, by lease agreement, more stringent standards than those in this chapter.

(c) *Questions or issues regarding terms of lease agreement.* If an FBO has a question or issue regarding the lease agreement, the FBO shall submit a written proposal concerning this matter to the Bureau. The Director or a designee will issue a response in writing within 30 days of receipt of the proposal.

(d) *Offering of services.* The FBO may not begin offering services until the lease agreement has been executed by the Department and the Department has received the required legal and fiscal approvals.

§ 476.26. Existing fixed base operating agreements.

(a) *Existing agreement preemption.* Fixed base operating agreements in place as of March 15, 1997, shall preempt the minimum standards in this chapter until those agreements terminate, unless the Department and an FBO agree to amend an agreement to be consistent with these minimum standards.

(b) *Airline operating agreements.* Privileges granted to airlines in accordance with airline operating agreements are excluded from this chapter.

§ 476.27. Compliance inspections.

(a) *Inspection of FBO facilities.* The airport management shall conduct at least one compliance inspection of

FBO facilities each year to ensure compliance with this chapter and the lease agreement. Deficiencies detected shall be reported to the FBO in writing within 5 days of completion of the inspection.

(b) *Corrections.* The operator shall make corrections within 24 hours of receipt of the written report and shall provide the Bureau with written notice of completion.

(c) *Proposed schedule of corrections.* For deficiencies requiring more than 24 hours to correct, the FBO shall submit a proposed schedule of corrections to the Bureau for approval. The FBO shall submit the proposed schedule within the time frame designated by airport management in the written report.

(d) *Cancellation of lease agreement.* Failure to make required corrections within the time frame specified by the Bureau will result in cancellation of the FBO's lease agreement.

WAIVER AND APPEAL

§ 476.51. Waiver.

The Department, for good cause, may waive compliance with the criteria or requirements, or both, of this chapter if the waiver is not inconsistent with the code. A waiver is considered granted if the FBO submits a written request to the Director and receives a formal written response granting the request.

§ 476.52. Appeal.

An applicant aggrieved by a decision of the Bureau may appeal by requesting an administrative hearing under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and Chapter 491 (relating to administrative practice and procedure).

[Pa.B. Doc. No. 97-405. Filed for public inspection March 14, 1997, 9:00 a.m.]