AIRPORT REGULATORY REQUIREMENTS THAT AFFECT ENVIRONMENTAL COMPLIANCE AND SUSTAINABILITY

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Katie van Heuven, Kaplan Kirsch & Rockwell
TODAY’S PRESENTATION

• ACRP Update
• Overview of Regulatory Requirements
• Case Studies / Examples / Questions
1. ACRP UPDATE

ACRP 10-21: Guidebook for Managing Compliance with Federal Regulations: An Integrated Approach

Prepared by Aviation Management Consulting Group, Inc.
Why develop this guidebook?

- Airports have to comply with many regulations (from up to 17 different federal agencies)
- Creates a “silos effect” in dealing with compliance
- Can result in duplicative efforts
Purpose of the Guidebook

• Identifies federal regulations that affect airports
• Provides methods and techniques to integrate resources, plans, policies, and procedures for regulatory compliance
• Provides a stand-alone tool, a quick reference guide, and master schedules
Compliance Management System (CMS)

- Facilitates the sharing of vital information and essential knowledge
- Fosters collaboration and innovation
- Improves efficiency and productivity across all functional areas of an airport
Overview of the Tool

• Identifies about 360 statutes, regulations, executive orders, and OMB circulars
• Ability to sort these 360 items by type, department or agency, frequency, function area, and compliance due dates
• Tool is editable for customization
• Export to a quick reference guide
# Quick Reference Guide

**Agency:** Federal Aviation Administration  
**Citation:** §139.313 (b) (5)  
**Completion Date:**

**Title/Part Number:** 14 CFR Part 139 - Certification of Airports  
**Section Name:** Snow and Ice Control

**Summary:** This section describes the requirements for the preparation, maintenance, and implementation of a snow and ice control plan.

**Compliance Requirement**  
**Type:** Document  
**Action:** Manual

**Frequency**  
**Type:** Trigger  
**Interval or Event:** Event

## Impacts (on other functional areas/responsible departments):

<table>
<thead>
<tr>
<th>Development</th>
<th>Operations</th>
<th>Management</th>
<th>Properties</th>
</tr>
</thead>
<tbody>
<tr>
<td>-Planning:</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>-Engineering:</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>-Construction:</td>
<td>Yes</td>
<td>Ye</td>
<td>Yes</td>
</tr>
<tr>
<td>-Safety/Security:</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>-Maintenance:</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

## Key Guidance:

- **SMS:** Yes  
- **EMS:** Yes  
- **Sponsor Assurances:** Yes  
- **14 CFR Part 139:** Yes

**Notes**
**Quick Reference Guide**

<table>
<thead>
<tr>
<th>Agency:</th>
<th>Federal Aviation Administration</th>
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<tbody>
<tr>
<td>Title/Part Number:</td>
<td>14 CFR Part 139 - Certification of Airports</td>
</tr>
<tr>
<td>Section Name:</td>
<td>Safety Areas</td>
</tr>
<tr>
<td>Citation:</td>
<td>§139.309 (a) (1-2)</td>
</tr>
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<td>Completion Date:</td>
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</table>

**Frequently Asked Questions:**

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must safety areas be free of standing water?</td>
<td>Yes, safety areas must be drained by grading or storm water sewers to prevent water accumulation.</td>
</tr>
<tr>
<td>Must safety areas be capable, under dry conditions, of supporting snow removal equipment and ARFF equipment?</td>
<td>Yes, each safety area must be capable of supporting these types of equipment including the occasional passage of an aircraft and without causing damage to the aircraft.</td>
</tr>
<tr>
<td>What type of objects can be located in a safety area?</td>
<td>Objects that need to be located in the safety area because of their function. They must be constructed to extent practical on frangible mounted structures of the lowest practical height, and no more than 3 inches above ground level grade.</td>
</tr>
</tbody>
</table>

**References**

<table>
<thead>
<tr>
<th>Other Regulation(s)</th>
<th></th>
</tr>
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<tbody>
<tr>
<td>Airport Sponsor Assurances</td>
<td></td>
</tr>
<tr>
<td>14 CFR Part 121</td>
<td></td>
</tr>
<tr>
<td>FAA Order 5280.5C Airport Certification Program Handbook</td>
<td></td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Other Agency Resources</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FAA Order 5190.6B FAA Airport Compliance Manual</td>
<td></td>
</tr>
<tr>
<td>AC 150/5200-18C Airport Safety Self-Inspection</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td></td>
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<tbody>
<tr>
<td>Citation:</td>
<td>§139.319 (i) (3)</td>
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<td>Completion Date:</td>
<td></td>
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<tr>
<td>Title/Part Number:</td>
<td>14 CFR Part 139 - Certification of Airports</td>
</tr>
<tr>
<td>Section Name:</td>
<td>Aircraft Rescue and Firefighting: Operational Requirements</td>
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<tr>
<td>Does Part 139 require the ACM to contain a section for an Airport Emergency Plan?</td>
<td>Yes, FEMA courses are required for operations and ARFF personnel. These courses include: IS-700.A: NIMS An Introduction and IS-100.FWA: Intro to Incident Command System (ICS 100) for Federal Workers.</td>
</tr>
<tr>
<td>Is NIMS training required for ARFF and emergency personnel?</td>
<td>Yes, FEMA courses are required for operations and ARFF personnel. These courses include: IS-700.A: NIMS An Introduction and IS-100.FWA: Intro to Incident Command System (ICS 100) for Federal Workers.</td>
</tr>
<tr>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Other Regulation(s):**

- Airport Sponsor Assurances
- 14 CFR Part 139.329
- FAA Order 5280.5C Airport Certification Program Handbook

**Other Agency Resources:**

- FAA Order 5190.6B FAA Airport Compliance Manual
- AC 150/5200-31C Airport Emergency Plan
- AC 150/5210-17C Programs for Training of ARFF Personnel

**Other Resources:**

- ACRP Report 103 Guidebook for Integrating NIMS for Personnel and Resources at Airports
- FEMA Course: IS-700.A National Incident Management System (NIMS) An Introduction
- FEMA Course: IS-100.FWA: Intro to Incident Command System (ICS 100) for Federal Workers
Quick Reference Guide

Agency: Federal Aviation Administration
Title/Part Number: 14 CFR Part 139 - Certification of Airports
Section Name: Wildlife Hazard Management

Summary: This section requires an airport operator to conduct a wildlife hazard assessment when certain wildlife events occur on or near the airport. They must take immediate action to alleviate potential problems. The wildlife hazard assessment must be submitted to the Administrator for approval and determination of the need for a wildlife hazard management plan.

<table>
<thead>
<tr>
<th>Compliance Requirement</th>
<th>Type:</th>
<th>Review</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Action:</td>
<td>Surveillance</td>
</tr>
<tr>
<td></td>
<td>Frequency</td>
<td>Continuously</td>
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<tr>
<td></td>
<td>Interval or Event:</td>
<td>N/A</td>
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<th>Development</th>
<th>Operations</th>
<th>Management</th>
<th>Properties</th>
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</thead>
<tbody>
<tr>
<td>Planning: Yes</td>
<td>Airside: Yes</td>
<td>Governance: No</td>
<td>Airside: Yes</td>
</tr>
<tr>
<td>Engineering: No</td>
<td>Landside: Yes</td>
<td>Administration: No</td>
<td>Landside: No</td>
</tr>
<tr>
<td>Construction: Yes</td>
<td>Environmental: No</td>
<td>Legal: No</td>
<td>Airlines: Yes</td>
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<tr>
<td></td>
<td>Safety/Security: Yes</td>
<td>Finance/Accounting: No</td>
<td>Concessions: No</td>
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<tr>
<td></td>
<td>Maintenance: Yes</td>
<td>Risk Management: Yes</td>
<td>General Aviation: Yes</td>
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</tbody>
</table>

Key Guidance:

SMS: Yes | EMS: Yes | Sponsor Assurances: Yes | 14 CFR Part 139: Yes

Notes
2. OVERVIEW OF REGULATORY REQUIREMENTS

- Federal Preemption
- Grant Assurances
- Revenue Diversion
- Part 139 Certification
- NEPA & Envt’l Laws
- Rates and Charges
A. Federal Preemption

• Federal Aviation Act
  – “exclusive sovereignty of airspace in the United States”

• Airline Deregulation Act
  – may not enact or enforce a regulation “related to the price, route or service of an air carrier that may provide air transportation”

• Airport Noise and Capacity Act
  – “may not restrict airport operations for purpose of noise”
    • Exception for exercise of proprietary powers” in which case, restriction must be reasonable, non-arbitrary, and nondiscriminatory
Federal Preemption, cont.

- Clean Air Act
  - § 233 (aircraft or aircraft engine emissions)
    - Preempts any state/local regulation “respecting emissions of any air pollutant from any aircraft or engine thereof”
  - § 209 (motor vehicles or motor vehicle emissions)
    - … “relating to the control of emissions from new motor vehicles or new motor vehicle engines …”

- Example
  - Rule requiring public and private fleets to acquire a specific percentage of low emission vehicles
    - Preempted for Federal Government entities and private entities not under state contract
    - State and Local governments eligible for market participant exception
B. Grant Assurances

ASSURANCES
Airport Sponsors

A. General.
1. These assurances shall be compiled with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.
1. Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.
   The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.
   The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
Grant Assurances

• **Assurance 20: Hazard Removal and Mitigation**
  – “... will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport ... will be adequately cleared and protected ...”
Grant Assurances, cont.

• **Assurance 21: Compatible Land Use**
  – “… will take appropriate action … to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations …”
Grant Assurances, cont.

• **Assurance 22: Economic Discrimination**
  – “... will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities ...”
Grant Assurances, cont.

• **Assurance 23: Exclusive Rights**
  – “... will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”
Grant Assurances, cont.

• **Assurance 24: Fee and Rental Structure**
  
  — “... will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport ...”
Grant Assurances, cont.

• **Assurance 25: Airport Revenue**
  – “All revenues generated by the airport ...will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator ...and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes ...”
C. Revenue Diversion

- Federal Aviation Act (49 USC 47133(a))
- Grant Assurance 25
Revenue Use Policy

“Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport are prohibited uses of airport revenue. However, the airport may pay for environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project or for constructing a ground access facility that would otherwise be eligible for the use of airport revenue.”

-Section VI (B) Prohibited Uses of Airport Revenue
D. Rates and Charges

• Anti-Head Tax Act
• Order 5190.6B (Airport Compliance Manual)
• Grant Assurance 24
Anti-Head Tax Act

• Airports generally may not levy or collect taxes, fees, head charges or other charges on air passengers.
  – Leaves open option of fees on non-aeronautical uses that access or otherwise use the airport, e.g.:
    • Taxi services
    • City parking taxes
    • Fuel dispensing fees
Rates and Charges Policy

- Airports may include “reasonable environmental costs” in their rate base and recover those costs through fees charges for providing airfield aeronautical services and facilities, e.g.:
  - Costs to address environmental contamination
  - Costs for environmental mitigation for development project
  - Noise abatement costs
• **18.10. Environmental Costs.** Sponsors may include reasonable environmental costs in the rate base to the extent that the airport incurs a corresponding actual expense. The resulting revenues are subject to the requirements on the use of airport revenue.

• **18.11. Noise.** Reasonable environmental costs include sponsor costs for aircraft noise abatement and mitigation measures, both on and off the airport. This includes land acquisition and acoustical insulation expenses to the extent that such measures are undertaken as part of a comprehensive aircraft noise compatibility program.

• **18.12. Insurance.** Reasonable costs of insuring against liability, including environmental contamination. ...
Grant Assurance 24

• Self-sustainability requirement.
  – Particularly expensive measures/mitigation costs could raise concerns about self-sustainability.

• Fair Market Value requirement for non-aeronautical uses
E. Part 139 Airport Certification

- Regulations covering
  - Operations
  - Safety
  - Wildlife hazards
F. NEPA AND ENVIRONMENTAL STATUTES

- State Laws
- Wetlands
- Endangered Species
- Historic Preservation
- Clean Air Act
- NPDES
3. CASE STUDIES / EXAMPLES / QUESTIONS
PORTLAND/PDX CASE STUDY
Portland Harbor Superfund Site

- Listed in 2000
- Community Information Sessions (2016)
- Record of Decision and Clean up (TBD)
- Port of Portland is potentially responsible party

Source: U.S. EPA
PDX Storm Water System

- All storm water flows south to the Columbia Slough which is managed for flood control by Multnomah County Drainage District (MCDD)
  - Airfield runoff
  - Deicing
  - Marine Drive (City owned)

Source: PDX Storm Water Master Plan (2013)
City Ordinance 185610 (2012)

- Bureau of Environmental Services (BES) to begin billing for stormwater service in drainage districts
- BES to include increased fee for Portland Harbor Superfund Program
Pending Litigation

• **A4A v. Jordan et al** (Federal District Court)
  – City violated the anti-revenue diversion provision in 49 USC 47133 by requiring airlines to pay fees

• **A4A v. Port of Portland** (Part 16 case)
  – Port (as sponsor) is violating grant assurances by improperly diverting airport revenue
  – Port cannot include fee in rate base
# GREENHOUSE GAS INITIATIVES EXAMPLE

<table>
<thead>
<tr>
<th>Proposed Initiative</th>
<th>Permissible?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide infrastructure for preconditioned air and ground power</td>
<td>YES</td>
</tr>
<tr>
<td>Prohibit auxiliary power units and/or require use of preconditioned air</td>
<td>NO</td>
</tr>
<tr>
<td>Support reduced engine taxiing</td>
<td>YES</td>
</tr>
<tr>
<td>Mandating engine off taxiing</td>
<td>NO</td>
</tr>
<tr>
<td>Make credits available for voluntary purchase</td>
<td>YES</td>
</tr>
<tr>
<td>Tax passengers to fund carbon offsets</td>
<td>NO</td>
</tr>
<tr>
<td>Incentives for tenant use of alternate-fuel GSE (subject to reasonableness, and unjust discrimination standards)</td>
<td>YES</td>
</tr>
<tr>
<td>Mandate private fleet use of alternate-fuel vehicles</td>
<td>NO</td>
</tr>
</tbody>
</table>
QUESTIONS?

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David.full@rsandh.com