

33rd Annual Basics of Airport Law Workshop and 2017 Legal Update

Session #3

SPONSOR OBLIGATIONS PART 1: NAVIGATING COMPLIANCE ISSUES

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WHAT IS “COMPLIANCE”?

- Satisfying Obligations Under Sponsor Assurances and Related Federal Laws
 - Grant Assurances
 - Federal Property Conveyances
 - Other Federal Laws and Policies
- Developing Procedures To Assure Compliance
- Preserving Authority To Meet Federal Obligations

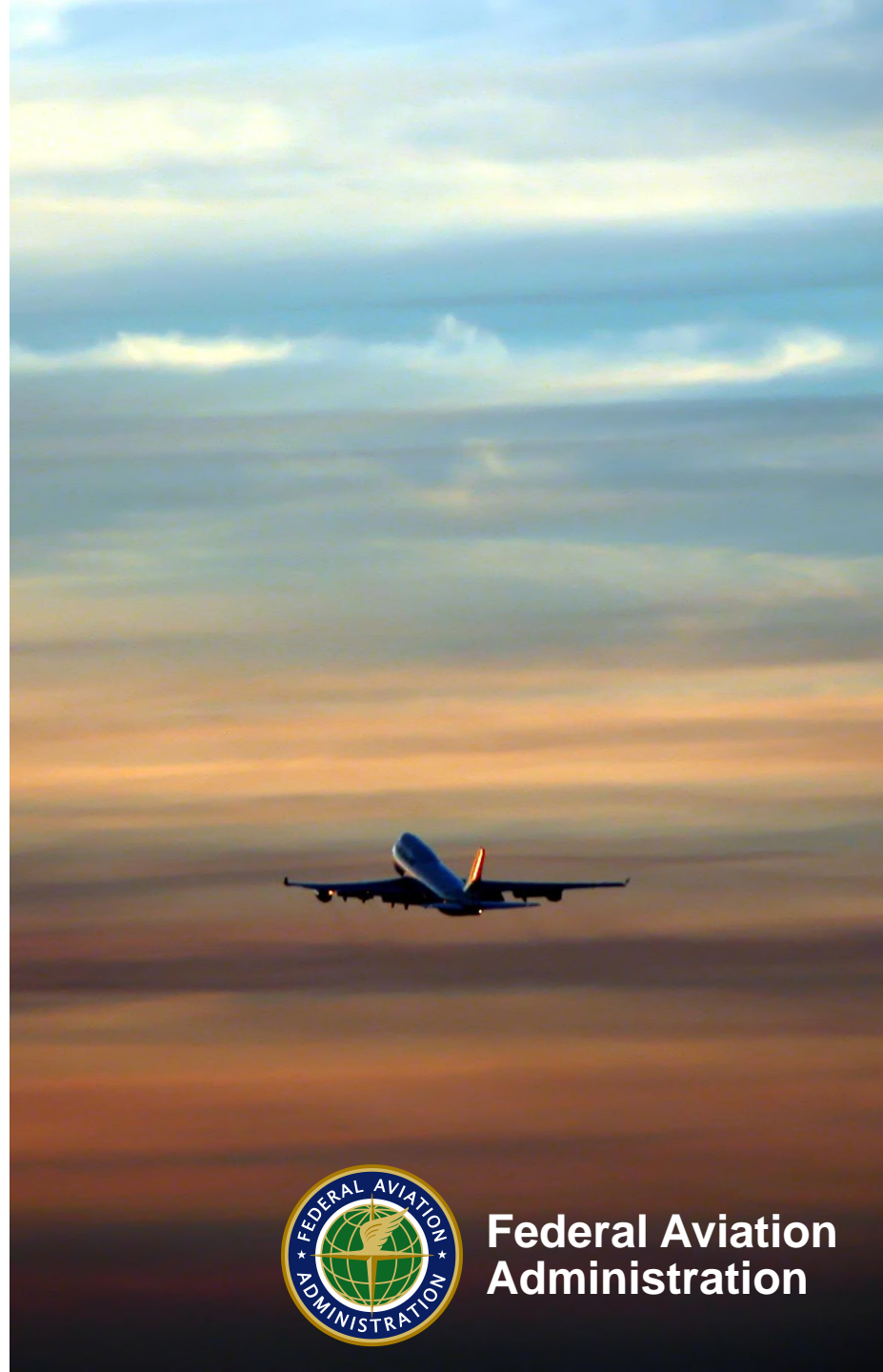
Airport Compliance

Navigating Compliance Issues

Presented to: AAAE Airport Law Conference
By: Lorraine Herson-Jones, Manager,
Compliance
Date: October 16, 2017



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Airport Obligations – Grant Assurances

- **Essentially a contract**
- **Funds given in exchange for assurances regarding the airport and its operation and maintenance**
- **Grant Assurances, as applicable, are required of all airport sponsors**



Duration of Grant Assurances

- **20 Years or the useful life of the facilities developed or equipment purchased**
- **No Time Limit for -**
 - Exclusive Rights
 - Airport Revenue
 - Civil Rights
 - Real Property acquired with Federal Funds



Key Grant Assurances

- **#5 - Right and Powers**
- **#22 - Economic Nondiscrimination**
- **#23 - Exclusive Rights**
- **#25 - Airport Revenues**



5 – Rights and Powers

- **Ensure that current/future plans will not deprive the airport of its rights and powers**
- **Review airports' policies and procedures to ensure that you are not giving away rights and responsibilities**



#22 – Economic Nondiscrimination

- **Airport open to all aeronautical users**
 - Without unjust discrimination, unless restriction based on safety or efficiency
 - FAA makes final determination of safety and efficiency, including:
 - Safety & Efficiency Studies by Flight Standards and Air Traffic



Aeronautical Activity – Definition

- **Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations.**

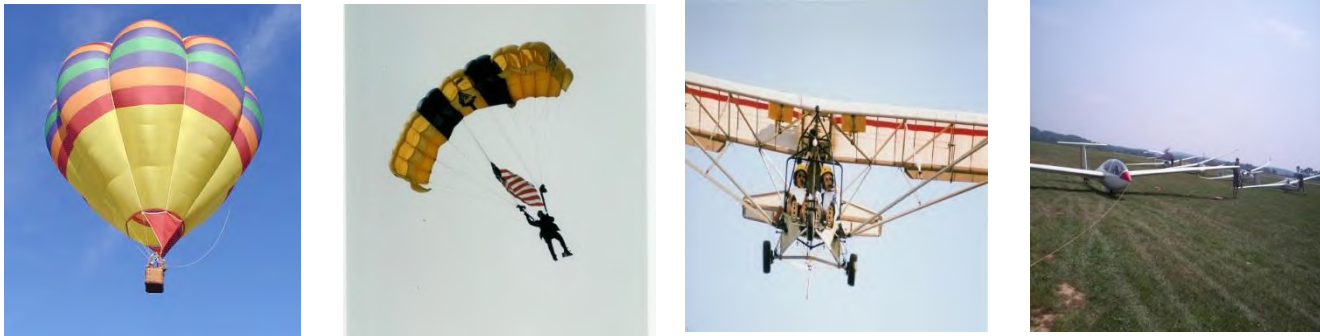


Aeronautical Activity Includes But Is Not Limited To

- Air Taxi and Charter Operations
- Scheduled or nonscheduled Air Carrier Services
- Pilot Training
- Aircraft Rental and Sightseeing
- Aerial Photography
- Crop Dusting
- Aerial Advertising and Surveying
- Aircraft Sales and Service
- Aircraft Storage
- Sale of Aviation Petroleum Products
- Repair and Maintenance of Aircraft
- Sale of Aircraft Parts
- Parachute Activities
- Ultralight Activities
- Sport Pilot Activities
- Military Flight Operations



#22 – Economic Nondiscrimination



Source: FAA

Examples of Aeronautical Users	
General Aviation	Sport Aircraft (Ex. Paragliders)
Skydivers	Ultralights
Agricultural operators	Banner Towers



#22 – Economic Nondiscrimination

- Adoption of **REASONABLE** Minimum Standards
 - May violate #22 if standards are too difficult to meet or unjustly discriminate among similarly-situated aeronautical users.
 - Standards may pursue other goals:
 - Efficiency
 - Legitimate airport business interests
 - Public aeronautical needs: level and scope of services



#23 – Exclusive Rights

- **No special privilege or monopoly to engage in aeronautical activity**
- **Obligation continues as long as the airport is an airport**
- **Also included in:**
 - Surplus property conveyances
 - FAAP/ADAP/AIP grant agreements
 - Section 16/23/516 property conveyances
 - Common to all property transfers & grants



#25 – Airport Revenue

- **All revenues generated by the airport and any local taxes on aviation fuel (after 12/30/87), will be expended by it for the capital or operating costs of the airport, the local airport system...and which are directly and substantially related to the actual air transportation of passengers or property.**



#25 – Airport Revenue

- **FAA’s Revenue Use Policy defines airport revenue and describes the permitted and prohibited uses of airport revenue.**
- **Revenue generated by the airport for the aeronautical and nonaeronautical uses, such as:**
 - fees,
 - charges,
 - rents,
 - or other payments received by or accruing to the sponsor from users of airport property and services



Other Airport Obligations

- **In addition to Grant Assurances, Airports incur:**
- **Property Conveyances Obligations**
 - Surplus and Non-surplus
- **Obligations by Law for Federally-assisted airports**
 - Exclusive Rights
 - Civil Rights
 - Revenue Use

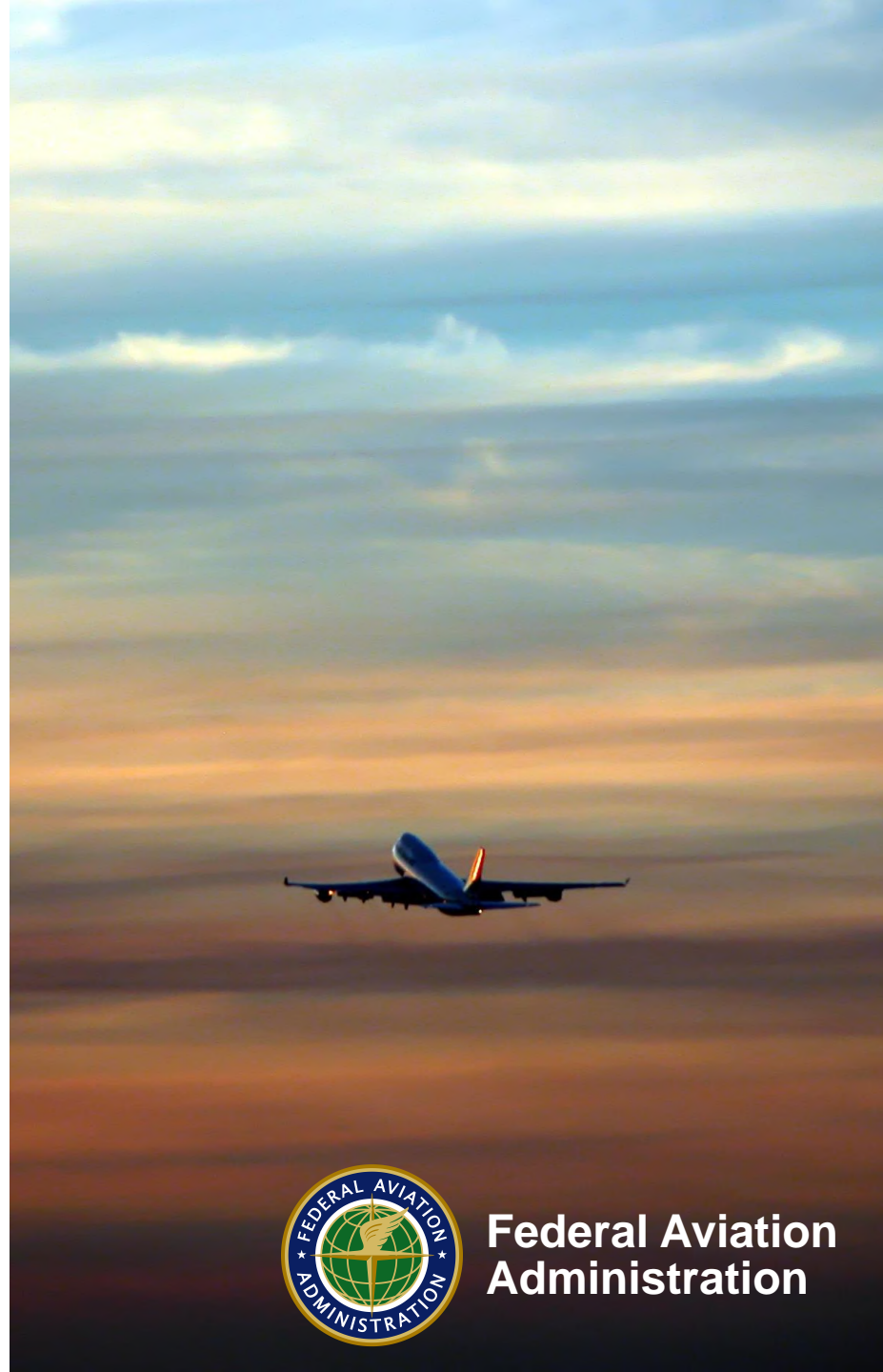


FAA Compliance and Enforcement Philosophy

Presented to: AAAE Airport Law Conference
By: Sue Mowery-Schalk, Director,
Airports Division, Great Lakes Region
Date: October 16, 2017



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FAA Overview of Compliance and Enforcement (C&E) Philosophy

- **Guidance found in FAA Order 8000.373, FAA Compliance Philosophy and FAA Order 2150.3B, FAA Compliance and Enforcement Program.**
- **To reach the next level of safety in this increasingly busy, complex, and global air transportation environment, the FAA is transitioning to a proactive safety management approach.**
- **Will emphasize accountability of all stakeholders.**



FAA Compliance and Enforcement Philosophy

- **From the Administrator's Compliance Philosophy:**
“FAA recognizes that some deviations arise from factors such as flawed procedures, simple mistakes, lack of understanding, or diminished skills. The agency believes that deviations of this nature can most effectively be corrected through root cause analysis and training, education or other appropriate improvements to procedures or training programs for regulated entities...”



FAA Compliance and Enforcement Philosophy

- **Encourage airports to build internal measures to identify non-compliance and ensure corrective actions.**
- **Where airports reflect positive motivation, the FAA will engage with them to encourage compliance and safety.**
- **FAA will focus our resources on areas of higher risk and insist on the expectation of accountability for risk-taking behaviors and zero tolerance for reckless behavior.**



What Does this Mean for ARP under Part 139?

Before:

- **Administrative Enforcement (Letter of Correction and Warning Letter)**
- **Legal Enforcement**

Now:

- **Compliance Action (Compliance Letter)**
- **Administrative Enforcement (Warning Letter)**
- **Legal Enforcement**



Five Reasons for Legal Enforcement

1) Intentional Conduct

- Falsification of Records
- Sending notice to the FAA that an airport has completed discrepancies in an LOC, but has not, in fact, done so. This is different from Failure to Complete a Corrective Action (below).

2) Reckless Conduct

- An act (or failure to act) evidencing a deliberate indifference to or a conscious disregard of: (i) a safety standard embodied in an applicable statute or regulation or (ii) the reasonably foreseeable consequences of the act (or failure to act).



Five Reasons for Legal Enforcement

3) Failure to Complete a Corrective Action

- An airport is not intentionally deceiving the FAA, but still fails to complete the action they agreed to.

4) Conduct Creating or Threatening to Create an Unacceptable Risk to Safety

- When alternative means to address the noncompliance and to effectuate immediate and future compliance would not be sufficient.
- The region has tried everything they can think of to work with the airport, but nothing seems to work.



Five Reasons for Legal Enforcement

5) Repeated Non-Compliance

- The same specific violation occurs again.
- What you should not see in CCMIS or Compliance Letter: “For the third year in a row, Airport XYZ failed to....”



Grant Assurance Compliance

Voluntary Compliance – Most grant assurance violations are not deliberate attempts to circumvent federal obligations. Generally, violations occur because sponsors do not understand their obligations or application to a specific circumstance.



Grant Assurance Compliance

The Priority is still Safety –

- **Ensure AOA is safe and usable condition**
- **Runway approaches cleared**
- **Operable and well maintained markings & lighting**
- **Compatible land use issues are reasonably addressed**



How We Achieve Compliance

- **Education – State and Regional Conferences, Industry Workshops, speaking engagements, website**
- **Advisory Services – policy guidance, three year notification**
- **Surveillance – Land use inspections, Financial Reviews, Compliance inspections, Grants Watch List**



Compliance Resolution Process

- **Part 13.1 Complaint – informal resolution**
- **Part 16 Formal Complaint**
- **Notice of Investigation**
- **Judicial Action**



Compliance Status

- **Compliance – with grant assurances**
- **Conditional Compliance – corrective action in progress**
- **Pending Non-compliance – timeframe expired**
- **Non-compliance – determined by Part 16 decision**



What is Planning for Compliance

Taking a holistic view of the airport during planning to identify:

- Current/Long standing compliance issues
- Future/Potential challenges for the airport that may become compliance issues



Why Planning for Compliance

- **Every airport has a potential compliance issue**
- **Gets the airport ahead of the curve and puts them in the driver seat**
- **Educates the sponsor, community, elected officials, airport users**
- **May preempt informal complaints**



Challenges

- **Getting past the “gotcha” fear and concerns that it could be used against sponsor**
- **Ends up on a shelf and not read**
- **FAA policy changes after document is created – become an outdated document**
- **Solutions may take time and effort to implement**



SPONSOR BEST PRACTICES

- Minimum Standards
- Airport Rules and Regulations
- Airport Leasing Policy
 - Standard Lease and Contract Forms
 - Subordination Clause
- Operational/Management Procedures
 - Pavement Condition
 - ALP Updates
 - Airport Self-Inspection Program

CURRENT COMPLIANCE ISSUES

- *Policy on the Non-Aeronautical Use of Airport Hangars*
- *Policy and Procedures Concerning the Use of Airport Revenue; Proceeds from Taxes on Aviation Fuel*
- *Rates and Charges at Smaller Airports – AOPA*
- *Policy on Evaluating Disputed Changes of Sponsorship at Federally Obligated Airports*
- *Interim Procedures for Review of Restrictions on Banner Towing, Powered Parachute, Gliders, Light Sport Aircraft, Parachute Operations, and Ultralights at Federally Obligated Airports*

COMPLIANCE RESOURCES

- FAA Compliance Handbook, Order 5190.6B
- FAA Advisory Circulars, Orders, Policies
 - Exclusive Rights, AC 5190-6
 - Policies and Procedures Concerning the Use of Airport Revenue
 - Policy Regarding Airport Rates and Charges
 - Minimum Standards for Commercial Aeronautical Activity
- Part 16 Decisions and DOT/FAA Letters

QUESTIONS?

Text a “friend’s” question to:
240.893.3499

QUESTIONS?

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