SAFETY, SECURITY, AND TORT LIABILITY

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ROADMAP

- Sources and Summary of Sponsors’ Safety Obligations
- Safety Management Systems (SMS)
  - Regulatory Status
  - Legal Considerations
  - Evolving Theories of Tort Liability?
- Sponsors’ Airport Security Roles
SOURCES OF SPONSORS’ SAFETY OBLIGATIONS

Source: coaching-journey.com
QUICK POLL

Source: aviationpros.com

Source: aecom.com
FAA GRANT ASSURANCES

- Operation and Maintenance (#19)
- Hazard Removal and Mitigation (#20)
- Compatible Land Use (#21)
- Construction Inspection and Approval (#17)
- Economic Nondiscrimination (#22)
ABOUT THOSE “ADVISORY” CIRCULARS...

- 125 Current Series 150 Advisory Circulars
- Generally *mandatory* for Part 139 airports
- Often *mandatory* for grant- or PFC-funded projects
- *Recommended* practices in other cases, but beware…
“The airport and all facilities which are necessary to serve the aeronautical users of the airport . . . shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation.”

- Signage, Marking, and Lighting
- NOTAMs
- Snow and Ice
- Foreign Object Debris (FOD)
- Pavement Maintenance
OPERATION AND MAINTENANCE (#19)

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WILDLIFE MANAGEMENT

- Guided by Advisory Circulars
- FAA has previously proposed requiring wildlife hazard programs for all obligated airports
- FAA has taken enforcement action under the grant assurances
- Grants are available to support assessments and mitigation
RUNWAY SAFETY

- Runway Safety Areas
  - EMAS

- Obstacle Free Zones (OFZ)
  - Runway OFZ
  - Inner-approach OFZ
  - Inner-transitional OFZ

- Runway Object Free Area
- Runway Protection Zones
HAZARD REMOVAL AND MITIGATION (#20)

“Take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.”
COMPATIBLE LAND USE (#21)

“Take appropriate action, to the extent reasonable, including the adoption of zoning laws, 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, including landing and takeoff of aircraft.”

- Wildlife Attractants
  - Municipal Solid Waste Landfills (49 U.S.C. 44718(d))

- Off-Airport Obstructions or Hazards
  - 14 CFR Part 77: Safe, Efficient Use and Preservation of the Navigable Airspace
CONSTRUCTION INSPECTION AND APPROVAL (#17)

“Provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project.”

- Duty to supervise?
ECONOMIC NONDISCRIMINATION (#22)

An airport sponsor –

- *May* establish reasonable and not unjustly discriminatory conditions for the safe and efficient operation of the airport.

- *May* prohibit or limit aeronautical uses of the airport if such action is necessary for the safe operation of the airport.
CERTIFICATED AIRPORTS

- Certain airports require Airport Operating Certificates
  - Scheduled Operations > 9 Seats
  - Unscheduled Operations > 30 Seats

- Part 139 Prescribes Minimum Safety Standards
  - Airport Certification Manual
  - Aircraft Rescue and Firefighting
  - Runway Safety Areas
  - Wildlife Hazard Assessment / Management Plan
  - Snow and Ice Control Plan
REGULATORY LIABILITY (14 C.F.R. PART 139)

- FAA may collect civil penalties up to $32,666 per day of violation, or for each flight involving the violation

- Examples:
  - $917,000 – Puerto Rico Ports Authority
    - ARFF equipment failures, training and response time deficiencies
    - self-inspections not conducted in accordance with ACM.
  - $735,000 (Reduced to $200,000) – Cleveland Airport System
    - Staffing of snow removal (4 of 18 positions staffed)
    - De-icing of runways and taxiways
TORT LIABILITY (A BRIEF REVIEW)

- Negligence
  - Duty
  - Breach
  - Causation (Factual and Legal)
  - Damages

- Negligence Per Se
  - Violation of a Statute
  - Harm the Statute was Designed to Prevent
  - Plaintiff Part of the Protected Class
SOVEREIGN IMMUNITY

- Most states have limited sovereign immunity waivers
- You need to know:
  - Are you covered?
  - Limitations on damages?
  - Procedural requirements?
  - Discretionary function exceptions?
  - Permissible causes of action?
  - Liability insurance?
WHAT IS AN AIRPORT’S STANDARD OF CARE?

Technically:

- It depends on your airport:
  - certificated or non-certificated

- It depends on your jurisdiction:
  - the standard of care
  - evidence of the standard of care
WHAT IS AN AIRPORT’S STANDARD OF CARE?

Practically:
An airport proprietor exercising an ordinary degree of prudence and caution follows the Advisory Circulars.
AND NOW FOR SOMETHING COMPLETELY DIFFERENT
UNCERTAINTY EXISTS
SMS REGULATORY PROCESS RECAP

- First Draft – October 2010
- Supplemental Draft – July 2016
- Final Draft
  - Q1 of 2017
  - Q4 of 2017
  - April 2018?
KEY NEW ELEMENTS OF SMS

- The Accountable Executive
- Responsibility on Non-Movement Area
- Data Collection
- Sponsor-Produced Documents
  - Risk Matrix
  - SMS Manual
THE ACCOUNTABLE EXECUTIVE
NON-MOVEMENT AREAS

NO VEHICLES
BEYOND THIS POINT
Figure 1:

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THE (RISK) MATRIX

- HIGH RISK
- MEDIUM RISK
- LOW RISK
LEGAL CONCERNS WITH SMS

- Shifting Liability (remember this?)
  - Sponsor
  - Accountable Executive
- Data Protection and Privacy
- Existing Documents
- Organizational Hierarchy
- Coordination with Outside Entities
LIABILITY

HELLO
I AM...

SUING YOU
DATA PROTECTION

This is where we hide our public information.
EXISTING DOCUMENTS
ORGANIZATIONAL HIERARCHY AND STRUCTURE
COORDINATION WITH OUTSIDE ENTITIES

- Sponsor
- FAA
- Tenants & Carriers
WHAT NOW?
SO, WHAT NOW?

BEGIN

- Legal Exposure Audit
- Regulatory Documents Audit
- Administrative Audit
- Financial Assessment
- FAA Approvals Audit
- Assemble Review Team
- Schedule Document Revisions
- Gap Analysis

IMPLEMENT
COLLECTING DATA
I HAVE AN EXCELLENT IDEA!
LET'S CHANGE THE SUBJECT.
AIRPORT SECURITY

- Sterile Areas
- AOA
- SIDA
- Airport Security Plans

- Perimeter/Physical Security
- Cybersecurity
- Insider Threats
- Local Law Enforcement
- Operational Agreements
- Sensitive Security Information
SENSITIVE SECURITY INFORMATION (SSI)

- Information “obtained or developed in the conduct of security activities . . . the disclosure of which TSA has determines would be detrimental to the security of transportation.”
- May only be disclosed to those with a “need to know.”
- Must take “reasonable steps” to protect from disclosure.