

PLANNING FOR COMPLIANCE

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CHAPTER ELEVEN

COMPLIANCE

11.1. Introduction

Airport sponsors that accept federal grants or federal property must also agree to certain obligations known as grant assurances. The Federal Aviation Administration (FAA) airport compliance program helps airport sponsors meet these obligations, and FAA Order 5190.6B, *Airport Compliance Manual*, provides guidance in interpreting and implementing these commitments. In general, these grant assurances remain in effect for the useful life of the project but do not last longer than 20 years. An exception is for land acquisition grants. These grant assurances remain in effect for as long as the property is owned and operated as an airport. The duration and applicability of each grant assurance for airport sponsors are summarized in FAA Order 5100.38D, *Airport Improvement Program Handbook*, Table 2-5, Duration and Applicability of Grant Assurance.¹

Title 14 of the Code of Federal Regulations (CFR) Part 139, *Certification of Airports*, establishes standards for airports with (scheduled or unscheduled) commercial passenger service. Part 139 airports are subcategorized as Class I-IV airports based on the size of the air carrier aircraft that operate at the airport. Under Part 139, the size of the aircraft depends on the number of seats the aircraft has. An air carrier with 10 to 30 seats is considered to be small, and an air carrier with more than 30 seats is considered to be large. Cedar City Regional Airport (CDC) is a Class I Part 139 airport that has scheduled operations of both large and small aircraft as well as unscheduled operations of large aircraft.



11.2. Sources of Obligations

Each grant agreement and deed of property conveyance includes the obligations an airport sponsor must agree to as a condition of accepting grant funding or property from the federal government. The FAA is responsible for administering the following federal financial assistance programs:

- Grant agreements issued through airport development grant programs such as the Federal Aid to Airports Program (**FAAP**), Airport Development Aid Program (**ADAP**), and Airport Improvement Program (**AIP**).
- Grant agreements and instruments of non-surplus conveyance issued under the 1946 Airport Act, 1970 Airport Act, or the Airport and Airway Improvement Act of 1982 (**AAIA**).
- Surplus property instruments of transfers issued under the provisions of Section 13(g) of the Surplus Property Act of 1944.
- Deeds of conveyance issued under Section 16 of the 1946 Airport Act, Section 23 of the 1970 Airport Act, and Section 516 of the Airport and Airway Improvement Act.
- AP-4 agreements authorized by various acts between 1939 and 1944.
- Exclusive Rights under Section 303 of the Civil Aeronautics Act of 1938 and Section 308(a) of the FAA Act.
- Commitments included in environmental documents prepared in accordance with FAA requirements related to the National Environmental Policy Act of 1969 (**NEPA**) and the Airport and Airway Improvement Act.
- Any written agreements between the sponsor and the FAA. This includes settlement agreements resulting from litigation.

11.3. Federal Grant Assurances

There are 39 Grant Assurances that federally obligated airport sponsors must comply with in the performance of grant agreements for airport development, planning, and noise compatibility programs.² The FAA has published *Airport Sponsor and Airport User Rights and Responsibilities* to provide airport sponsors with guidance in understanding and fulfilling these grant assurances by explaining some of the more complex grant assurances (Grant Assurances 5, 22, 23, 24, and 25) in simple terms.³ The FAA also provides basic guidance for interpreting the various commitments for federal grant funds in FAA Order 5190.6B, *Airport Compliance Manual*, and the FAA's Airport Compliance Program is designed to help ensure airport sponsors are fully informed of their federal obligations and understand how to comply with each grant assurance given the circumstances at a particular airport.

Most violations of grant assurances occur unintentionally rather than in a deliberate attempt to avoid federal obligations because many airport sponsors do not fully understand every requirement or how they apply in a specific circumstance. The Airport Cooperative Research Program (**ACRP**) Report 184, *Understanding FAA Grant Assurance Obligations*, has also been published by the Transportation Research Board (**TRB**) to provide additional guidance in interpreting and meeting these obligations. According to this report, the majority of compliance complaints made against airports were related to the following grant assurances.⁴

11.3.1. Grant Assurance 5: Preserving Rights and Powers

Grant Assurance 5, Preserving Rights and Powers, prohibits an airport sponsor from taking or permitting any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without FAA approval. It also requires airport sponsors to act promptly to acquire, extinguish, or modify any outstanding rights or claims of rights of others that would interfere with the sponsor's ability to comply with all of its obligations. In other words, airport sponsors can't take any action or enter into any agreement that could prevent it from complying with its grant obligations. This means most real estate transactions require prior FAA approval.

11.3.2. Grant Assurance 19: Operation and Maintenance

Grant Assurance 19, Operation and Maintenance, applies to airports subject to Federal Aid to Airports Program, Airport Development Aid Program, or Airport Improvement Program agreements; surplus property; and conveyances as well as deeds of conveyance issued under Section 16, Section 23, and 516.

Obligation: To preserve, operate, and maintain airport facilities in a safe and serviceable condition for the benefit of the public and in a manner that will eliminate aviation hazards. This applies to all facilities shown on the approved airport layout plan that are dedicated to aviation use and includes facilities conveyed under the Surplus Property Act.

11.3.3. Grant Assurance 20: Hazard Removal and Mitigation

Grant Assurance 20, Hazard Removal and Mitigation, requires airports to prevent, as much as reasonably possible, the growth or establishment of obstructions in the aerial approaches to the airport. The term obstruction refers to natural or man-made objects that penetrate the imaginary surfaces as defined in Part 77, Safe, Efficient Use and Preservation of the Navigable Airspace.

11.3.4. Grant Assurance 21: Compatible Land Use

Grant Assurance 21, Compatible Land Use, requires airports to take appropriate action, to the extent reasonably possible, to restrict the use of lands in the vicinity of the airport to activities and purposes compatible with normal airport operations.

11.3.5. Grant Assurance 22: Economic Nondiscrimination

Grant Assurance 22, Economic Nondiscrimination, requires airports to operate for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination.

11.3.6. Grant Assurance 23: Exclusive Rights

Grant Assurance 23, Exclusive Rights, requires airports to operate the airport without granting or permitting any exclusive right to conduct any aeronautical activity at the airport. Aeronautical activity is defined as any activity that involves or is related to the operation of an aircraft or contributes to the safety of such operations (e.g., air taxi and charter operations, aircraft storage, sale of aviation fuel).

11.3.7. Grant Assurance 24: Fee and Rental Structure

Grant Assurance 24, Fee and Rental Structure, requires airports to maintain a fee and rental structure for the facilities and services being provided to airport users that will make the airport as self-sustaining as possible. (Note: Fair and reasonable for aeronautical activities and fair market value for nonaeronautical activities.)

11.3.8. Grant Assurance 25: Airport Revenue

Grant Assurance 25, Airport Revenue, requires airports to use all airport revenues for the capital or operating costs of the airport, the local airport system, or other local facilities that are owned or operated by the owner or operator of the airport and directly relate to the actual air transportation of passengers or property.

a. Special Conditions Affecting Noise Land and Future Aeronautical Use Land

Airports must apply interim revenue derived from noise land or future aeronautical use land to projects eligible for grants under the Airport Improvement Program. This income may not be used for the matching share of any grant.

11.3.9. Grant Assurance 29: Airport Layout Plan

Grant Assurance 29, Airport Layout Plan, requires airports to develop, operate, and maintain the airport in accordance with its most recently approved airport layout plan (ALP). Airport land depicted on the latest property map, which is Exhibit A of the airport layout plan, cannot be disposed of or otherwise encumbered without prior FAA approval.

11.3.10. Grant Assurance 31: Disposal of Land

Grant Assurance 31, Disposal of Land, requires airports to obtain FAA approval for the sale or other disposal of property acquired under the Federal Aid to Airports Program, Airport Development Aid Program, or Airport Improvement Program as well as for the use of any net proceeds.

11.3.11. Other Obligations

Grants agreements can also include obligations relating to:

- Use of Government Aircraft
- Land for Federal Facilities
- Standard Accounting Systems
- Reports and Inspections
- Consultation with Users
- Terminal Development Prerequisites
- Construction Inspection and Approval
- Minimum Wage Rates
- Veterans Preference
- Audits, Audit Reports, and Record Keeping Requirement
- Local Approval
- Civil Rights
- Construction Accomplishment
- Planning Projects
- Good Title
- Sponsor Fund Availability

11.4. Complaint Resolution

Under Title 14 of the Code of Federal Regulations 13.1, *Reports of Violations*, any person who knows of a violation of federal aviation laws, regulations, rules, policies, or orders may informally report the violation to the FAA. This includes allowing airport users to make informal complaints to report allegations of grant assurance violations. Individuals seeking to file informal complaints are encouraged to do so in writing. Alleged violations are then investigated by the FAA's Airports District Office or Regional Airports Division.

Title 14 CFR Part 16, *Rules of Practice for Federally-Assisted Airport Enforcement Proceedings*, which is commonly referred to as Part 16, outlines the formal complaint process. To file a formal complaint under Part 16, complainants must be directly and substantially affected by any alleged noncompliance. Part 16 includes regulatory time frames and detailed procedures associated with the process. This includes engaging in a good faith effort to resolve the matter informally as this is the preferred course of action when it comes to addressing violations. The FAA maintains a Part 16 Decision Database that contains copies of all the final determinations of these complaints. For airports facing a formal complaint, it may be helpful to review previous decisions made in similar cases.⁵

11.5. Compatible Land Use

Land use compatibility is attained when property located on and near an airport is used in ways that don't adversely affect flight operations and is itself not adversely affected by airport operations. According to FAA Order 5190.6B, *Airport Compliance Manual*, land use planning and zoning laws are important tools to help protect airport investments from incompatible land uses, protect airport approaches, and ensure land uses on and near airport property are compatible with normal airport operations while also meeting federal obligations relating to Grant Assurance 21.

This includes restricting uses that create or contribute to flight hazards such as tall structures or have features that block the line of sight from the control tower to the airfield, inhibit pilot visibility (e.g., glaring lights or smoke), interfere with navigational guidance systems, or attract birds. Likewise, the development of public facilities (e.g., schools, churches, concert halls) and residential areas should also be avoided near the airport due to noise and safety concerns. This includes airpark developments, which allow aircraft owners to reside and park their aircraft on the same property with immediate access to an airfield, because aircraft owners are entitled to the same protection from airport impacts as any other residents of the community.

A "through-the-fence" agreement is one in which the airport allows owners of property located adjacent to the airport to access the airfield. While the FAA does not support these types of agreements under any circumstances when they are associated with residential use (e.g., airpark developments), exceptions may be granted on a case-by-case basis for off-airport aeronautical businesses providing the sponsor makes sure the agreement does not violate any grant assurances.⁶

11.5.1. Improper and Noncompliant Land Uses

The most common improper and noncompliant land use is when property that has been designated for aeronautical use, or on property not released by the FAA for nonaeronautical use, is used or leased for nonaeronautical uses (i.e., not shown on the airport layout plan). This includes using hangars to store automobiles, using property and buildings for animal control facilities, nonairport vehicle and maintenance equipment storage, aircraft museums, and municipal administrative offices.

Failure to take adequate steps to prevent hazardous wildlife on airport property is another common area of noncompliance. This can stem from allowing incompatible land uses that are hazardous wildlife attractants such as wastewater ponds, municipal flood control channels and drainage basins, sanitary landfills, solid waste transfer stations, electrical power substations, water storage tanks, public parks, or golf courses. Additionally, towers or buildings that penetrate Part 77 surfaces or are located within a runway protection zone, runway object free area, or obstacle free zone are also incompatible land uses.⁷

11.6. Part 139 Certification of Airports

Part 139, Airport Operating Certificates, serves to ensure safety in air transportation. To obtain a certificate, an airport must agree to certain operational and safety standards and provide for such things as firefighting and rescue equipment. These requirements vary depending on the size of the airport and the type of flights available. As a Class I airport, Cedar City Regional Airport is required to comply with all Part 139 requirements. As part of this certification, the airport must also have an FAA-approved Airport Certification Manual (ACM), Airport Emergency Plan (AEP), Airport Security Plan (ASP), and Snow and Ice Control Plan (SICP).

Part 139 is subdivided into parts A through D. Subpart D lists the operational requirements that a Part 139 certificate holder must meet. The following information pertains to Subpart D and what an airport must do to maintain its Part 139 certification.

- **§139.301, Records:** Maintain personnel training, inspection, accident and incident, and airport condition records.
- **§139.303, Personnel:** Description of the required training, re-occurring training, familiarization, and lengths to keep records of training.

- **§139.305, Paved areas:** Description when repairs are required for runways, taxiways, loading ramps, and parking areas.
- **§139.307, Unpaved areas:** Description when repairs are required for gravel, turf, and unpaved runways, taxiways, or loading ramps and parking areas.
- **§139.309, Safety areas:** Description of the safety area required to be provided by the airport for each runway and taxiway used for air carrier use.
- **§139.311, Marking, signs, and lighting:** Description of the required marking, signs, and lighting for air carrier operations.
- **§139.313 Snow and ice control:** Description of the minimum required standards for an airport's snow and ice control plan.
- **§139.315, Aircraft rescue and firefighting index determination:** Description of the length and frequency in aircraft to determine the Aircraft Rescue and Firefighting (ARFF) index.
- **§139.317, Aircraft rescue and firefighting equipment and agents:** Description of the minimum equipment and agents needed corresponding to the appropriate Aircraft Rescue and Firefighting index.
- **§139.319, Aircraft rescue and firefighting operational requirements:** Addresses rescue and firefighting capabilities, how to increase an Aircraft Rescue and Firefighting index, procedures for reducing capabilities, required vehicle communication, vehicle markings, vehicle readiness, response requirements, personnel training, hazardous materials guidance, emergency access roads, methods and procedures, and implementation of these requirements.
- **§139.321, Handling and storing of hazardous substances and materials:** Description of protection of persons and property for airports who handle cargo.
- **§139.323, Traffic and wind direction indicators:** Description of required traffic and wind direction indicators.
- **§139.325, Airport emergency plan:** Description of requirements for an airport emergency plan to minimize the possibility and extent of personal injury and property damage on the airport in an emergency.
- **§139.327, Self-inspection program:** Description of the required self-inspection program each airport must follow to maintain their certificate.
- **§139.329, Pedestrians and ground vehicles:** Addresses the required manner to control pedestrians and ground vehicles to prevent incursions, accidents, and incidents.
- **§139.331, Obstructions:** Addresses the requirements for obstructions.
- **§139.333, Protection of navigational aids:** Description of how to protect navigational aids.
- **§139.335, Public protection:** Description of how to protect the public from harm, including airport personnel within and the public outside the fence.
- **§139.337, Wildlife hazard management:** Description of how and when to conduct wildlife hazard assessments.

- **§139.339, Airport condition reporting:** Description of when and how to disseminate airport condition information to air carriers.
- **§139.341, Identifying, marking, and lighting construction and other unserviceable areas:** Addresses how to mark and light construction and unserviceable areas.
- **§139.343, Noncomplying conditions:** Description as to when to limit air carrier operations when noncomplying conditions exist.

To ensure that airports with Part 139 airport operating certificates are meeting these requirements, FAA airport certification safety inspectors conduct certification inspections. These inspections typically occur yearly, but the FAA can also make unannounced inspections. If the FAA finds an airport is not meeting its obligations, it often imposes an administrative action. It can also impose a financial penalty for each day the airport continues to violate a Part 139 requirement. In extreme cases, the FAA might revoke the airport's certificate or limit the areas of an airport where air carriers can land or takeoff.

11.7. Compliance at Cedar City Regional Airport

The following conditions at Cedar City Regional Airport should be closely monitored to ensure the airport is complying with required grant assurances.

11.7.1. Nonaeronautical Use or Disposal of Obligated Airport Property

The FAA must approve the use of airport property for nonaeronautical purposes if that property is subject to grant assurances, and any agreements must preserve the rights and powers of the airport sponsor to comply with its obligations. This means the sponsor will not sell, lease, encumber, or otherwise transfer its title or interest in any property shown on Exhibit A of the airport layout plan without prior approval from the FAA. When airport property that was purchased (with federal funds) for noise compatibility purposes is no longer needed, the sponsor is required to promptly dispose of the property at fair market value (Grant Assurances 5, 19, 29, 31).⁸

The entire airport is currently designated for aeronautical use. However, several parcels have been identified that should be released for non-aeronautical use based on how they are currently being used or because they could serve potential future needs. These parcels are highlighted on the airport layout plan and will require further coordination with the FAA, including a Section 743 screening process, to formally release them from aeronautical use.

11.7.2. Rates and Charges for Nonaeronautical Uses of Airport Property

An airport sponsor must charge fair market value for any nonaeronautical uses of airport property that is subject to grant assurances. However, it may make airport property available for community purposes at less than fair market value on a limited basis as long as the following conditions are met:

- The property is not needed for aeronautical purposes.
- The property is not producing airport revenue for the airport and there are no near-term prospects for producing revenue.
- Use of the property by the community will not impact the aeronautical use of the airport.
- Use of the property by the community will maintain or enhance positive community relations.
- The proposed use is consistent with the airport layout plan.
- The proposed use is consistent with other federal obligations regarding surplus and non-surplus property.⁹

Rates and charges should be reviewed annually to ensure they are current, relevant, and comply with FAA policies. If rates and charges for nonaeronautical uses are below fair market value, the airport must demonstrate a valid community use if the property is not needed for aeronautical purposes. Nonaeronautical uses should also comply with other grant assurances related to land use.

11.8. Summary

According to FAA Order 5190.6B, *Airport Compliance Manual*, the FAA's airport compliance program is contractually based and does not attempt to control or direct the operation of airports. Rather, the program is designed to monitor and enforce obligations agreed to by airport sponsors in exchange for valuable benefits and rights granted by the federal government in return for substantial direct grants of funds and for conveyances of federal property for airport purposes. The airport compliance program is designed to protect the public interest in civil aviation. Grants and property conveyances are made in exchange for binding commitments (i.e., grant assurances) designed to ensure the public interest in civil aviation will be served. The FAA bears the responsibility of seeing that these commitments are met. The FAA considers all federal airport obligations important. However, the most important objective in the FAA's oversight of the compliance program is to ensure and preserve safety at all federally obligated airports.

Endnotes

- 1 U.S. Department of Transportation. Federal Aviation Administration. "Order 5100.38D, Airport Improvement Program Handbook." February 26, 2019. https://www.faa.gov/airports/aip/aip_handbook/media/AIPHandbook-Order-5100-38D-Chg1.pdf.
- 2 U.S. Department of Transportation. Federal Aviation Administration. "Grant Assurances (Obligations)." August 2, 2022. https://www.faa.gov/airports/aip/grant_assurances.
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- 4 Airport Cooperative Research Program. "Report 184, Guidebook on Understanding FAA Grant Assurance Obligations." Transportation Research Board: December 12, 2017. <https://www.trb.org/Main/Blurbs/177621.aspx>.
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- 6 U.S. Department of Transportation. Federal Aviation Administration. "Order 5190.6B Change 2, Airport Compliance Manual." December 9, 2022. https://www.faa.gov/documentLibrary/media/Order/Order_5190_6B_Compliance_Chg2.pdf.
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- 8 U.S. Department of Transportation. Federal Aviation Administration. Office of Airport Planning & Programming. "Noise Land Management and Requirements for Disposal of Noise Land or Development Land Funded with AIP." June 2014. https://www.faa.gov/sites/faa.gov/files/airports/environmental/policy_guidance/Noise-Land-Management-Disposal-AIP-Funded-Noise-Development-Land.pdf; "Assurances, Airport Sponsors." May 2022. https://www.faa.gov/sites/faa.gov/files/airports/new_england/airport_compliance/assurances-airport-sponsors-2022-05.pdf.
- 9 U.S. Department of Transportation. Federal Aviation Administration. "Order 5190.6B, Airport Compliance Manual." https://www.faa.gov/documentLibrary/media/Order/Order_5190_6B_Compliance_Chg2.pdf.

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