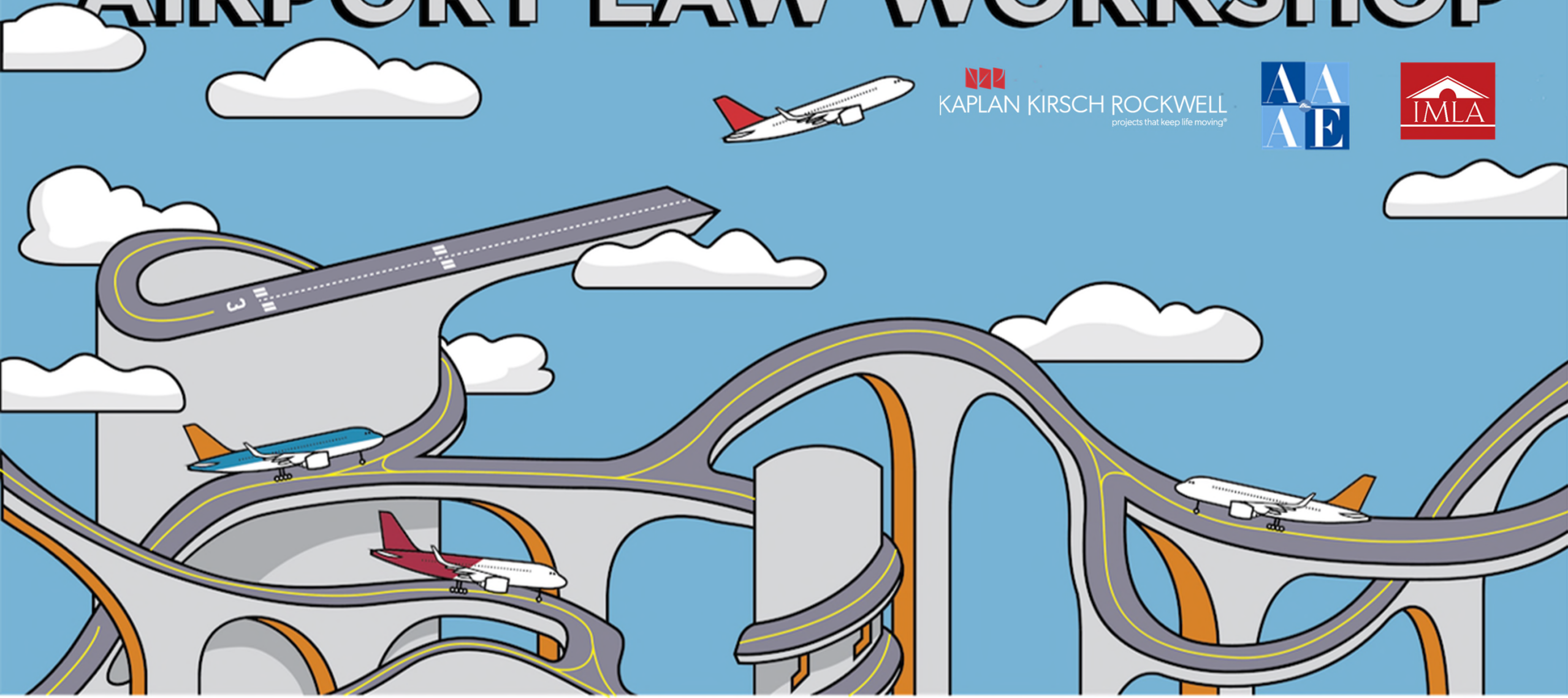


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Key Grant Assurances of the  
Airport Improvement Program

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# Presentation overview



Background on Grant Assurances

Key AIP Grant Assurances

- 1 General Federal Requirements
- 5 Preserving Rights and Powers
- 19 Operation and Maintenance
- 22 Economic Nondiscrimination
- 23 Exclusive Rights
- 24 Fee and Rental Structure
- 25 Airport Revenues
- 29 Airport Layout Plan

FAA Grant Assurance investigations

# The Grant Assurances: an overview



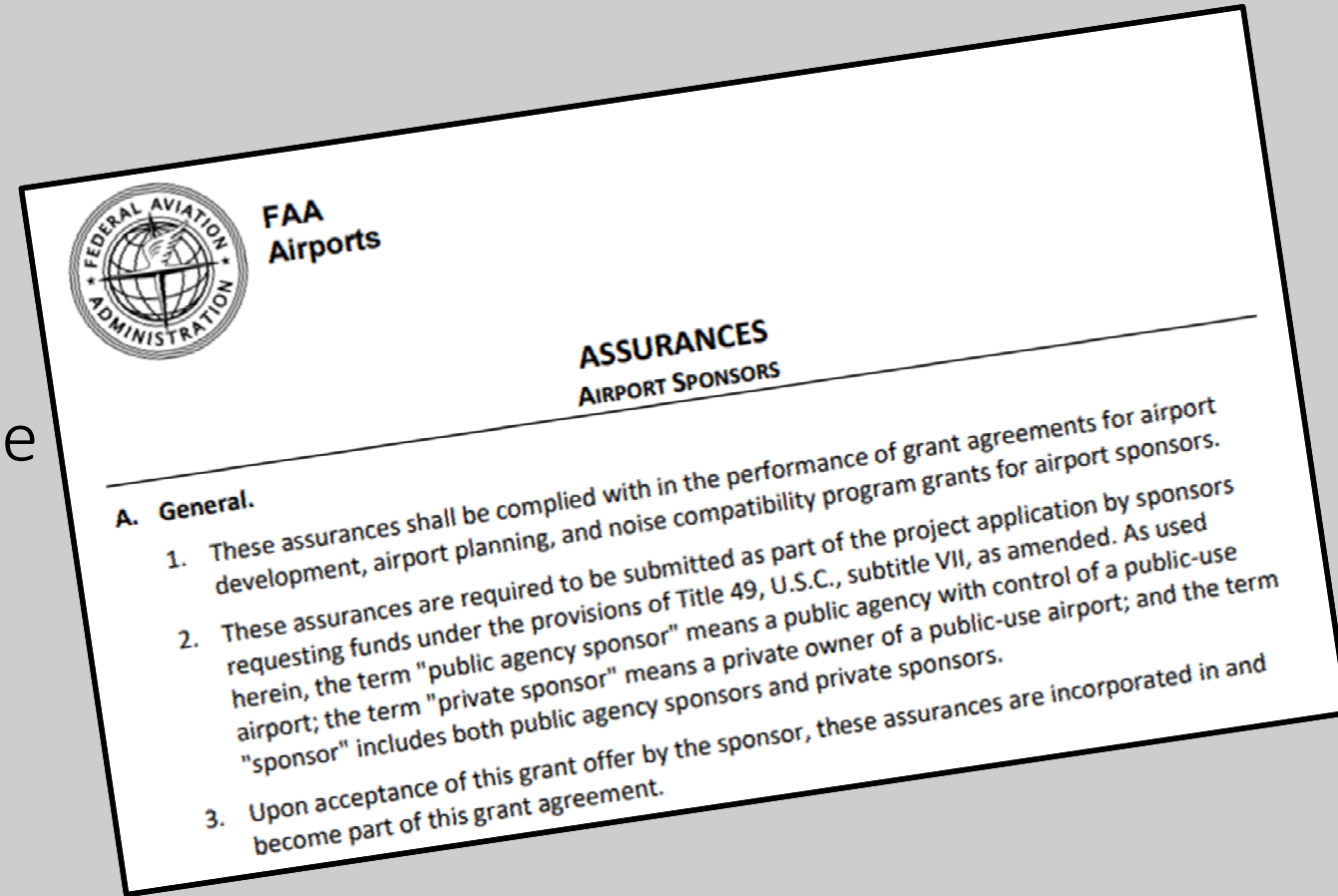
39 contractual commitments in exchange for AIP funds

De facto airport regulations

Most bind sponsor for 20 years; three run in perpetuity:

- 23: Exclusive Rights
- 25: Airport Revenues
- 30: Civil Rights

Enforced through 14 C.F.R. Parts 13 and 16



# The Grant Assurances: full list



## The Airport Improvement Program Sponsor Assurances

1. General Federal Requirements	11. Pavement Preventative Maintenance	21. Compatible Land Use	31. Disposal of Land
2. Responsibility/Authority	12. Terminal Development Prerequisites	22. Economic Nondiscrimination	32. Engineering and Design Services
3. Sponsor Fund Availability	13. Accounting System, Audit, and Record Keeping	23. Exclusive Rights	33. Foreign Market Restrictions
4. Good Title	14. Minimum Wage Rates	24. Fee and Rental Structure	34. Policies, Standards & Specifications
5. Preserving Rights and Powers	15. Veteran's Preference	25. Airport Revenues	35. Relocation & Real Property Acquisition
6. Consistency with Local Plans	16. Conformity to Plans & Specifications	26. Reports and Inspections	36. Access by Intercity Buses
7. Consideration of Local Interest	17. Construction Inspection & Approval	27. Use by Government Aircraft	37. Disadvantaged Business Enterprises
8. Consultation with Users	18. Planning Projects	28. Land for Federal Facilities	38. Hangar Construction
9. Public Hearings	19. Operation and Maintenance	29. Airport Layout Plan (ALP)	39. Competitive Access
10. Metropolitan Planning Organization	20. Hazard Removal and Mitigation	30. Civil Rights	



# Assurance 1: general federal requirements



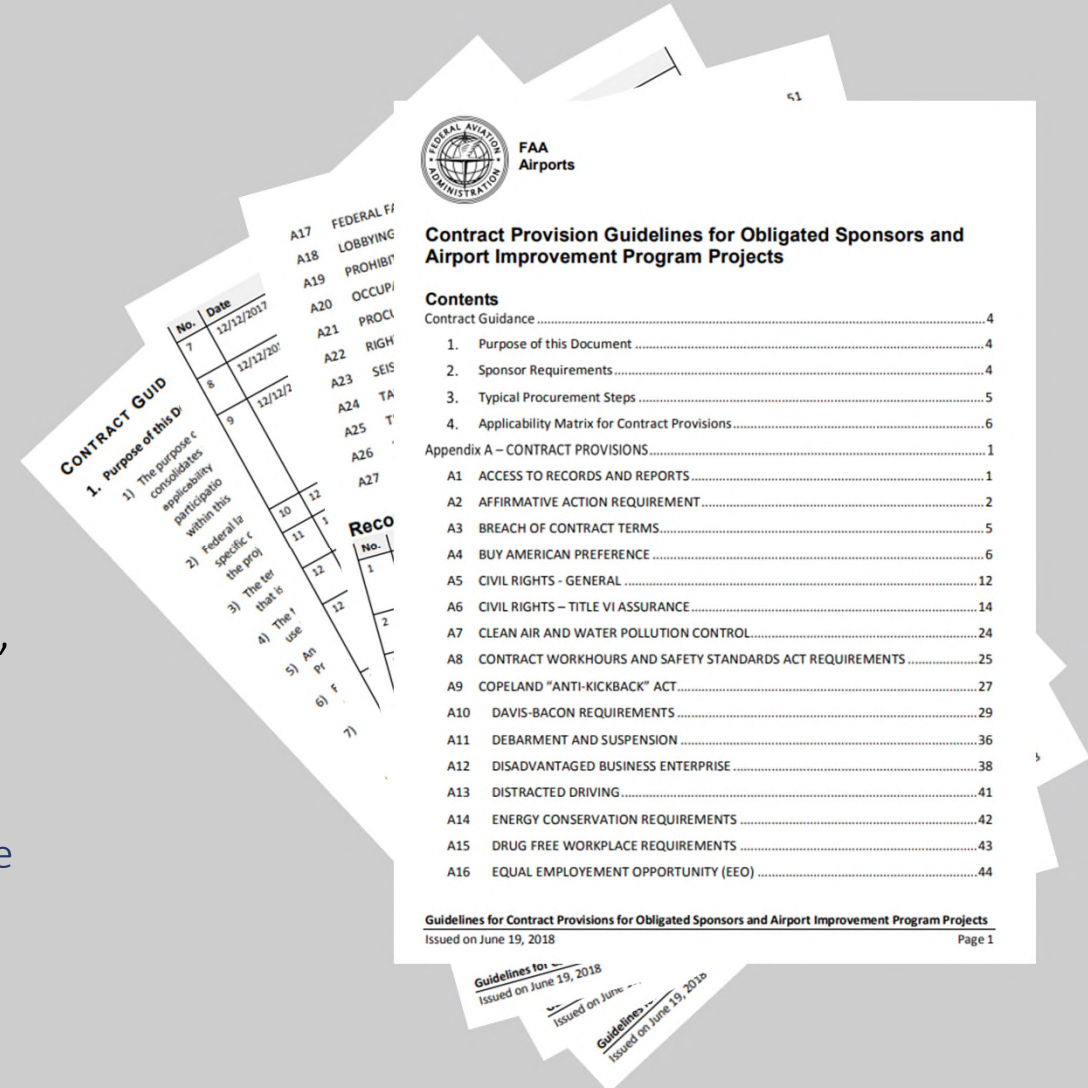
Requires compliance with wide range of federal:

- Statutes
- Regulations
  - Including OMB guidance
- Executive orders

Assurances serves as “hook” to enable FAA to enforce many other federal policies

Sponsors must include various “required contract provisions” in their own contracts

- Available at:  
[https://www.faa.gov/sites/faa.gov/files/airports/aip/procurement/federal\\_contract\\_provisions/combined-federal-contract-provisions.pdf](https://www.faa.gov/sites/faa.gov/files/airports/aip/procurement/federal_contract_provisions/combined-federal-contract-provisions.pdf)



# Assurance 5: preserving rights and powers



Credit: Worth Acquisition Group

Sponsor cannot “take or permit” actions that deprive it of “rights and powers” needed to comply with grant assurances

Limits property or easement sales

- Basis for prohibiting residential through-the-fence uses

When issuing leases, sponsors should:

- Retain authority over airport
- Limit lease duration
- Impose reversion clauses
- Include subordination clause



# Assurance 19: operation and maintenance



Credit: Dennis K. Johnson (via AOPA)

Sponsor must operate airport in “safe and serviceable condition”

Cannot “cause or permit” uses that interfere with airport operations

- Cannot close for non-aeronautical purposes without FAA approval

Must have plans for:

- Marking hazards
- Warning pilots of airport conditions

Applies to management & privatization contracts



Credit: National Aviation Academy





# Assurance 22: economic nondiscrimination



Photo: mpkelley.com

Whatever this  
violates, it  
isn't  
Grant  
Assurance 22



# Assurance 22: economic nondiscrimination



Credit: Marek Ślusarczyk

## Grant Assurance 22(a):

[The sponsor] 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**, including commercial aeronautical activities offering services to the public at the airport.



# Assurance 22: economic nondiscrimination



➤ Must make airport available...

1 To Aeronautical Activities

2 On Reasonable Terms

3 Without Unjust Discrimination



Credit: Getty Images



Credit: Shutterstock



Credit: Shutterstock



# Assurance 22: economic nondiscrimination



## ➤ Defining “aeronautical activity”

An aeronautical activity is  
“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”

Advisory Circular 150/5190-6,  
Exclusive Rights at 8



Credits (clockwise from top left): Shutterstock, MIT, Davis-Ulmer Fire Suppression, Shutterstock



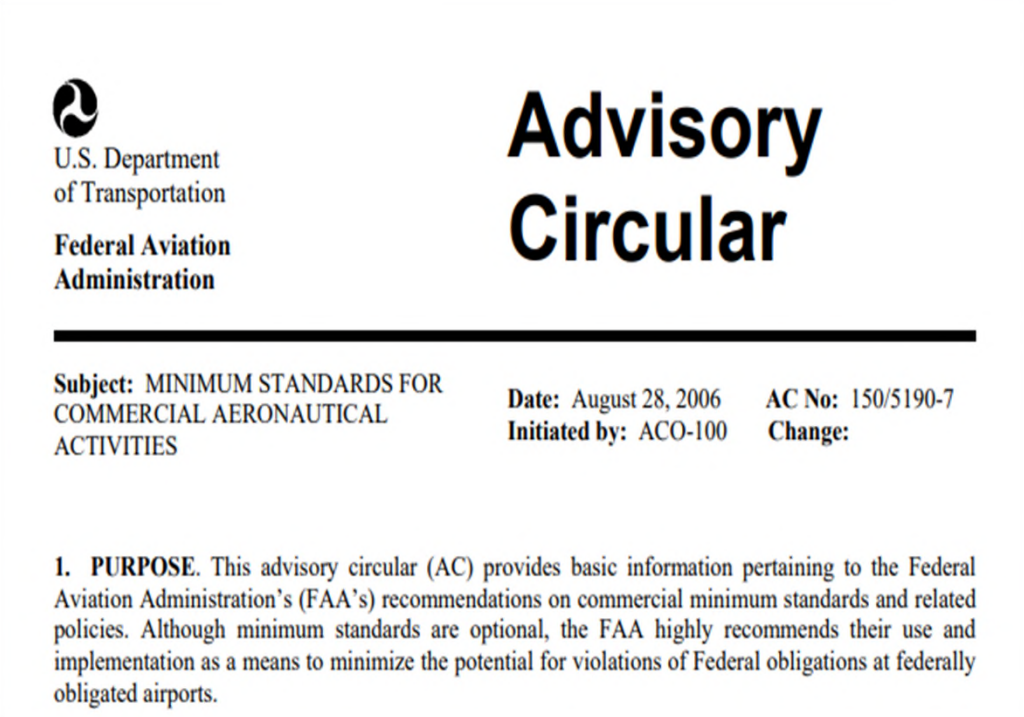
# Assurance 22: economic nondiscrimination



- “Reasonable” and “not unjustly discriminatory” terms

Such terms must be:

- Attainable
- Rational
- Uniformly applied
- Treat **similarly situated** users similarly
  - Age, condition, and use of facilities
  - Degree of operational or financial risk
  - Signatory and non-signatory status
  - Change in airport policies




The image shows the cover of a Federal Aviation Administration (FAA) Advisory Circular. The top left features the FAA logo and the text "U.S. Department of Transportation Federal Aviation Administration". The top right prominently displays "Advisory Circular" in large, bold, black font. Below this, a horizontal line separates the header from the subject information. The subject is "MINIMUM STANDARDS FOR COMMERCIAL AERONAUTICAL ACTIVITIES". To the right of the subject, the date "August 28, 2006", the AC number "150/5190-7", and the initiation "ACO-100" are listed. The bottom section of the cover contains the "PURPOSE" of the advisory circular, which is to provide information on minimum standards and related policies for commercial airports.

**Subject:** MINIMUM STANDARDS FOR COMMERCIAL AERONAUTICAL ACTIVITIES

**Date:** August 28, 2006    **AC No:** 150/5190-7

**Initiated by:** ACO-100    **Change:**

**1. PURPOSE.** This advisory circular (AC) provides basic information pertaining to the Federal Aviation Administration's (FAA's) recommendations on commercial minimum standards and related policies. Although minimum standards are optional, the FAA highly recommends their use and implementation as a means to minimize the potential for violations of Federal obligations at federally obligated airports.

 Publishing (and enforcing) minimum standards is a key method for complying with Grant Assurance 22



# Assurance 22: economic nondiscrimination



- Assurance focuses on airport access

## What Assurance 22 requires

- Timely consideration of applications
- *Reasonable and not unjustly discriminatory* terms
- Opportunity to operate
- Grant Assurance 38: private hangar construction

## What it doesn't require

- Operator's preferred site
- Operator's preferred terms
- Through-the-fence access
- Unsafe or unsightly operations
- Development of facilities



# Assurance 22: economic nondiscrimination



## ➤ Other important provisions

- Contracts for aeronautical services to public, “insert and enforce” requirement that services be offered on/for *reasonable, not unjustly discriminatory* basis and prices
- Aircraft operators have right to self-service
- Air carriers have further right to use authorized FBO of their choice
- Sponsor has *limited* right to restrict operations for bona fide safety and efficiency reasons
- Wise to prepare (and consistently enforce) **minimum standards** to ensure reasonable, not unjustly discriminatory practices



# Assurance 23: exclusive rights



Prohibits sponsor from permitting any “exclusive right” —

- “for the use of the airport by any person providing, or intending to provide, **aeronautical services** to the public” or
- “to conduct any **aeronautical activities**”

Assurance 23 looks to the **sponsor’s** conduct: Is the *sponsor* creating an exclusive right by:

**Express** grant, or

**Implied** by effectively excluding others

Credit: Locinox USA





# Assurance 23: exclusive rights

- Single service provider not necessarily a problem



Having only one FBO at an airport does not necessarily violate Assurance 23

Problem if sponsor **denies airport access** (or lets FBO deny access) to a competitor

Assurance 23 allows sponsor to deny second FBO access only if:

- “Unreasonably costly, burdensome, or impractical” for second FBO to operate, *and*
- Would require reducing first FBO’s leasehold



Credit: Avfuel



# Assurance 24: fee and rental structure



Requires sponsor to “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**,” at the airport



Credit: Fold ‘n Crease via YouTube

While sponsor can charge rent less than fair market value (FMV) to **aeronautical** tenants, must charge FMV rent to **nonaeronautical** tenants



# Assurance 25: Airport Revenues



## ➤ Compliance Practice Pointers

Revenue diversion can be tricky to spot

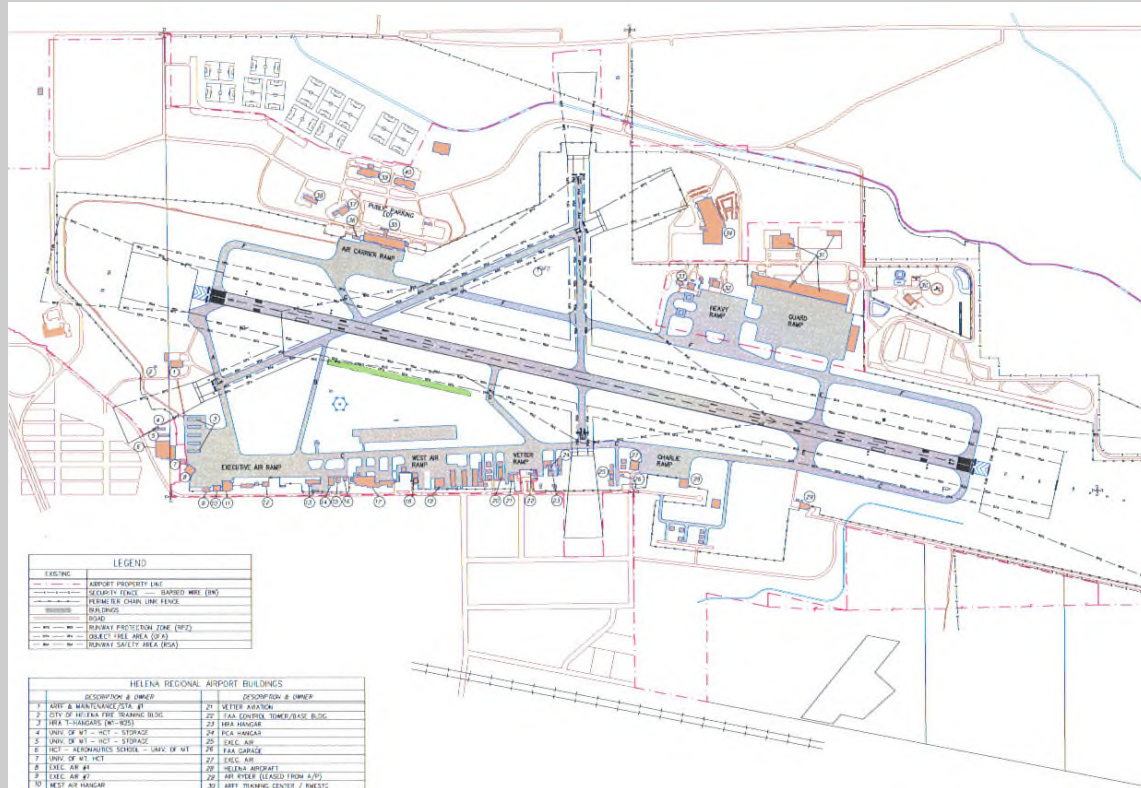
- Is airport property used for public, non-airport purpose?
- Is airport charged consistently with other gov't units?
- Is airport overpaying sponsor for services?
- Is accounting for sponsor-provided services precise?
- Is payment for legitimate airport purpose?

FAA Oversight

- Area of compliance focus
- Document compliance
- Permission not forgiveness



# Assurance 29: Airport Layout Plan



Credit: Helena Regional Airport Authority

Must maintain an up-to-date ALP depicting current and proposed airport:

- Boundaries
- Facilities and structures
- “Non-aviation areas”
- Access points

Some changes require FAA approval

Generally cannot alter airport facilities except according to approved ALP

**Section 163** of 2018 FAA Reauthorization Act limits FAA approval authority over certain nonaeronautical changes

# Enforcement: Parts 13 & 16



Credit: Yellow Dog Productions via Getty Images

The FAA strongly prefers voluntary compliance  
Focus is on *current* compliance; not punitive action

Two types of enforcement actions:

- 14 C.F.R. Part 13: “Informal” investigations
  - Handled at district or regional level
- 14 C.F.R. Part 16: “Formal” investigations
  - Decided by Director of FAA Office of Airport Compliance and Management Analysis
  - May appeal to Associate Administrator for Airports
  - May further appeal to U.S. Court of Appeals

Part 16 is sole process to terminate grant eligibility



# Grant Assurance resources



Airport Compliance Manual (FAA Order 5190.6B (Change 1)), including:

- Grant Assurances (Full Text) (Appendix A)
- Rates and Charges Policy (Appendix D)
- Revenue Use Policy (Appendix E)

FAA Advisory Circulars

- Airport Master Plans (150-5070-6)
- Exclusive Rights (AC 150/5190-6)
- Minimum Standards (AC 150/5190-7)

Part 16 Decisions Database: [part16.airports.faa.gov](http://part16.airports.faa.gov)

Airport Law Desk Reference – Chapters 12 (Enforcement) & 13 (Grant Assurances)

*ACRP: Understanding FAA Grant Assurance Obligations Vol. 1: Guidebook*



# Questions?

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