

38TH ANNUAL

AIRPORT LAW WORKSHOP



 KAPLAN KIRSCH ROCKWELL
projects that keep life moving™



Session #

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Safety Management
and Security

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Overview

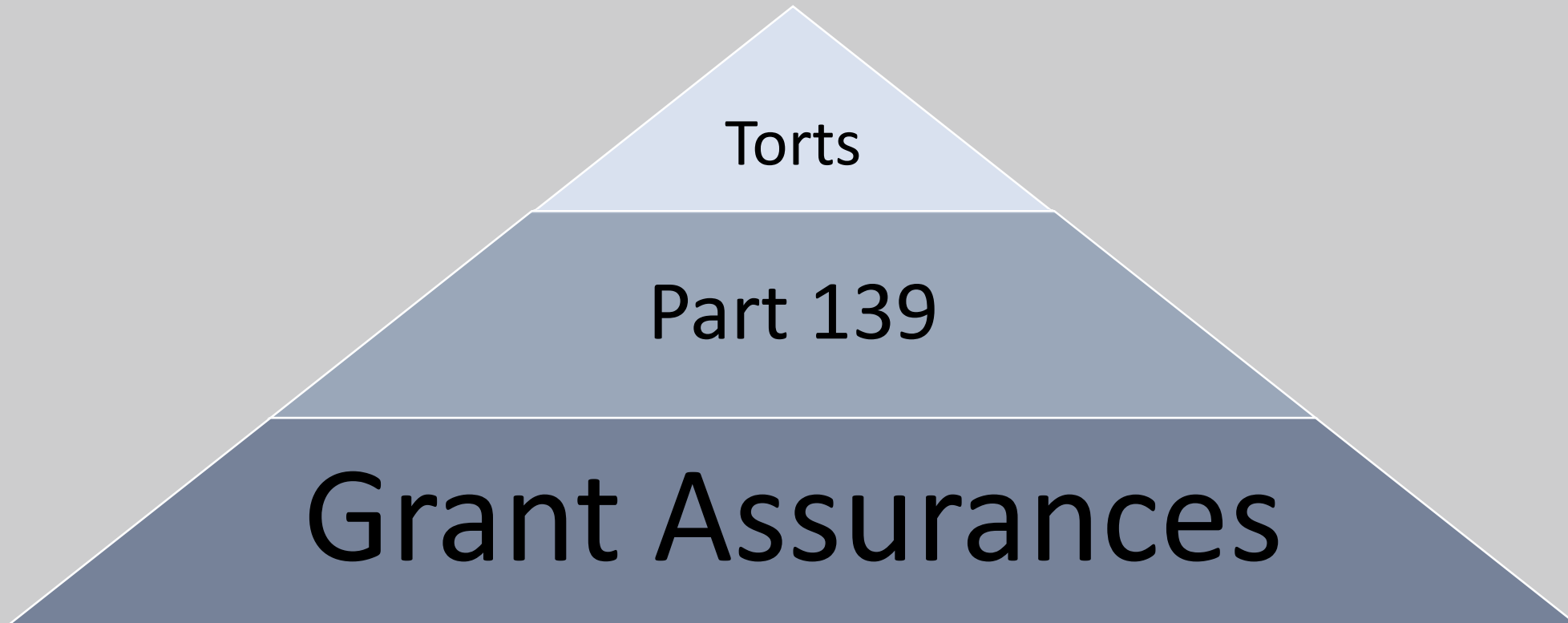


- A sponsor's safety obligations
- Tort liability
- A sponsor's security obligations
- Agency investigations of airport sponsors
- Potential upcoming regulatory developments

www.kaplankirsch.com | www.aaae.org | www.imla.org



Sources of Sponsor Safety Obligations



Safety-related Grant Assurances



- Operation and Maintenance (#19)
- Hazard Removal and Mitigation (#20)
- Compatible Land Use (#21)
- Economic Nondiscrimination (#22)
- Airport Layout Plan (#29)



About those Advisory Circulars



- 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...



Operations and Maintenance (#19)



“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
- Wildlife hazard management



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- **NOTAMs**



!DCA 10/299 DCA RWY 01 FICON 5/5/5 100 PCT WET OBS AT 2110161932

!DCA 10/294 DCA RWY 15 4000FT DIST REMAINING SIGN LGT U/S 2110160950-2110300500

- Wildlife Hazard Management

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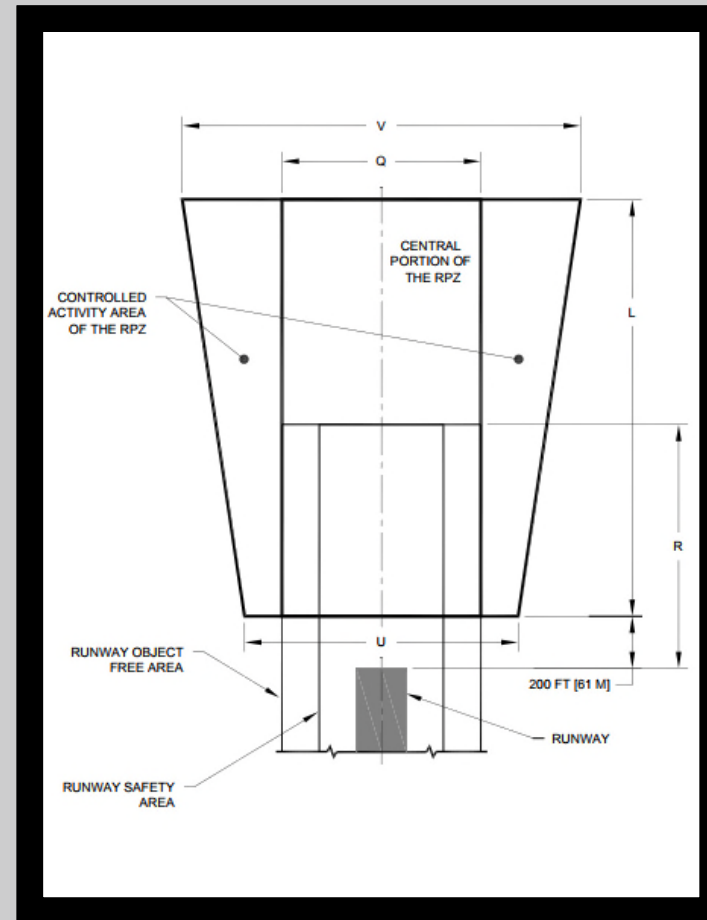
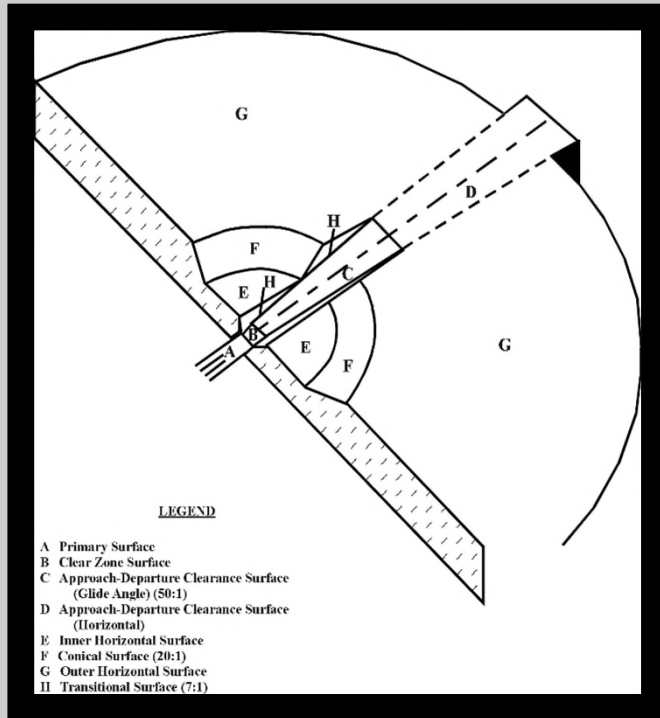
Operations and Maintenance (#19)



- “It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.”



Hazard Removal and Mitigation (#20)



Compatible Land Use (#21)



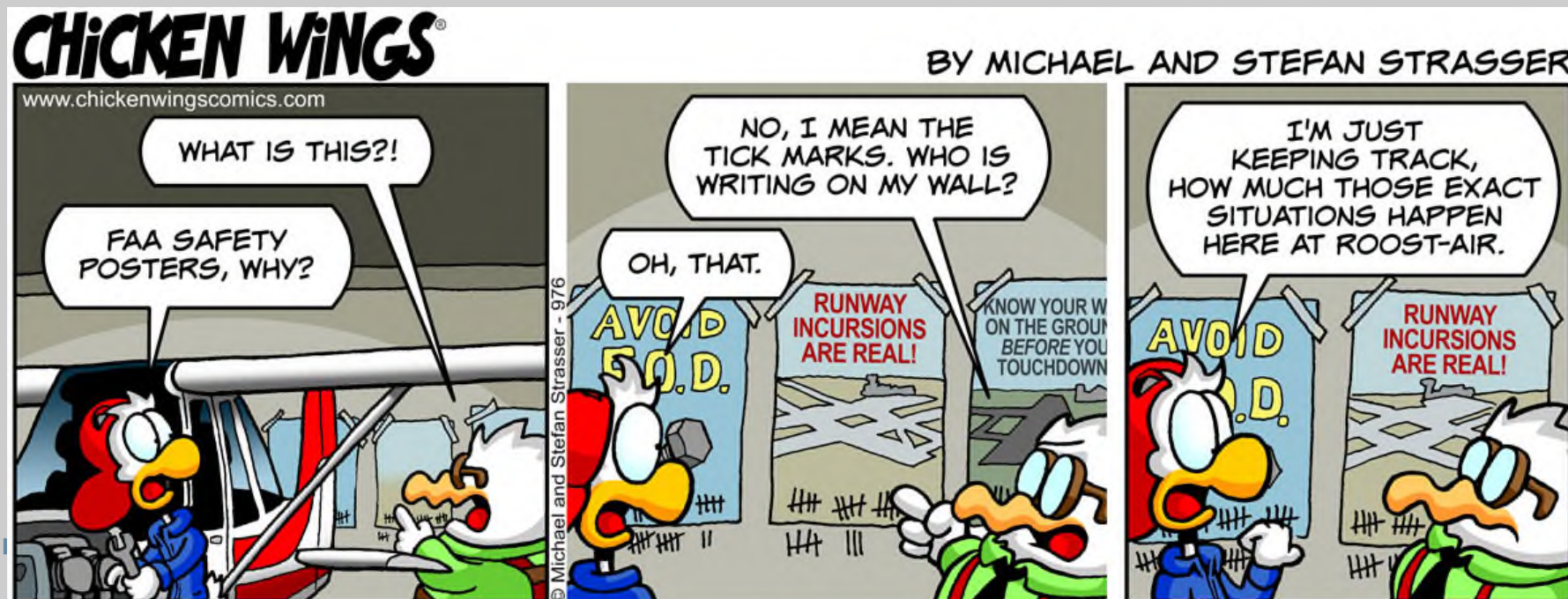
Economic Nondiscrimination (#22)



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.

But, the FAA is “final arbiter of safety.”

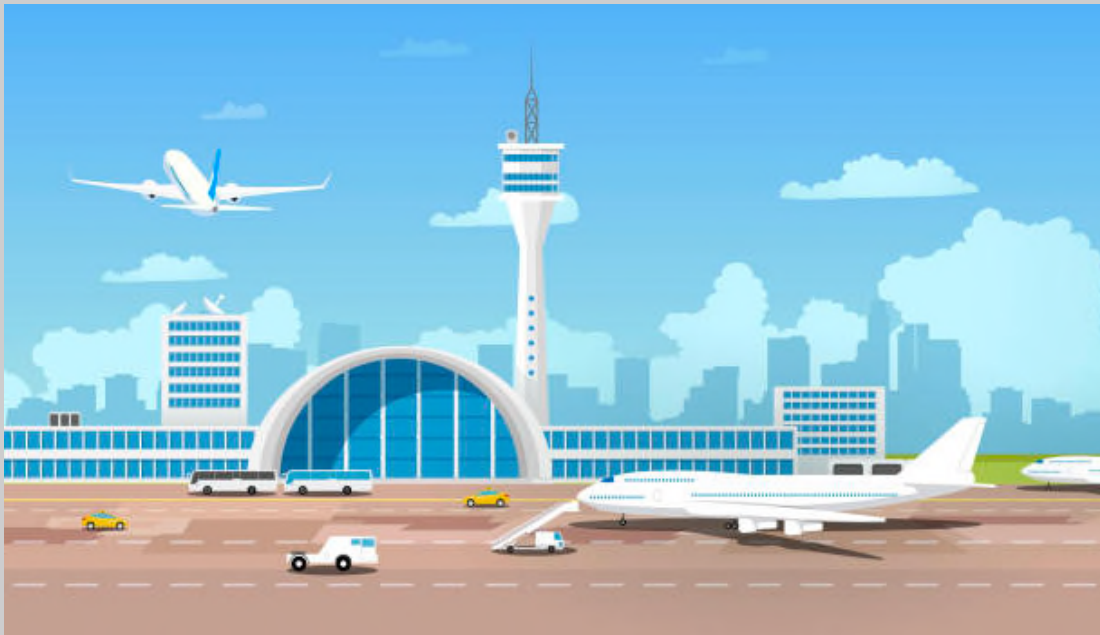


Certificated Airports (Part 139)

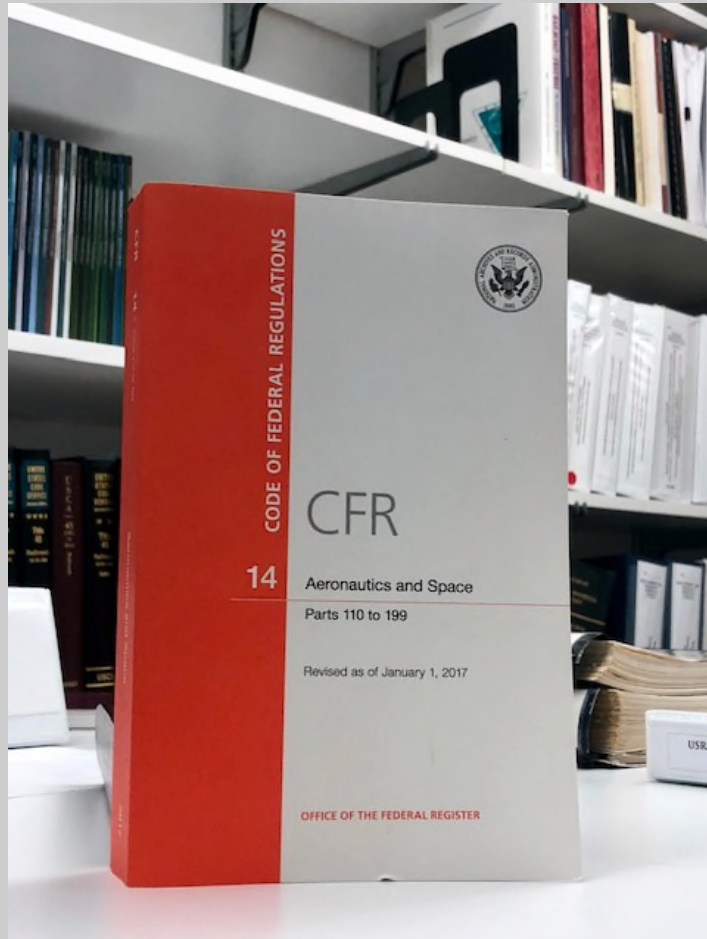


Airports serving:

- Scheduled air carrier operations in aircraft designed for more than 9 passenger seats but less than 31 passenger seats
- Scheduled or unscheduled operations in aircraft designed for more than 30 passenger seats;
- If required by FAA.



Certificated Airports



Minimum regulatory standards for:

- Airport certification manual
- Aircraft rescue and firefighting
- Runway safety areas
- Wildlife hazard assessment and management
- Snow and ice control plan



Part 139 Inspections



- Pre-inspection review
- Interviews
- Movement area inspection
- ARFF inspection
- Fueling facilities inspection
- Night inspection
- Post-inspection briefing



Safety Enforcement

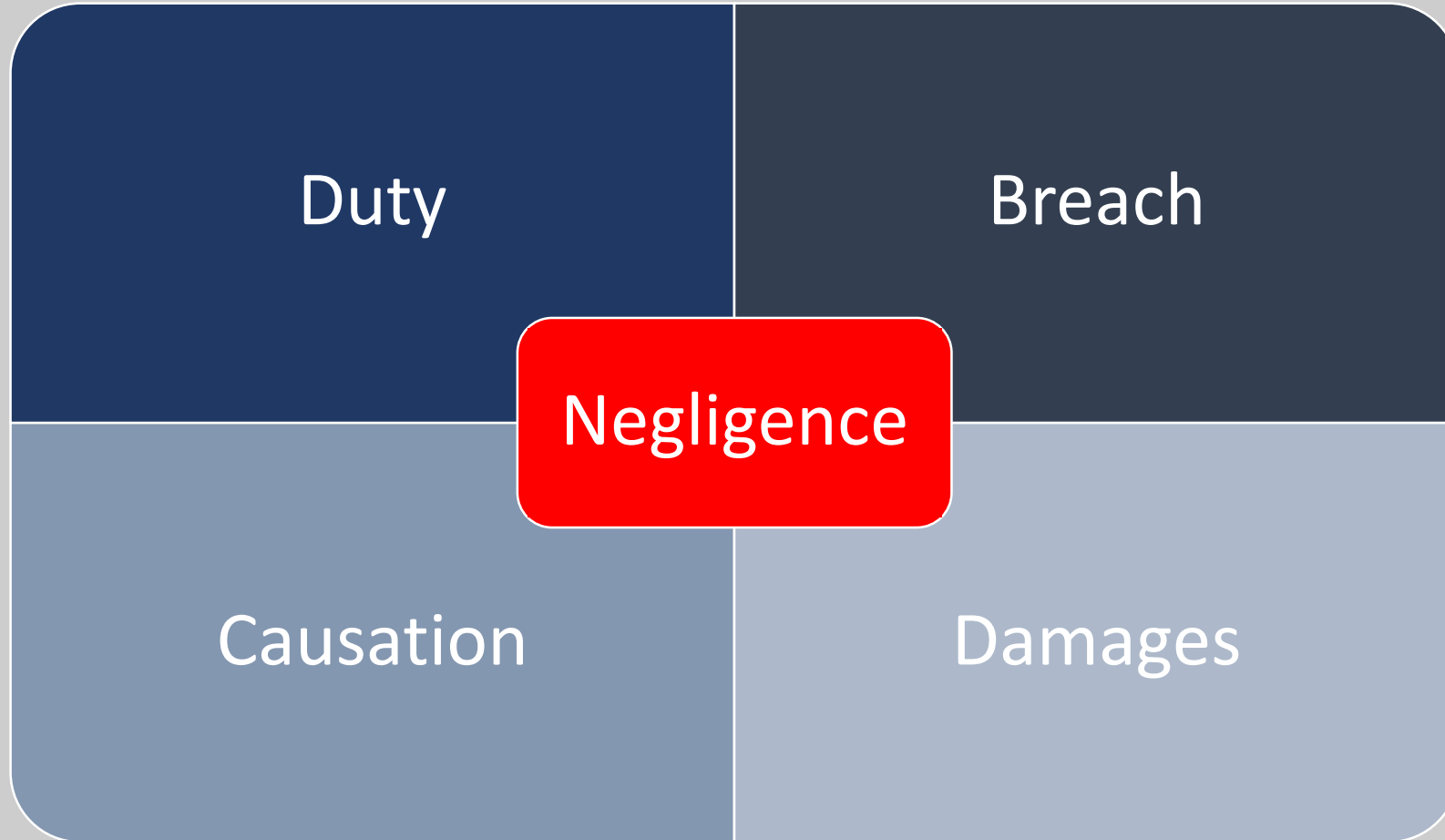


AIP
PFC

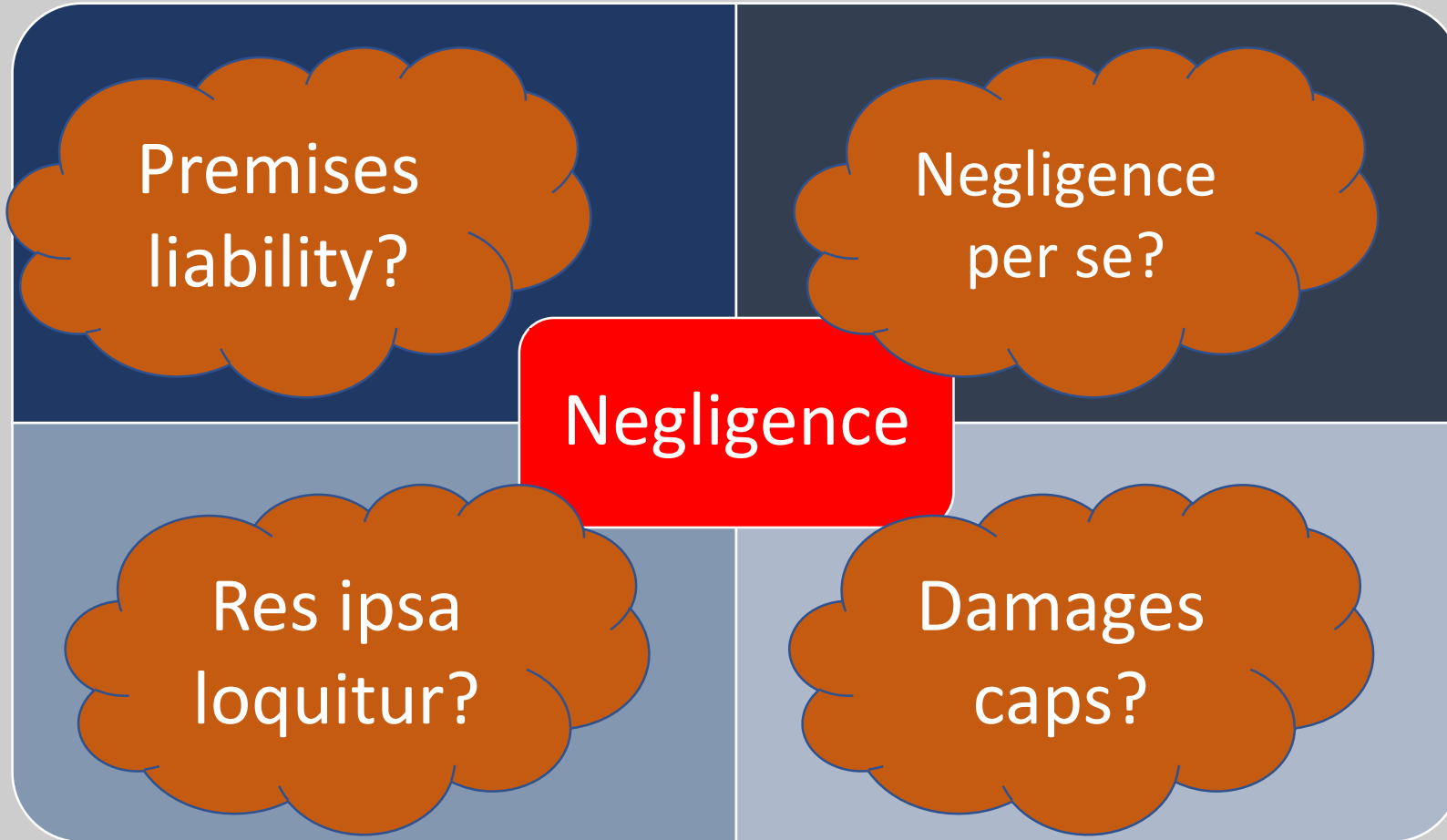
Part 139



Possible Tort Liability



Possible Tort Liability



Sovereign Immunity



Things to know the answer to:

- Are you covered?
 - Limitations on damages?
 - Procedural requirements?
 - Discretionary function exceptions?
 - Permissible causes of action?
 - Liability insurance?
- [Seay Law International, Sovereign Immunity for Public Airport Operators, Legal Research Digest No. 24, Transportation Research Board \(2015\)](#)



Airport's Standard of Care



- Generally, no private right of action under FAA Act
- Standard of care depends on your airport:
 - Certificated
 - Non-certificated
 - Was the airfield component AIP-funded?
- And it depends on your jurisdiction:
 - Standard of care
 - Evidence of the standard of care
 - Preemption



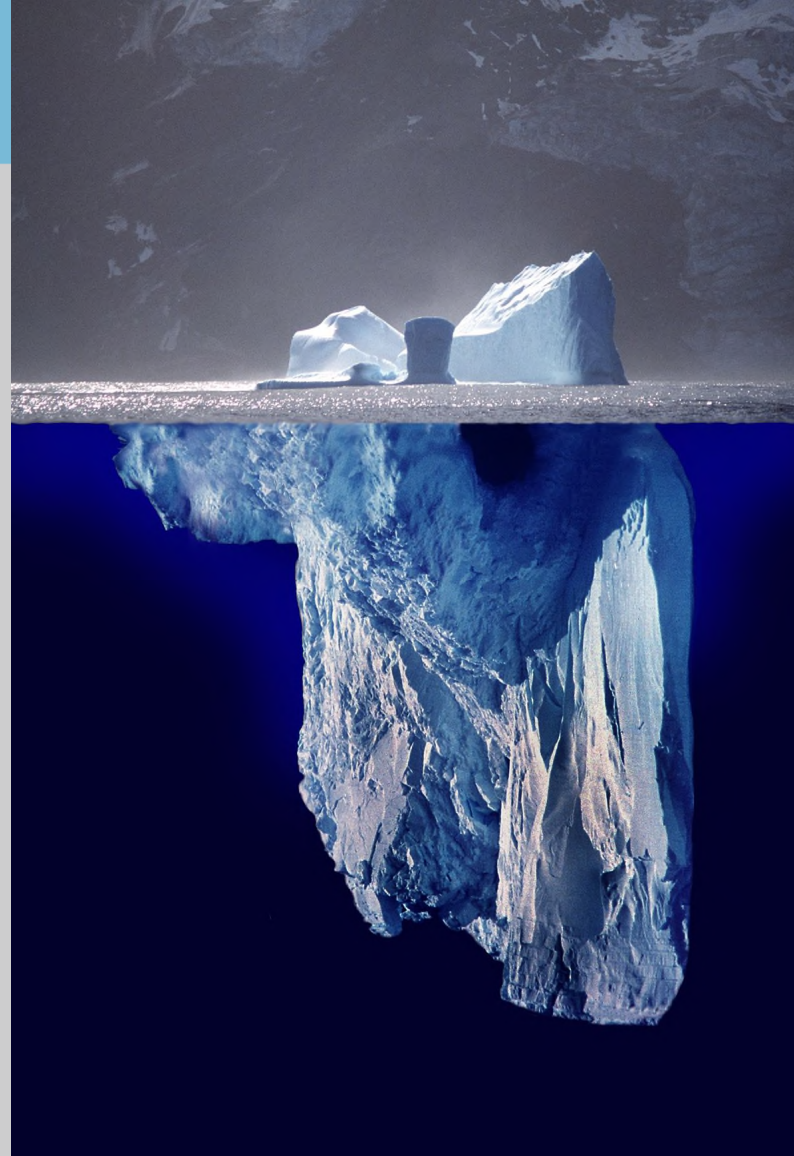
Security Obligations Pursuant to TSA Regulations and Policies



Airport Security

- Sterile areas
- AOA
- SIDA
- Airport security plans

- Perimeter / physical security
- Cybersecurity
- Insider threats
- Local law enforcement
- Operational agreements
- Sensitive security information



General Aviation Airport Security



Transportation Security Administration

Security Guidelines for General Aviation Airport Operators and Users

Information Publication A-001, Version 2

July 2017



Sensitive Security Information (SSI)



- Information “obtained or developed in the conduct of security activities . . . the disclosure of which TSA has determined 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
- Examples: Airport Security Plan, operational constraints, emergency preparations



Agency investigations



- FAA
 - Part 139
 - Airport Certification Manual
- TSA
 - Airport Security Plan



Best Practices in Responding



- Internal review/investigation
- Parallel the agency
- Acknowledge shortcomings to the extent possible
- Offer proactive compliance solutions



Potential Upcoming Regulatory Developments



Safety Management Systems (SMS) – Key Features



- The accountable executive
- Responsibility on non-movement area
- Data collection
- Sponsor-produced documents
 - Risk matrix
 - SMS manual



Legal Concerns With SMS



- Shifting liability
 - Sponsor
 - Accountable executive
- Data protection and privacy
- Existing documents



SMS Regulatory Status



- First Draft – October 2010
- Supplemental Draft – July 2016
- Notice of Proposed Rulemaking – October 2010
- Supplemental Notice of Proposed Rulemaking – July 2016
- Comment period reopened – August 2021
- Comment period closed – September 2021
- Rule may be finalized in the coming months



"Good news! He said he only needs a few more weeks to finish the first draft of the Requirements Document."





Questions and Discussion

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