

Chapter 10 – FAA Compliance Review



Chapter 10 – FAA Compliance Review



Introduction

This chapter discusses the elements associated with the operation and management of Bremerton National Airport, as a federally-obligated airport. The Federal Aviation Administration (FAA) encourages airport sponsors to establish and implement programs that promote sound operating practices and ongoing compliance with regulatory requirements. The FAA currently recommends that compliance be addressed during the airport planning process through the review of airport documents, plans, and other records, such as an approved ALP, Exhibit "A" Property Map, Airport Ordinance, Zoning Ordinance, Rules and Regulations Minimum Standards, airport budgets, leases, easements, permits, and other documents.

Port of Bremerton Compliance

The Port of Bremerton maintains a high degree of control over the operation of Bremerton National Airport. The Port meets all applicable financial reporting and record keeping requirements and employs a variety of "best practices" including periodic review of market rates and fees, land appraisals, formal procurement and contracting practices, and coordination with adjacent land owners (avigation easements), local government (land use planning, zoning), state government (airport overlay zoning, environmental agencies, etc.), and tribal government. There are no known compliance issues associated with airport development, tenant leases, airport land uses or other items.

FAA Compliance Overview

A management program based on the FAA's "Planning for Compliance" guidance and the adoption of airport management "Best Practices" is recommended to address FAA compliance requirements and avoid noncompliance, which could have significant consequences.

Airport management "Best Practices" are developed to provide timely information and guidance related to good management practices and safe airport operations for airport managers and sponsors. The practices outlined herein are designed for use by the Port of Bremerton for evaluating and improving their current and future operation and management program.

Airport sponsors must comply with various federal obligations through agreements and/or property conveyances. These are outlined in FAA Order 5190.6B, Airport Compliance Manual. The contractual federal obligations that a sponsor accepts when receiving federal grant funds or transfer of federal property can be found in a variety of documents including:

- Grant agreements issued under the Federal Airport Act of 1946, the Airport and Airway Development Act of 1970, and the Airport and Airport Improvement Act of 1982. Included in these agreement are the requirement for airport sponsors to comply with:
 - Grant Assurances
 - Advisory Circulars
 - Application commitments
 - FAR procedures and submittals
 - Special conditions
- Surplus airport property instruments of transfer
- Deeds of conveyance
- Commitments in environmental documents prepared in accordance with FAA requirements.
- Separate written requirements between a sponsor and the FAA.

Land use compliance and compatible land use planning is often a significant compliance issue for airports. Compliance and suggested best practices are discussed under the following subheadings in this chapter:

- Airport Compliance with Federal and State Grant Assurances
- Environmental Compliance
- Airport User Compliance
- Other Airport Operational Policies and Procedures

Airport Compliance with Grant Assurances

As a recipient of both federal and state airport improvement grant funds, the Port of Bremerton is contractually bound to various sponsor obligations referred to as "Grant Assurances" that have been put together by the FAA and the Washington Department of Transportation – Aviation Division. These obligations, presented in detail in federal and state grants and state statute and administrative code, document the commitments made by the airport sponsor to fulfill the intent of the grantor (FAA and State of Washington) required in association with acceptance necessary of federal and/or state funding for airport improvements. Failure to comply with the grant assurances may result in a finding of noncompliance and/or forfeiture of future funding. Grant assurances and their associated requirements are to protect the significant investment made by the FAA, state and the Port, to preserve and maintain the nation's airports as a valuable national transportation asset, as mandated by Congress.

FAA GRANT ASSURANCES

The FAA's Airport Compliance Program defines the interpretation, administration, and oversight of federal sponsor obligations contained in grant assurances. Currently, **FAA Order 5190.6B**, Airport Compliance Manual, defines policies and procedures for the Airport Compliance Program. Although it is not regulatory or controlling with regard to airport sponsor conduct, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring compliance by the sponsor.

Order 5190.6B states: the FAA Airport Compliance Program is, "...designed to monitor and enforce obligations agreed to by airport sponsors in exchange for valuable benefits and rights granted by the United States 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 (federal obligations) designed to ensure that the public interest in civil aviation will be served. The FAA bears the important responsibility of seeing that these commitments are met. This Order addresses the types of these commitments, how they apply to airports and what FAA personnel are required to do to enforce them."

To better understand the intent of the FAA Compliance Program, it is important to understand the FAA's goals for a national airport system. The national airport system is currently known as the National Plan of Integrated Airport Systems (NPIAS), which has historic origins dating back to the 1946 Federal Airports Act. The airport system has evolved through several legislative updates in concert with changes in the organization and scope of the Federal Aviation Administration (FAA). The NPIAS was adopted as part of the Airport and Airway Development Act of 1982, replacing the National Airspace System Plan (NASP),

created by earlier legislation. There are approximately 2,500 general aviation airports and 800 commercial service airports in the NPIAS.

According to the FAA, cooperation between the FAA, state and local agencies should result in an airport system with the following attributes:

- Airports should be safe and efficient, located at optimum sites, and be developed and maintained to appropriate standards.
- Airports should be operated efficiently both for aeronautical users and the government, relying primarily on user fees and placing minimal burden on the general revenues of the local, state, and federal governments.
- Airports should be flexible and expandable, able to meet increased demand and accommodate new aircraft types.
- Airports should be permanent, with assurance that they will remain open for aeronautical use over the long term
- Airports should be compatible with surrounding communities, maintaining a balance between the needs of aviation and the requirements of residents in neighboring areas.
- Airports should be developed in concert with improvements to the air traffic control system
- The airport system should support national objectives for defense, emergency readiness, and postal delivery
- The airport system should be extensive, providing as many people as possible with convenient access to air transportation, typically not more than 20 miles of travel to the nearest NPIAS airport
- The airport system should help air transportation contribute to a productive national economy and international competitiveness.

FAA AIP grant assurances are summarized and categorized in **Table 10-1**. While Sponsors should understand and comply with all grant assurances, there are several assurances that are common and recurring issues for airport sponsors throughout the country. These are summarized in more detail below. A complete description of current AIP grant assurances is provided in Appendix F. It is important to note that the assurances (and corresponding numbers) are applied to Non-Airport Sponsors Undertaking Noise Compatibility Program Projects and Planning Agency Sponsors. These can also be found in the Airport Improvement Program under Grant Assurances.

TABLE 10-1: SUMMARY OF FAA AIP GRANT ASSURANCES (AIRPORT SPONSOR ASSURANCES 3/2014)

GRANT ASSURANCE NO.	GENERAL AIRPORT	PROJECT PLANNING / DESIGN & CONTRACTING	AIRPORT OPERATIONS AND LAND USE	DAY TO DAY AIRPORT MANAGEMENT	PROJECT CONSTRUCTION	LEASES & FINANCIAL	OTHER
1. General Federal Requirements							
2. Responsibility and Authority of the Sponsor							
3. Sponsor Fund Availability							
4. Good Title							
5. Preserving Rights and Powers							
6. Consistency with Local Plans							
7. Consideration of Local Interest							
8. Consultation with Users							
9. Public Hearings							
10. Metropolitan Planning Organization							
11. Pavement Preventative Maintenance							
12. Terminal Development Prerequisites							
13. Accounting System, Audit, and Record Keeping Requirements							
14. Minimum Wage Rates							
15. Veteran's Preference							

GRANT ASSURANCE NO.	GENERAL AIRPORT	PROJECT PLANNING / DESIGN & CONTRACTING	AIRPORT OPERATIONS AND LAND USE	DAY TO DAY AIRPORT MANAGEMENT	PROJECT CONSTRUCTION	LEASES & FINANCIAL	OTHER
16. Conformity to Plans and Specifications							
17. Construction Inspection and Approval							
18. Planning Projects							
19. Operations and Maintenance							
20. Hazard Removal and Mitigation							
21. Compatible Land Use							
22. Economic Nondiscrimination							
23. Exclusive Rights							
24. Fee and Rental Structure							
25. Airport Revenues							
26. Reports and Inspections							
27. Use by Government Aircraft							
28. Land for Federal Facilities							
29. Airport Layout Plans							
30. Civil Rights							
31. Disposal of Land							

GRANT ASSURANCE NO.	GENERAL AIRPORT	PROJECT PLANNING / DESIGN & CONTRACTING	AIRPORT OPERATIONS AND LAND USE	DAY TO DAY AIRPORT MANAGEMENT	PROJECT CONSTRUCTION	LEASES & FINANCIAL	OTHER
32. Engineering and Design Services							
33. Foreign Market Restrictions							
34. Policies, Standards and Specifications							
35. Relocation and Real Property Acquisition							
36. Access by Intercity Bus							
37. Disadvantaged Business Enterprises							
38. Hangar Construction							
39. Competitive Access							

As the airport sponsor, the Port of Bremerton is responsible for the direct control and operation of Bremerton National Airport. Familiarity with, proper monitoring and implementation of sponsor obligations and FAA grant assurances in particular, is the key to maintaining compliance. FAA Order 5190.6B and ongoing communication with the [FAA Northwest Mountain Region Compliance Office](#) are both excellent resources for the Port when addressing policy and compliance.

DURATION

The terms, conditions and assurance of a grant agreement with the FAA remain in effect for the useful life of a development project, which is typically 20 years from the receipt of the last grant. However, terms, conditions and assurances associated with land purchased with federal funds do not expire.

The airport sponsor should have a clear understanding of and comply with all assurances. The following sections describe the selected assurances in more detail.

Project Planning/Design and Contracting

Sponsor Fund Availability (Assurance # 3)

Once a grant is given to an airport sponsor, the receiving sponsor commits to providing the funding to cover their portion of the total project cost. Currently this amount is ten percent of the total eligible project cost, although it may be higher depending on the particular project components or makeup. Once the project has been completed, the receiving airport also commits to having adequate funds to maintain and operate the airport in the appropriate manner to protect the investment in accordance with the terms of the assurances attached to and made a part of the grant agreement.

Consistency with Local Plans (Assurance #6)

All projects must be consistent with city and county comprehensive plans, transportation plans, zoning ordinances development code, and hazard mitigation plans. The airport sponsor and planners should all familiarize themselves with local planning documents before a project is considered and ensure that all projects follow local plans and ordinances.

In addition to understanding local plans, airport sponsors should be proactive in order to prevent noncompliance with this assurance. The airport sponsor should assist in the development of local plans that incorporate the airport and consider its unique aviation related needs. Sponsor efforts should include the development of goals, policies and implementation strategies to protect the airport as part of local plans and ordinances.

Accounting System Audit and Record Keeping (Assurance# 13)

All project accounts and records must be made available at any time. Records should include documentation of cost, how monies were actually spent, funds paid by other sources and any other financial record associated with the project at hand. Any books, records, documents or papers that pertain to the project should be available at all times for an audit or examination.

General Airport

Good Title (Assurance #4)

The airport owner must have a Good Title to affected property when considering projects associated with land, building or equipment. Good Title means the sponsor can show complete ownership of the property without any legal questions, or show it will soon be acquired.

Preserving Rights and Powers (Assurance #5)

No actions are allowed which might take away any rights or powers from the sponsor which are necessary for the sponsor to perform or fulfill any condition set forth by the assurance included as part of the grant agreement. If there is an action taken or activity permitted that might hinder any of those rights or powers it should be discontinued. An example of an action which can adversely affect the rights and powers of the airport is a Through-the-Fence (TTF) activity. TTF activities allow access to airport facilities from off-airport users. In many instances, the airport sponsor cannot control the activities of those operating off the airport resulting in less sponsor control. This loss of control can potentially have an adverse impact to airport users. For example, TTF activities many times do not pay the same rates and charges as on-airport users, resulting in an unfair competitive advantage for business/users located off-airport versus those on-airport.

Airport Layout Plan (ALP) (Assurance #29)

The airport should at all times keep an up-to-date ALP which should include on it both current and future boundaries, facilities/structures, and the location of any non-aviation areas and existing improvements. No changes should be made at the airport to hinder the safety of operations; also no changes should be made to the airport that is not in conformity with the ALP. Any changes of this nature could adversely affect the safety, utility or efficiency of the airport. If any changes are made to the airport without authorization the alteration must be changed back to their original condition or the airport will have to bear all cost associated with moving or changing the alteration to an acceptable design or location. Additionally no federal participation will occur for improvement projects not shown on an approved ALP.

Disposal of Land (Assurance #31)

Land purchased with the financial participation of an FAA Grant cannot be sold or disposed of by the airport sponsor at their sole discretion. Disposal of such lands are subject to FAA approval and a definitive process established by the FAA. If airport land is no longer considered necessary for airport purposes, and the sale is authorized by the FAA, the land must be sold at fair market value. Proceeds from the sale of the land must either be repaid to the FAA or reinvested in to another eligible airport improvement or noise compatibility project. Land disposal requirements typically arise when a community is building a new airport and the land on which the airport was located is sold with the proceeds used to offset costs of the new airport. In general, land purchased with FAA funds is rarely sold by a sponsor.

Airport Operations and Land Use

Pavement Preventative Maintenance (Assurance #11)

Since January 1995, the FAA has mandated that it will only give a grant for airport pavement replacement or reconstruction projects if an effective airport pavement maintenance-management program is in place. The program should identify the maintenance of all pavements funded with federal financial assistance. The report provides a pavement condition index (PCI) rating (0 to 100) for various section of aprons, runways, taxiways, and a score for overall airport pavements.

Operations and Maintenance (Assurance #19)

All federally funded airport facilities must operate at all times in a safe and serviceable manner. The airport sponsor should not allow for any activities which inhibit or prevent this. The airport sponsor must always promptly mark and light any hazards on the airport, and promptly issue Notices to Airmen (NOTAMs) to advise of any conditions which could affect safe aeronautical use. Exceptions to this assurance include when temporary weather conditions make it unreasonable to maintain the airport. Further, this assurance does not require the airport sponsor to repair conditions which have happened because of a situation beyond the control of the sponsor.

Compatible Land Use (Assurance #21)

Land uses around an airport should be planned and implemented in a manner which ensures surrounding development and activities are compatible with the airport. To ensure compatibility, the sponsor is expected to take appropriate action, to the extent reasonable, including the adoption of zoning laws to guide land use in the vicinity of airports under their jurisdiction. Incompatible land use around airports represents one of the greatest threats to the future viability of airports.

Day to Day Airport Management

Economic Non-Discrimination (Assurance #22)

Any reasonable aeronautical activity offering service to the public should be permitted to operate at the airport as long as the activity complies with airport established standards for that activity. Any contractor agreement made with the airport will have provisions making certain the person, firm or corporation will not be discriminatory when it comes to services rendered as well as rates or prices charged to customers. Provisions include:

- All FBOs on the airport should be subject to the same rate fees, rentals and other charges.

- All persons, firms or corporations operating aircraft can work on their own aircraft with their own employees.
- If the airport sponsor at any time exercises the rights and privileges of this assurance they will be under all of the same conditions as any other airport user would be.
- The sponsor can establish fair conditions which need to be met by all airport users to make the airport safer and more efficient.

The sponsor can prohibit any type, kind or class of aeronautical activity if it is for the safety of the airport. An example of an activity which may be considered for prohibition is sky diving. It is important to point out that the FAA will review such prohibitions and will make the final determination as to whether or not a particular activity type is deemed unsafe at the airport based on current operational dynamics.

Exclusive Rights (Assurance #23)

Exclusive Rights at an airport is often a complicated subject usually specific to individual airport situations. The assurance states the sponsor “will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public...” There are exceptions to this rule. If the airport sponsor can prove that permitting a similar business would be unreasonably costly, impractical or result in a safety concern, the sponsor may consider granting an exclusive right. To deny a business opportunity because of safety, the sponsor must demonstrate how that particular business will compromise safety at the airport. Exclusive rights are very often found in airport relationships with fixed base operations (FBO) but exclusive rights can also be established with any other business at the airport which could assist in the operation of an aircraft at the airport. If an unapproved exclusive rights agreement exists it must be dissolved before a future federal grant is awarded to the airport.

If a sponsor is contemplating denial of a business use at the airport, it is strongly encouraged that they contact their FAA ADO in order to ensure that they have all necessary information and that denial of access is not going to be seen as unjust discrimination. For more in depth information on exclusive rights reference Advisory Circular 150/5190-6, "Exclusive Rights at Federally Obligated Airports."

Leases and Financial

Fee and Rental Structure (Assurance #24)

Simply put, the fee and rental structure at the airport must be implemented with the goal of generating enough revenue from airport related fees and rents to become self-sufficient in funding day to day operational needs. The airport sponsor should routinely monitor its fee and rental structure to ensure reasonable fees are being charged to meet this goal. Common fees charged by airports include fuel flowage, tie-down, and landing fees and hangar rent.

Airport Revenue (Assurance #25)

All airport revenue and local taxes on aviation fuel should be used toward the operating costs of the airport, the local airport system, or other local facilities which are owned by the same owner of the airport which will directly impact air transportation passengers or property or for noise mitigation on or off airport property. In other words, revenue generated by airport activities must be used to support the continued operation and maintenance of the airport. Use of airport revenue to support or subsidize other non-aviation activities or functions of the sponsor is not allowed and is considered revenue diversion. Revenue diversion is a significant compliance issue subject to cause scrutiny by the FAA.

Other FAA Compliance Requirements

OTHER FEDERAL CONTRACTING AND PROCUREMENT DOCUMENTS

When an airport sponsor accepts an FAA Airport Improvement Program (AIP) grant, they agree to adhere to all applicable federal contracting and procurement requirements. Advisory circulars are required for use in AIP funded projects. Included in each grant request is a federal funding checklist that identifies the requirements an airport should consider before accepting the grant. The following items are noted in the checklist:

- ALPs should be up to date
- Exhibit A Property Map may need to be updated if acquiring additional property
- Land Inventory may need to be updated if you have recently acquired land with federal assistance
- Airports must hold good title to the airport landing area
- Appropriate signage and markings must be in place
- RPZ and approach surface deficiencies must be identified and steps to address deficiencies must be noted
- RSAs must meet FAA standards if planning a runway project
- DBE program goals must be met on projects more than \$250,000
- Procedures should be in place to handle bid protests
- Open AIP grant projects need to be identified
- Project closeout form must be submitted within 90 days of work completion
- A “Certification of Economic Justification” must be included for routine pavement maintenance projects
- A “Revenue Generating Facility Eligibility Evaluation” must be completed for hangar constructing or fueling facilities
- A “Reimbursable Agreement” and “Non-Fed Coordination” must be completed for navigational aid projects
- A “Relocation Plan” must be completed if a project requires residences or businesses to be relocated

SPECIAL CONDITIONS

In addition to the standard grant assurances discussed above, the state or the FAA may require “Special Conditions” to individual grants which supplement or expand the standard grant assurances. Special Conditions are unique to an individual airport and can be project or administrative in nature. Airport sponsors need to be aware of such conditions that may be applied to their airport.

MULTIJURISDICTIONAL CHALLENGES

In some instances, airports are jointly owned and operated by more than one airport sponsor. In other instances, airports may be located within multiple jurisdictions. While the official airport sponsor is ultimately responsible for adherence with the grant assurance, the actions, or inactions, of surrounding jurisdictions can and do impact the airport sponsor’s ability in meeting its sponsor obligations. This is particularly true with land use compatibility issues around airports. As a result, it is important in either circumstance that all jurisdictions affected by the airport understand the operational needs and complexities of having an airport within its jurisdiction. Mutual agreements addressing airport operational or land use protection needs, or other cooperative measures, are recommended by all jurisdictions to both protect the functionality of the airport as well as the safety and well-being of airport user and neighbors.

WSDOT Aviation Division Grant Assurances

In 2013, WSDOT Aviation adopted new grant assurances (WAC Chapter 468-260) for airport sponsors that are intended to protect the public’s investment in the Washington aviation system. The WSDOT grant assurances apply to both NPIAS and non-NPIAS airports that receive funding through the WSDOT Airport Aid Grant Program. The WSDOT grant assurances are consistent and complimentary to FAA grant assurances with a significant emphasis placed on land use planning, public process, and environmental stewardship. A summary of the WSDOT grant assurances are included in **Appendix G**.