



U. S. Department  
of Transportation  
**Federal Aviation  
Administration**

Great Lakes Region  
Illinois, Indiana, Michigan  
Minnesota, North Dakota,  
Ohio, South Dakota,  
Wisconsin

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Des Plaines, Illinois 60018

## **REGIONAL GUIDANCE LETTER—AIRPORTS DIVISION**

**NUMBER:** 5100.25

**DATE:** December 12, 2007

**SUBJECT:** Updating State Block Grant (SBG) Agreements

**REFERENCES:** FAA Order 5100.38C (“Airport Improvement Program Handbook”)  
Title 49, United States Code, Para. 47128 (“State Block Grant Program”)

### **BACKGROUND:**

The FAA’s authorizing legislation provides (in Title 49 USC, Para. 47128) that

The Secretary may designate not more than 9 qualified States for fiscal years 2000 and 2001 and 10 qualified States for each fiscal year thereafter to assume administrative responsibility for all airport grant amounts available under this subchapter, except for amounts designated for use at primary airports.

The legislation also provides that the Secretary of Transportation must consider the following criteria:

- The State has an organization capable of effectively administering a block grant made under this section;
- The State uses a satisfactory airport system planning process;
- The State uses a programming process acceptable to the Secretary;
- The State has agreed to comply with United States Government standard requirements for administering the block grant; and
- The State has agreed to provide the Secretary with program information as required.

The legislation also provides that

Before deciding whether a planning process is satisfactory or a programming process is acceptable, the Secretary shall ensure that the process provides for meeting critical safety and security needs and that the programming process ensures that the needs

of the national airport system will be addressed in deciding which projects will receive money from the Government.

**POLICY:**

Therefore, it shall be the policy of the Great Lakes Region that all SBG agreements existing as of the date of this PPM shall be reviewed to ensure consistency with current legislative, regulatory and policy provisions. The Airports District Offices (ADOs) shall address the following factors in developing new SBG agreements:

1. SBG agreements shall have an established expiration date rather than continuing indefinitely. SBG agreements shall also permit either party to terminate or amend the agreement with a fixed amount of advance notice, and provide the FAA an opportunity to incorporate new policies periodically.

In addition, the ADO shall conduct a complete, formal review of the SBG agreement within 90 calendar days of any applicable legislative provision becoming law, or any applicable regulatory provision taking effect, in order to determine whether a new SBG agreement or amendment may be required.

2. SBG agreements must clearly identify statutory responsibilities and applicability of laws, regulations and FAA Orders. The FAA does not have the authority to waive a state's compliance with any applicable law, regulation or Executive Order. Attachment A lists current statutory references to be specifically cited in every SBG agreement.
3. SBG agreements must clearly identify and incorporate relevant FAA Orders, including Advisory Circulars, Program Guidance Letters, and regional policies and procedures. This may be accomplished either by attaching a specific list, or by referring to a standard web reference where current documents may be found. Attachment B lists the minimum required FAA Orders that shall be incorporated into every SBG agreement.
4. Ensure that all steps in the project formulation and implementation process are addressed, and responsibilities are clearly delineated between the FAA and the state. This needs to address all steps in system planning, master planning, ALP processing, environmental review and permitting, financial planning and implementation, including grant processing and closeout procedures and compliance matters. It is recommended that these responsibilities be set forth in tabular format, clearly delineating responsibility for each function.
5. Clearly state that the responsibility for preparing and approving Environmental Impact Statements remains with the FAA, and all other Federal action responsibilities that are currently in place.
6. Establish FAA's expectations for protection of airports against encroachment, and establish the planning, environmental and financial processes for new or relocated airports. The state should assume a high level of responsibility for assisting airport

sponsors in establishing zoning protection in order to safeguard the Federal investment in airport facilities.

7. Clearly define all steps in the NPIAS update and ACIP processes, including a clear expectation that block-grant states are to prioritize requests for AIP Discretionary funds for the airports covered by the SBG agreement, working within the levels established by the Region and ADO, with due consideration of the legislative requirement that the planning process meets critical safety and security needs. Ensure that the programming process will address the needs of the national airport system in deciding which projects will receive AIP funds.
8. In cases where new or relocated airports are contemplated, SBG agreements shall provide for FAA review and approval of the site selection process.
9. The SBG agreement shall clearly establish any and all administrative fees paid to the states out of AIP funds, and establish upper limits to the fees that may be paid for a single project and in the aggregate.
10. The SBG agreement shall establish a clear process for planning and financial expectations for any project that will depend on more than \$5 million in Discretionary funds in the aggregate. FAA guidance establishes a cost trigger when a BCA is required for capacity projects. However, the BCA relates only to eligibility and justification, and does not address competing demands and other criteria beyond the BCA itself.
11. Ensure that the state requires all elements of the ALP Exhibit A, including all information supporting property releases and local zoning ordinances.
12. Because one of the core responsibilities of a block-grant state is to establish priorities for allocating State Apportionment funds, SBG agreements should require state system plan updates on a periodic basis, recommended to be every five years unless specific circumstances warrant a greater or lesser frequency.
13. If the block-grant state is responsible for administering the National Environmental Policy Act (NEPA) and other environmental reviews, then the state must administer its system planning and financial planning processes in such a manner to avoid any pre-decisional actions.
14. SBG agreements shall establish clear requirements of the state to maintain historical documentation in an accessible location for sponsors and consultants to use in subsequent planning and environmental processes.
15. SBG agreements shall establish clear requirements of the audit requirements under A-133, and provide for periodic program reviews by the ADO and Region, consistent with FAA Order 5100.38.
16. SBG agreements shall require electronic updates at least once quarterly (in spreadsheet format) of the state's plan for spending AIP State Apportionment funds,

for current and future years.

17. SBG agreements shall require electronic updates at least once quarterly (in spreadsheet format) of grants received and subgrants awarded, clearly delineating funding sources by project and location, and identifying any subsequent reimbursements planned.
18. SBG agreements shall establish rules governing the co-mingling of AIP funds from multiple appropriation years, including both use and reporting of funds as well as closeout requirements.
19. SBG agreements shall establish a clear expectation that all projects funded with AIP funds, and particularly Discretionary funds, are to be implemented expeditiously, and must be appropriately phased to use the funds in a reasonable timeframe to result in usable units of work, regardless of whether and when additional Discretionary funds may become available.
20. SBG agreements shall require states to maintain sufficiently qualified personnel to fulfill their obligations under the agreement.

The ADO shall afford AGL-610 the opportunity to review SBG agreements and address any issues before the ADO executes the SBG agreement. ADOs are encouraged to coordinate with AGL-610 as early as possible.

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## **Attachment A**

### **Required Statutory and Regulatory References<sup>1</sup>**

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1. Title 49, U.S.C., subtitle VII, as amended.
2. Davis-Bacon Act - 40 U.S.C. 276(a), et seq. <sup>2</sup>
3. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
4. Hatch Act - 5 U.S.C. 1501, et seq. <sup>2</sup>
5. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970  
Title 42 U.S.C. 4601, et seq. <sup>2</sup>
6. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f). <sup>2</sup>
7. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c. <sup>2</sup>
8. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
9. Clean Air Act, P.L. 90-148, as amended.
10. Coastal Zone Management Act, P.L. 93-205, as amended.
11. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a. <sup>2</sup>
12. Title 49 ,U.S.C., Section 303, (formerly known as Section 4(f))
13. Rehabilitation Act of 1973 - 29 U.S.C. 794.
14. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
15. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
16. American Indian Religious Freedom Act, P.L. 95-341, as amended.
17. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq. <sup>2</sup>
18. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373. <sup>2</sup>
19. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq. <sup>2</sup>
20. Copeland Antikickback Act - 18 U.S.C. 874. <sup>2</sup>
21. National Environmental Policy Act of 1969 – U.S.C. 4321 et seq. <sup>2</sup>
22. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
23. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.
24. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

### **Executive Orders**

25. Executive Order 11246 – Equal Employment Opportunity <sup>2</sup>
26. Executive Order 11990 – Protection of Wetlands
27. Executive Order 11998 – Flood Plain Management
28. Executive Order 12372 – Intergovernmental Review of Federal Programs.
29. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New  
Building Construction <sup>2</sup>
30. Executive Order 12898 - Environmental Justice

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<sup>1</sup> Corresponds to references included in “Terms and Conditions Of Accepting Airport Improvement Program Grants” (revised June 2005).

<sup>2</sup> These do not apply to airport planning sponsors.

## **Federal Regulations**

31. 14 CFR Part 13 - Investigative and Enforcement Procedures.
32. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
33. 14 CFR Part 150 - Airport noise compatibility planning.
34. 29 CFR Part 1 - Procedures for predetermination of wage rates. <sup>2</sup>
35. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States. <sup>2</sup>
36. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act). <sup>2</sup>
37. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements). <sup>2</sup>
38. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.
39. 49 CFR Part 20 - New restrictions on lobbying.
40. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
41. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
42. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs. <sup>2,3</sup>
43. 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
44. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance. <sup>2</sup>
45. 49 CFR Part 29 – Government wide debarment and suspension (non-procurement) and government wide requirements for drug-free workplace (grants).
46. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
47. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction. <sup>2</sup>

## **Office of Management and Budget Circulars**

48. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
49. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

## **Attachment B**

### **Minimum FAA Orders to be Incorporated**

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*This attachment lists key provisions of applicable FAA Orders that should be incorporated by specific reference in the state block grant agreement. The purpose is to ensure that block-grant states fully understand their legal obligations under the SBG program, and the FAA's oversight responsibilities in the various program areas.*

1. FAA Order 5050.4B ("National Environmental Policy Act Implementing Instructions for Airport Projects"), with particular reference on Paragraph 210 ("The State Block Grant Program"). However, this paragraph includes references to the applicability of other requirements throughout the Order, based on Federal laws including but not limited to NEPA.
2. FAA Order 5100.38C ("Airport Improvement Program Handbook"), with particular reference to:
  - a. Chapter 1, Sections 1-3 which provide general background on the statutory provisions governing the Airport Improvement Program.
  - b. Chapter 10, Section 9 ("Block Grant Procedures"), with a particular focus on Paragraphs 1090-1097.
3. FAA Order 5100.39A ("Airport Capital Improvement Plan"), particularly Paragraph 10 ("Use of Other Priority Systems").
4. FAA Order 5190.6A ("Airport Compliance Requirements"), particularly Chapter 3 ("Exclusive Rights") and Chapter 4 ("Obligations of Airport Owners").