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Federal Aviation Administration

Memorandum

Date: June 7, 2022

To: Regional Directors
Regional Compliance Specialists

From: Kevin C. Willis, Director, Office of Airport Compliance and Management
Analysis (ACO-1) X78741 **KEVIN WILLIS** Digitally signed by KEVIN WILLIS
Date: 2022.06.07 10:36:28 -0400

Subject: ACTION: Compliance Guidance Letter 2021-05 – Guidance on Cost Free
Land for Federal Facilities

I. INTRODUCTION

This Compliance Guidance Letter (CGL) clarifies and sets forth guidance by which Airports Division field offices will provide assistance to airport sponsors and other Federal Aviation Administration (FAA) Lines of Business (LOB) concerning cost free space for Federal facilities required in applicable laws and Grant Assurance 28, *Land for Federal Facilities*.

II. GRANT ASSURANCE AND STATUTORY REQUIREMENTS

1. Grant Assurance 28, Land for Federal Facilities (amended 85 FR 12048 on February 28, 2020) provides:

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

2. The FAA Reauthorization of Act of 2018, Section 147, amended the statutory language in Section 44502 of title 49, United States Code, and restricted the sponsors' obligation to furnish cost-free space or facilities to the FAA in section 44502(f) as follows:

49 U.S.C. 44502 currently states

(f) Airport Space.

(1) Restriction.—The Administrator may not require an airport owner or sponsor (as defined in section 47102) to provide to the Federal Aviation Administration without cost any of the following:

(A) Building construction, maintenance, utilities, or expenses for services relating to air traffic control, air navigation, or weather reporting.

(B) Space in a facility owned by the airport owner or sponsor for services relating to air traffic control, air navigation, or weather reporting.

(2) Rule of construction.—Nothing in this subsection may be construed to affect--

(A) any agreement the Secretary may have or make with an airport owner or sponsor for the airport owner or sponsor to provide any of the items described in paragraph (1)(A) or (1)(B) at below-market rates; or

(B) any grant assurance that requires an airport owner or sponsor to provide land to the Administration without cost for an air traffic control facility.

III. STAKEHOLDER GUIDANCE

Grant Assurance 28, *Land for Federal Facilities*, as amended by Section 147, only requires the sponsor to furnish the Federal Government without cost **such areas of land** as may be necessary or desired for the construction at Federal expense of facilities to house any air traffic control activities. The FAA has the right to identify the needed land area during the life of any Airport Improvement Program grant at any time. The sponsor also may furnish land for weather-reporting and communications facilities at below-market rates as negotiated with the FAA.

Additional space, such as, storage, parking for official FAA vehicles, essential office space, and space for technicians to support these facilities, are deemed essential to the facility. Space provided for FAA Airways staff would be limited to that necessary to maintain the facilities located at the airport. This may or may not include utility easements.

Current law does not require the airport sponsor to provide **cost-free space in a facility** owned by the airport owner or sponsor for services relating to air traffic control, air navigation, or weather reporting. The current law allows the airport sponsor to negotiate reasonable rates for utilities, janitorial services, or similar services. The space required for FAA Flight Standards, Security, Airport District offices, employee parking, and offices not directly related to the airport facilities also are subject to price negotiation.

IV. ADDITIONAL GUIDANCE ISSUES

If applicable, the airport sponsor and the FAA regional airports offices also should review the airport's Surplus and Non-Surplus Property deeds. These deeds may have other contractual terms and/or requirements concerning rental rates for Federal facilities on the deeded properties.

The FAA regional airports offices and airport sponsors need to collaborate closely to prevent conflicts over details when planning to relocate air traffic control, air navigation, or weather reporting activities.

The rent-free space requirement is contained in the same set of statutes as the requirement for a self-sustaining rate structure. Therefore, it is considered a specific exception to the general requirements of Grant Assurance 24, Fee and Rental Structure.

The FAA provides its services at a significant cost for the benefit of the local airport and the communities and is not a for-profit business. In providing such services, the FAA uses cost-benefit data to establish or continue support of its facilities. In many cases, the additional rent may be the difference in making the establishment or continuance of services uneconomical.

V. LEASING OF AIRPORT PROPERTY TO OTHER FEDERAL AGENCIES

There also is no specific obligation to provide space for other Federal Government activities such as Post Office, Customs, Immigration, etc. However, the leasing of space at nominal rental rate for activities that complement or support aeronautical operations will not be viewed as a misuse of airport property under both the rates and charges, and revenue use policies.

If you have any further questions, please contact the Office of Airport Compliance and Management Analysis, at (202) 267-3085.