

Part I: Background

Chapter 1. Scope and Authority

1.1 Purpose.

This Order sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

1.2 Audience.

FAA personnel have responsibility for monitoring airport sponsors' compliance with the sponsor's federal obligations.

1.3 Where Can I Find This Order?

The current Order is available on the FAA website and will be updated electronically at this location.

1.4 Cancellation.

This Order cancels and replaces FAA Order 5190.6B, dated September 30, 2009, in its entirety.

1.5 Introduction.

This chapter discusses the scope of the Order, the sources of sponsor¹ federal obligations, and the FAA's authority to administer the Airport Compliance Program within the FAA Office of Airports (ARP). The FAA Airport Compliance Program is contractually based, and it does not attempt to control or direct the operation of airports. Rather, the program is designed to monitor and enforce obligations agreed to by airport

¹ A sponsor is any public agency that applies for federal financial assistance, or private owner of a public use airport, as defined in the *Airport and Airway Improvement Act of 1982* (AAIA), codified at 49 U.S.C. § 47102(26).

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 ensure compliance with Federal obligations.

1.6 Scope.

This Order provides guidance, policy, and procedures for conducting a comprehensive and effective FAA Airport Compliance Program to monitor and ensure airport sponsor compliance with the applicable federal obligations assumed in the acceptance of airport development assistance.

Grants and property conveyances are made in exchange for binding commitments (federal obligations) designed to ensure the public interest in civil aviation will be served.

1.7 Background.

The Air Commerce Act of 1926 was the cornerstone of the federal government's regulation of civil aviation. This landmark legislation was passed at the urging of the aviation industry, whose leaders believed that aviation could not reach its full commercial potential without federal action to improve and maintain safety standards. The Air Commerce Act charged the Secretary of Commerce with fostering air commerce, issuing and enforcing air traffic rules, licensing pilots, certifying aircraft, establishing airways, and operating and maintaining aids to air navigation. A new Aeronautics Branch of the Department of Commerce assumed primary responsibility for aviation oversight.

In 1938, the Civil Aeronautics Act transferred the federal civil aviation responsibilities from the Commerce Department to a new independent agency, the Civil Aeronautics Authority. The legislation also expanded the government's role by giving the Civil Aeronautics Authority the power to regulate airline fares and to determine the routes that air carriers would serve. In 1940, President Franklin Roosevelt split the Civil Aeronautics Authority into two agencies, the Civil Aeronautics Administration (CAA) and the Civil Aeronautics Board (CAB). The CAA was responsible for air traffic control (ATC), airman and aircraft certification, safety enforcement, and airway development. The CAB was entrusted with safety rulemaking, accident investigation, and economic regulation of the airlines. Both organizations were part of the Department of Commerce.

Unlike the CAA, however, the CAB functioned independent of the Secretary of Commerce. On the eve of America's entry into World War II, the CAA began to extend its ATC responsibilities to takeoff and landing operations at airports. This expanded role eventually became permanent after the war. The application of radar to ATC helped controllers keep abreast of the postwar boom in commercial air transportation.

In the Federal Airport Act of 1946 (1946 Airport Act), Congress gave the CAA the added task of administering the Federal Aid to Airports Program (FAAP), the first peacetime program of financial assistance aimed exclusively at promoting development of the nation's civil airports. The approaching introduction of jet airliners and a series of midair collisions spurred passage of the Federal Aviation Act of 1958 (FA Act). This legislation transferred the CAA's functions to a new independent agency, the Federal Aviation Agency, which had broader authority to address aviation safety through rulemaking and enforcement. It also gave the Federal Aviation Agency sole responsibility for developing and maintaining a common civil-military system of air navigation and air traffic control, a responsibility the CAA had shared with others.

In 1966, Congress authorized the creation of a cabinet department that would combine federal transportation responsibilities for all public modes of transportation. This new Department of Transportation (DOT) began full operations on April 1, 1967. On that day, the Federal Aviation Agency became one of several modal administrations within the DOT and received a new name, the Federal Aviation Administration (FAA). At the same time, the CAB's accident investigation function was transferred to the new National Transportation Safety Board (NTSB).

The FAA has gradually assumed responsibilities not originally contemplated by the FA Act. For example, the hijacking epidemic of the 1960s brought the agency into the field of aviation security. That function was later transferred to the Transportation Security Administration (TSA) in 2001 after the events of 9/11. In 1968, Congress vested in the FAA Administrator the power to prescribe aircraft noise standards. The Airport and Airway Development Act of 1970 (1970 Airport Act) placed the agency in charge of a new airport aid program funded by a special aviation trust fund. The 1970 Airport Act also made the FAA responsible for safety certification of airports served by air carriers.

In 1982, Congress enacted the current grant statute, the Airport and Airway Improvement Act (AAIA), which established the Airport Improvement Program (AIP). The FAA's mission expanded again in 1995 with the transfer of the Office of Commercial Space Transportation from the Office of the Secretary to the FAA.

The National Plan of Integrated Airports Systems (NPIAS) is the FAA's plan that identifies and contains all commercial services airports, all reliever airports and select publicly owned general aviation airports. Currently, the NPIAS identifies approximately 3,300 public-use airports. The NPIAS reports are available online at [National Plan of Integrated Airport Systems \(NPIAS\)](#).

The airport system envisioned in the first National Airport Plan, issued in 1946, has been developed and nurtured by close cooperation between federal, state, and local agencies. The general principles guiding federal involvement have remained largely unchanged for the National Plan of Integrated Airport Systems (NPIAS). The airport system should have the following attributes to meet the demand for air transportation:

- 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.

Airports should be permanent with assurance that they will remain open for aeronautical use over the long term.

In addition to these principles specific to airport development, a guiding principle for federal infrastructure investment, as stated in Executive Order 12893, Principles for Federal Infrastructure Investments (January 26, 1994), is that such investments must be cost beneficial, *i.e.*, must have a positive ratio of benefits to costs. The FAA implements these principles using program guidance to ensure the effective use of federal aid.

A national priority system guides the distribution of funds. Information used to establish the priority is supplemented by specific requirements for some additional analysis or justification. For example, in certain cases the airport sponsor must prepare a benefit-cost analysis for airport capacity development projects to be funded under the Airport Improvement Program (AIP).

1.8 Compliance Program Background.

The Civil Aeronautics Act of 1938, as amended, and the FA Act, as amended, charge the FAA Administrator with broad responsibilities for the regulation of air commerce in the interests of safety and national defense and for the development of civil aeronautics. Under these broad powers, the FAA was tasked with regulation of airmen, aircraft, navigable airspace, and airport operations. The federal interest in advancing civil aviation has been augmented by various legislative actions that authorize programs for granting property, funds, and other assistance to local communities to develop airport facilities.

In each program, the airport sponsor assumes certain federal obligations, either by contract or by restrictive covenants in property deeds, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in deeds or grant agreements have been generally successful in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance. The FAA Airport Compliance Program establishes the policy and guidelines for monitoring the compliance of airport sponsors with their obligations to the United States and for ensuring that airports serve the needs of civil aviation.

The federal obligations a sponsor assumes in accepting FAA administered airport development assistance are mandated by federal statute.

1.9 Sources of Airport Sponsor Federal Obligations.

The federal obligations a sponsor assumes in accepting FAA-administered airport development assistance are mandated by federal statute and incorporated in the grant agreements and property conveyance instruments entered into by the sponsor and the United States Government, including:

a. Grant Agreements.

Grant agreements issued under the various FAA-administered airport development grant programs through the years. These include, but are not limited to, the Federal Aid to Airports Program (FAAP), the Airport Development Aid Program (ADAP), and the Airport Improvement Program (AIP) under 49 U.S.C. § 47101, *et seq.* This statutory provision provides for federal airport financial assistance for the development of public use airports under the AIP established by the AAIA. Section 47107 sets forth assurances that FAA must include in every grant agreement as the sponsor's conditions for receiving federal financial assistance. Pursuant to and consistent with 49 U.S.C. § 47107(g) and (h), the FAA has prescribed some additional assurances or requirements for sponsors beyond those specifically enumerated in 49 U.S.C. § 47107. These include requirements set forth in 49 U.S.C. § 47106 and other statutes.

Occasionally, there are special funding programs authorized by Congress to provide federal grants to airports for a specific purpose such as economic development or recovery (*e.g.*, American Recovery and Reinvestment Act of 2009 (ARRA); Coronavirus Aid, Relief, and Economic Security Act (CARES), etc.). The grant agreements under these programs set forth the conditions for receiving federal assistance and will vary depending on the purpose of the grant.

Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal government.

b. Surplus Property.

Instruments of surplus property transfer issued under the provisions of section 13(g) of the Surplus Property Act of 1944, as amended, 49 U.S.C. §§ 47151-47153.

c. Nonsurplus Property.

Instruments of nonsurplus conveyance issued under section 16 of the 1946 Airport Act, as amended; under section 23 of the 1970 Airport Act, as amended; or under section 516 of the AAIA, as amended, codified at 49 U.S.C. § 47125.

d. AP-4 Agreements.

AP-4 agreements, as part of the Development Landing Areas National Defense (DLAND) and the Development Civil Landing Areas (DCLA) Programs, were mostly lease-based (government leasehold interest) Civil Aviation Authority (CAA)/Administration grants issued under statutory authority to civil sponsors for airport development projects (Pub. L. 76-812, 77-135, 77-247, 77-353, 77-528, 77-644 and 78-105; 31 U.S.C. § 7501; and 2 CFR § 200.1). The general obligations under AP-4 Agreements were determined to be expired by FAA in 1969, except for the exclusive rights obligation.

e. Section 303.

Exclusive Rights under section 303 of the Civil Aeronautics Act of 1938, as amended, and section 308(a) of the FAA Act, as amended, codified at 49 U.S.C. § 40103(e).

f. Title VI.

Title VI of the Civil Rights Act of 1964, as amended, codified at 42 U.S.C. §2000d, *et seq.*

1.10 FAA Authority to Administer the Compliance Program.

Responsibility for monitoring and ensuring airport sponsor compliance with applicable federal obligations is vested in the Secretary of Transportation by statute and delegated to the FAA under [49 CFR § 1.83](#).

a. Surplus Property Transfers.

Surplus property instruments of transfer were issued by the War Assets Administration (WAA) and are now issued by its successor, the General Services Administration (GSA). However, section 3 of Public Law (Pub. L.) 81-311 specifically vests the FAA with the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is, or has been, conveyed to nonfederal public agencies pursuant to the Surplus Property Act of 1944, as amended.

b. Nonsurplus Property Transfers.

Nonsurplus property transfers are conveyances under section 16 of the 1946 Airport Act, under section 23 of the 1970 Airport Act, or under section 516 of the AAIA, codified at 49 U.S.C. § 47125. These are also referred to as nonsurplus property conveyances. Instruments of property conveyance issued under these sections are also issued by agencies other than the FAA. The conveyance instrument, deed, or quitclaim document assigns monitoring and enforcement responsibility to the FAA.

c. Grant agreements from the FAAP, ADAP, and the AIP programs (ARRA, CARES, etc.).

The FAA is vested with jurisdiction over monitoring and enforcing grant agreements that the FAA and its predecessor, the CAA, executed on behalf of the United States.

d. Exclusive Rights Prohibition.

The FAA is also charged with responsibility for monitoring and enforcing compliance with the provisions prohibiting exclusive rights set forth in section 303 of the Civil

Aeronautics Act of 1938, as amended, and in section 308(a) of [the FAA Act](#), as amended, codified at 49 U.S.C. § 40103(e).

e. Amendment, Modification, or Release of Airport Sponsor Federal Obligations.

The authority of the FAA to release or modify the terms and conditions of airport sponsor grant agreements varies based on the respective types of agreements. Pub. L. 81-311 prescribes specific circumstances and conditions under which the FAA may release, modify, or amend the terms and conditions of surplus property conveyances. While the FAA has the ability to amend, modify, or release an airport sponsor from a federal obligation, the FAA is not required to do so. The FAA exercises its discretion when releasing a sponsor from any of its obligations. For additional information, refer to chapter 22, *Land Use Changes and Releases on Federally Acquired and Federally Conveyed Land*.

1.11 through 1.15 Reserved.