

FAA New England Region

Doing Business within your Grant Obligations

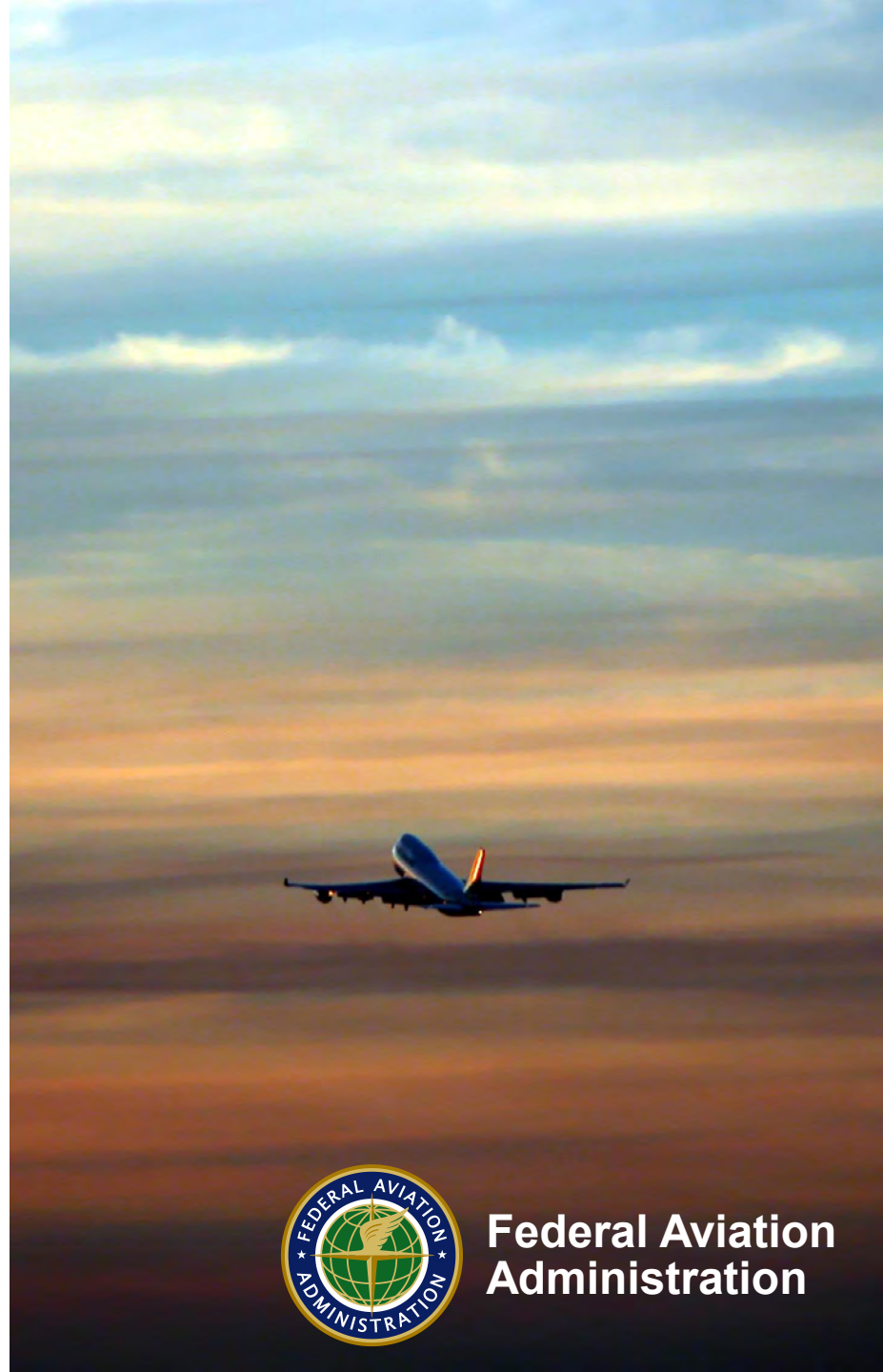
Presented By:

Jorge E. Panteli, ANE Compliance and Land Use Specialist

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**Federal Aviation
Administration**



Introductions & Agenda

- **This is Training – it's a High Level Discussion**
- **How Grant Assurances Relate to Everyday Operations**
- **What's Discussed Today Changes Over Time**
- **Let's Go Around the Room**



Introductions & Agenda

- **What We Will Talk About**
 - Provide an overview of your obligations
 - Framework We Must Operate Within (Compliance 101)
 - Ups and Downs of the Most Common Obligations



Introductions & Agenda

- **What We Will Not Talk About**
 - Skydiving Lawsuit
 - Ongoing Part 13
 - Land Use Inspection



Compliance 101



Compliance 101

- **The Grant Assurances are part of a contract between your Airport and the federal government;**
- **The contract essentially sets up the Airport Sponsor *in the business* of operating an airport;**
- **The Grant Assurances are a framework (*or set of principles*) under which you operate your airport business enterprise**



Compliance 101

AIP Grant Assurances – Quick Overview

- **39 Assurances**
- **Included In AIP Grant Application**
- **Accepted When AIP Grant is Signed**

ASSURANCES	
1. General Federal Requirements.	21. Compatible Land Use.
2. Responsibility and Authority of the Sponsor.	22. Economic Nondiscrimination.
3. Sponsor Fund Availability.	23. Exclusive Rights.
4. Good Title.	24. Fee and Rental Structure.
5. Preserving Rights and Powers.	25. Airport Revenues.
6. Consistency with Local Plans.	26. Reports and Inspections.
7. Consideration of Local Interest.	27. Use by Government Aircraft.
8. Consultation with Users.	28. Land for Federal Facilities.
9. Public Hearings.	29. Airport Layout Plan.
10. Metropolitan Planning Organization.	30. Civil Rights.
11. Pavement Preventive Maintenance.	31. Disposal of Land.
12. Terminal Development Prerequisites.	32. Engineering and Design Services.
13. Accounting System, Audit, and Record Keeping Requirements.	33. Foreign Market Restrictions.
14. Minimum Wage Rates.	34. Policies, Standards, and Specifications.
15. Veteran's Preference.	35. Relocation and Real Property Acquisition.
16. Conformity to Plans and Specifications.	36. Access By Intercity Buses.
17. Construction Inspection and Approval.	37. Disadvantaged Business Enterprises.
18. Planning Projects.	38. Hangar Construction.
19. Operation and Maintenance.	39. Competitive Access.
20. Hazard Removal and Mitigation.	

Compliance 101

Sources of Sponsor Obligations:

- **Contract (Accepting Federal Grants)**
 - FAAP – Federal Aid to Airports Program (1946-1970)
 - ADAP – Airport Development Aid Program (1971-1981)
 - AIP – Airport Improvement Program (1982 – present)
- **Receipt of Federal Property for Airport Purposes**
 - Instruments of Surplus Property Transfer
 - Instruments of Non-Surplus Property Conveyance



Compliance 101

Duration of Sponsor Obligations:

- **AIP: 20 Years From Last Development Grant, or Useful Life of Development / Equipment**
- **No Expiration for:**
 - Exclusive Rights
 - Airport Revenue
 - Civil Rights
- **Indefinite when real property is acquired with AIP**

Compliance 101

Grant Programs and Their Land Requirements

	Federal Aid to Airports Program (FAAP)	Airport Development Aid Program (ADAP)	Airport Improvement Program (AIP)
Years	1946-1970	1971-1981	1982 to Present
Obligations Imposed in Perpetuity	VERY RARELY (SEE GRANT)	RARELY (SEE GRANT)	OBLIGATIONS IMPOSED IN PERPETUITY
Aeronautical Use	AERONAUTICAL PURPOSES OR APPROVED INTERIM/CONCURRENT USES ONLY		
Lease Rate	RATES MUST BE FAIR, REASONABLE, NOT UNJUSTLY DISCRIMINATORY NON-AERONAUTICAL RATES ARE FAIR-MARKET		
Release Proceeds	ALL PROCEEDS GO TO AIRPORT REVENUE	ALL PROCEEDS GO TO AIRPORT REVENUE	AIP PROPORTION OF FMV MUST GO BACK INTO AN AIP PROJECT



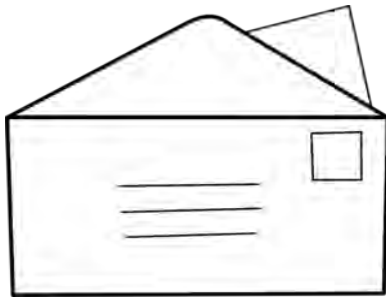
Compliance 101

Complaint / Resolution process

14 CFR § 13.1

Part 13 “Informal Complaint”

- Submitted to the ADO or RO
- Letter Format Preferred
- Not a Final Agency Decision
- Faster / Less Expensive



14 CFR § 16

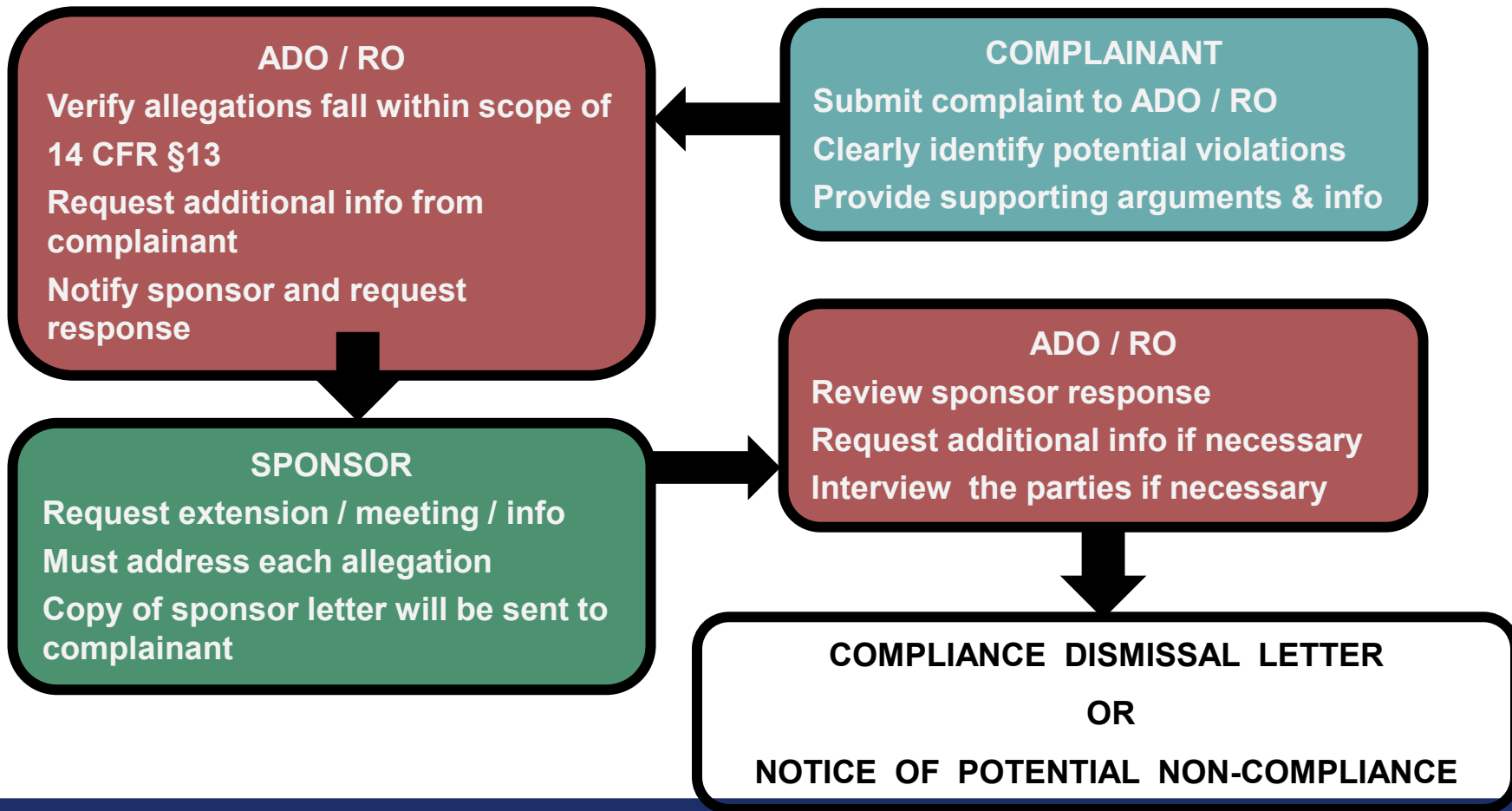
Part 16 “Formal Complaint”

- Submitted to FAA Office of General Counsel
- Final Agency Determination
- Subject to Judicial Review in US Court of Appeals



Compliance 101

Part 13 Complaint Review and Investigation



Compliance 101

Part 13 Possible Outcomes

Compliance: Sponsor is meeting its obligations.

Conditional Compliance: Sponsor has been notified of compliance deficiencies, but is willing to take agreed upon corrective action in a specified period (Corrective Action Plan).

Pending Non-Compliance: Sponsor has been notified of compliance deficiencies, but has not agreed to take corrective action. ADO/Region is elevating issue to ACO-100 for further action.

Non-Compliance and Default: FAA has made a formal finding of non-compliance and default. AIP funding will be withheld.

Compliance 101

Other Compliance Actions

- **Land Use Inspections:**
 - 1999 GAO and Senate reports identified issues with land uses at airports
 - Each FAA Region required to conduct two each year
 - Criteria for Land Use Inspections in FAA Order 5190.6B Chapter 21
 - Evaluates all areas of the airport, leases, Exhibit A, Airport Layout Plan
 - Identifies problems as they relate to meeting grant assurances
 - Corrective Action Plan developed from inspection
 - Specified timeframe required to make corrections

Sources of Information

- **Airport Compliance Manual, Order 5190.6B**
www.faa.gov/airports/resources/publications/orders/compliance_5190_6/
- **Airport Compliance Program Website**
www.faa.gov/airports/airport_compliance/
 - All the Compliance AC's
 - Revenue Use Policy
 - Rates and Charges Policy
- **Airport Sponsor & User Rights & Resp.**
www.faa.gov/airports/airport_compliance/media/airportSponsorAndUserRightsBrochure.pdf

Ups and Downs of Most Common Obligations



Ups and Downs of Most Common Obligations



- **What we will cover**

- Keep from giving away the store (#5)
- Avoiding favoritism while still setting standards (#22)
- Setting fees and reinvesting in your business (#24 & #25)
- Can you operate and maintain your airport (#19)
- Letting competition flourish (#23)
- Keeping the airport and local environment compatible with aviation (#21)
- Building and following your airport vision (#29)

Don't Give Away the Store

(#5, *Preserving Rights and Powers*)

- **The grant assurance for all assurances**
- **Always keep your ability to enforce your grant assurances and operate your airport.**
- **Ways to give away the store:**
 - Property line easements
 - Leases over 50 years without your ability to deny
 - No subordination clauses in leases
 - Airport Management to 3rd party w/o controls
 - Rights of First Refusal

Avoiding Favoritism while Still Setting Standards

(#22, *Economic Non-Discrimination*)

Make your airport available to all types, kinds and classes of aeronautical uses w/o unjust discrimination

- Set reasonable standards (Chapter 10 Compliance HB; AC 150/5190_7)
 - Minimum Standards
 - Rules & Regulations
- May limit for safety or civil aviation needs of public (Chpt. 14 Compliance HB)
 - Adequately Justify & Support
 - FAA is Final Arbiter
- Charge similarly situated FBOs/Carriers same rates and fees
- Allow self-service fueling with their own employees & equip.
- Sponsor must meet same standards as FBO

Setting Fees & Reinvesting in Your Business

(#24, Fee & Rental Structure; #25 Airport Rev.)

- **Setting Fees**

- Airport must be as self-sustaining as possible
- Not required to break even
- Aeronautical rates may be less than FMV
(reasonable, transparent, not unjustly discriminatory, consistently applied)
- Reasonable distinctions between users is okay
- Non-aeronautical rates below FMV may violate

Setting Fees & Reinvesting in Your Business

(#25, Fee & Rental Structure; #25 Airport Rev.)

- **Reinvesting in your business (Airport Rev)**
 - Obligation in perpetuity
 - All revenue must be used for capital or operation costs of the airport
 - Revenue includes
 - Use of land
 - Fuel Tax established after Dec. 1987

Can You Operate and Maintain Your Airport?

(#19, *Operation and Maintenance*)



Can you Operate and Maintain Your Airport?

19. Operation and Maintenance

a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, 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....

Letting Competition Flourish

#23, *Exclusive Rights*

Sponsor "...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public..."

- AIP Assurance #23, also included in:
 - Surplus Property Deed Restrictions
 - Section 16/23/516 Conveyances
 - FAAP/ADAP Grant Agreements
- Obligation in Perpetuity
(Doesn't expire even if AIP assurances do)
- See: Advisory Circular 150/5190-6, Exclusive Rights at Federally Obligated Airports



Letting Competition Flourish

#23, *Exclusive Rights*



- “I don’t want to allow a second FBO on our airport. It will create too many problems.”
- “If we allow a second FBO on the field, it will put the first FBO out of business.”
- “Their lease guaranteed that they would be the only FBO on the airfield.”

Letting Competition Flourish

#23, *Exclusive Rights*

TWO EXCEPTIONS:

1

“Unreasonably costly, burdensome or impractical” for more than one

AND

Would require the reduction of leased space **IN USE** by existing FBO

2

Sponsor may exercise “Proprietary Exclusive Right”

Offer some/all aeronautical services itself

Must use its own resources and employees, cannot contract out

Keeping the Airport & Local Environment Compatible with Aviation (#21, *Compatible Land Use*)

Advocate for land use on and off the airport that is compatible with normal airport operations:

- Avoid incompatible uses on airport (residential, glare, schools, industrial uses causing smoke)
- Make appropriate zoning
- Insert yourself in the zoning/permitting process
- Comment when there is public comment

Building and Following Your Airport Vision

(#29, Airport Layout Plan)

It will keep up to date at all times an airport layout plan of the airport showing:

- 1) boundaries of the airport and all proposed additions thereto,;
- 2) all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and

Questions?

