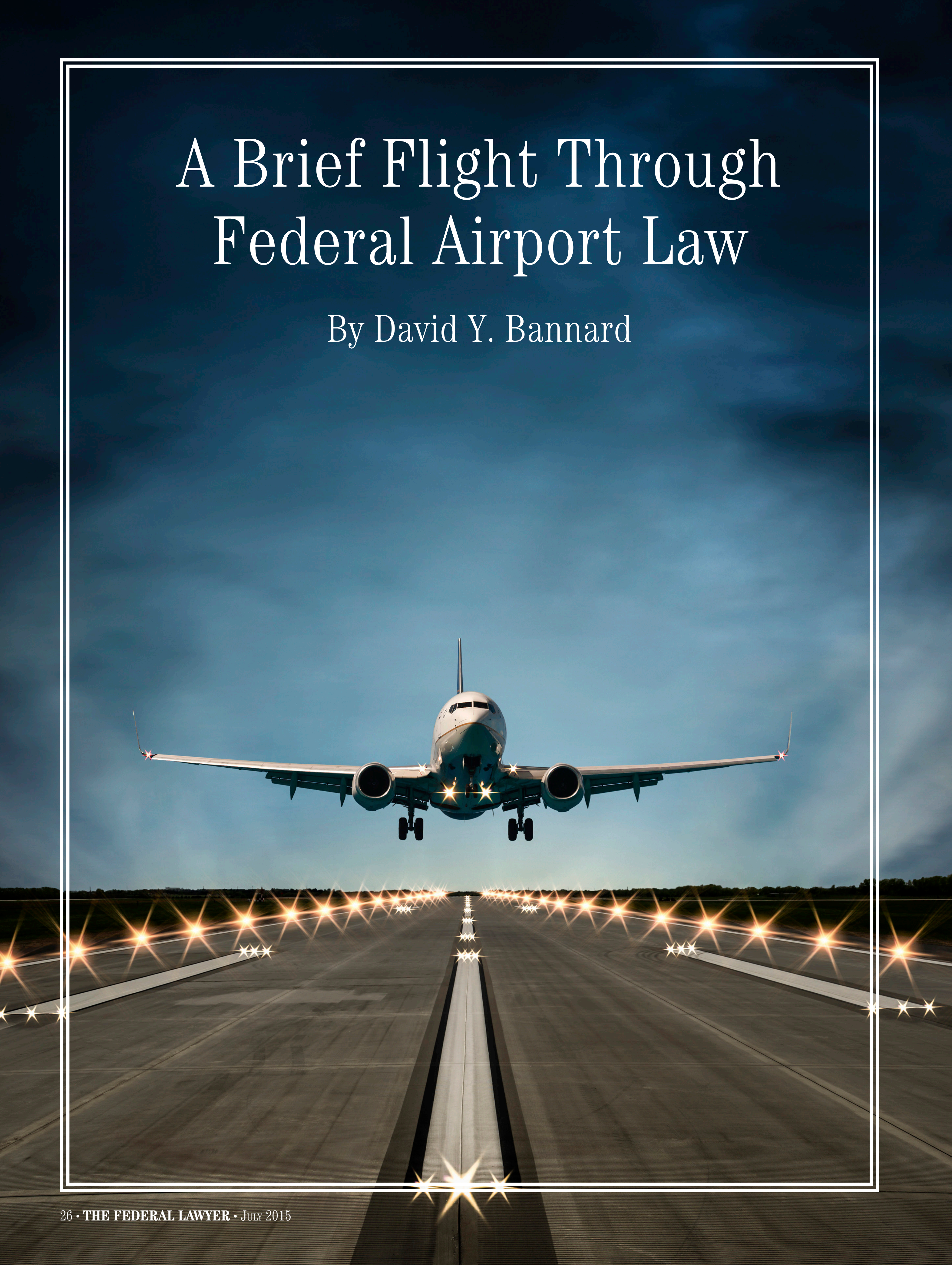
A Brief Flight Through Federal Airport Law

By David Y. Bannard



In a recent interview in *The Federal Lawyer*, Dallas/Fort Worth International Airport's general counsel, Elaine Flud Rodriguez, estimated that approximately 100 lawyers specialize in airport law and that many of them are in-house counsel at U.S. airports.[1] Given the huge number of American lawyers, what makes U.S. airport law a specialized discipline and airport lawyers so rare?

Similar to many practices, airport law is a hybrid. A specific body of federal statutory and case law applies to airports and, in turn, these legal requirements affect almost every aspect of operations at an airport. Each agreement that an airport operator enters into with another party must take into account the specific legal requirements that are applicable to airports, in addition to the other myriad legal issues and requirements under local, state, and federal law. The purpose of this article is to provide a brief overview of the federal law that applies to U.S. airports and demonstrate its application through a few examples of applicable contractual requirements. But this is not a complete description of the area of practice, and the summaries below are just that—summaries. It's a quick tour, so stow your carry-ons, fasten your seatbelt, and prepare for takeoff!

Federal Legal Provisions Applicable to Airports

Federal Grant Assurances

Perhaps the most significant legal requirements applicable to airports from a practitioner's perspective are the federal grant assurances, which are primarily derived from 49 U.S.C. § 47107. Each airport that receives an Airport Improvement Program (AIP) grant from the Federal Aviation Administration (FAA) must enter into a grant agreement with the FAA.[2] Included as conditions to the grant are a series of assurances that bind the recipient of the AIP grant, known as the airport sponsor, contractually for varying periods, generally the useful life of the asset financed with grant process but in some cases, in perpetuity.[3] Periodically, Congress will amend Section 47107 to add additional requirements,[4] and the current grant agreement now includes a list of 39 grant assurances, ranging from No. 1, general federal requirements to No. 39, competitive access. Several of the more significant grant assurances are highlighted below, but airport sponsors and their counsel must be familiar and comply with all 39 of the assurances.

Airport Revenue Use

The two grant assurances generating the most litigation and a significant body of case law are likely Grant Assurances Nos. 25 (Airport Revenues) and 22 (Economic Nondiscrimination). With limited exceptions, Grant Assurance No. 25 requires that all revenues generated by an airport must be expended for the capital or operating costs of the airport, the local airport system, or other local facilities that are owned or operated by the owner or operator of the airport and that are directly and substantially related to the actual air transportation of passengers or property or for noise mitigation purposes.[5] This assurance, known as the "anti-diversion" requirement, essentially prohibits the use of airport revenue to support unrelated initiatives.

The genesis of the requirement stems from initiatives by various cities in the 1980s and 1990s to raise airport fees and use the additional revenue to support city services, such as citywide police or fire protection services. Airlines serving these airports protested that this proposed diversion of airport revenue was unfair and successfully obtained Congressional action resulting in enactment of this prohibition, not only with respect to airport sponsors receiving AIP grants; in 1996, the prohibition was broadened to apply to all U.S. airports on a permanent basis.[6] In 1999 the FAA issued its *Policy and Procedures Regarding the Use of Airport Revenue* to help provide guidance regarding the permissible uses of such revenue.[7]

Although many uses of airport revenue are clearly either permissible or impermissible, quite a number of gray areas require legal counsel. Examples include air service incentive programs, which are discussed below; projects that are intended to improve access to airports, such as mass transit or improved roadways; and off-airport projects to mitigate the impact of airport operations. Issues arising from access projects tend to revolve around whether or what portion of the project is directly and substantially related to air transportation. For example, use of airport funds to construct the BART station at San Francisco International Airport was permitted because the station was on airport property and exclusively serves airport passengers and workers.[8] In contrast, the costs of elements of the light rail line that passes through the Minneapolis–St. Paul International Airport from downtown Minneapolis to the Mall of America were prorated based on complex formulae tied to projected use by airport passengers compared to through riders. The FAA has developed complex criteria for determining which portions of such access projects are eligible for funding with airport revenue. In the case of mitigation, the environmental permitting process for airport projects can often result in requirements that an airport undertake certain measures designed to mitigate the impacts of airport construction. Where there is a sufficient nexus between the two projects, the FAA has generally found that no violation of the anti-diversion requirement exists.

"Reasonable" Rates

As noted above, another heavily litigated grant assurance is No. 22 which contains several important requirements, one of which mandates that the airport sponsor make the airport available as an airport for public use "on reasonable terms."[9] A line of cases stretching back to 1972 has helped to define what constitutes a "reasonable" charge for use of an airport and, in 1996, the FAA issued a policy clarifying what constitutes reasonable rates and charges.[10] This Rates Policy was promptly the subject of additional litigation and, in a series of cases, portions of the Rates Policy were held to be arbitrary and capricious and vacated by the U.S. Appeals Court for the District of Columbia, and the policy was remanded to the Secretary of the Department of Transportation.[11] The Rates Policy has been modified since 1997 only once, to clarify certain terms, but the vacated provisions have not been reinstated.[12] Accordingly, the line of cases, beginning with *Evansville* and continuing through the series of cases involving Los Angeles International Airport and the airline trade association, Airlines for America (formerly known as the Air Transport Association, or ATA) provides the majority of the current guidance regarding what constitutes a "reasonable" charge for the use of aeronautical facilities.[13]

The determination of what constitutes a "reasonable" charge highlights the often-contentious issue between airport sponsors and airlines over which entity should have the final say in determining whether airport capital projects and operational undertakings are necessary or appropriate. When revenue bonds were issued to finance development of airport infrastructure at the beginning of the jet age, the credit of the tenant airlines was considered to be the best security, and many airports entered into use and lease agreements with their tenant airlines with terms of 30 years or longer to secure the bonds. These agreements tended to give a majority in interest (MII) of the tenant airlines the right to approve capital development projects at the airport, because the bonds were generally payable largely from airline landing fees and terminal rentals. Many of these agreements were so-called "residual" or "single cashbox" agreements pursuant to which the air carriers operating at the airport agreed to pay all capital and operating expenses net of all other revenues, essentially acting as the guarantor of the airport's financial obligations.

Over time, airport sponsors diversified their revenue sources, and at many airports today, airline revenues are less than 50 percent of total revenues, with parking and concessions—such as rental cars and in-terminal food and beverage or news and gift retailers—generating substantial revenues. As airports developed more varied sources of revenues, compensatory agreements, where costs are allocated to multiple cost centers and airports accept the risk and reward of covering these costs from the various revenue sources, or hybrids of compensatory and residual structures, developed. During this period of time, financial analysis also became more sophisticated, and a variety of factors now goes into rating airport credits, including the local demand for air service (known as origin and destination, or O&D, traffic), the diversity of revenue sources, as well as the importance of the airport to the airlines serving it. In turn, many airports have negotiated use and lease agreements with their tenants carriers that give the airport sponsor more control over capital projects and programs or, in some cases, have done away with such long-term agreements altogether and imposed rates and charges for use of the airport by ordinance, and have relied on the local demand for air service to ensure that airlines will continue to serve the airport.

Self-Sustaining Requirement

In contrast to the requirement that fees charged to aeronautical users of an airport be "reasonable," Grant Assurance No. 24 requires that airport sponsors maintain a fee and rental structure that will make the airport as self-sustaining as possible.[14] Many airports have minimal or no commercial service and must instead generate revenues sufficient to operate the airport from private or business aviation tenants, known as general aviation (GA) users of the airport; other commercial aeronautical services, such as fixed base operators (FBOs) that service general aviation aircraft, banner towing, or crop dusting services; and from non-aeronautical tenants, ranging from farmers to solar-electric-generation facilities to aviation equipment manufacturers. Because airports often compete with neighboring airports for commercial service or for GA tenants, it is not always possible for the full cost of providing aeronautical assets and services to be passed through to the aeronautical users of such assets and services. The FAA has interpreted the "self-sustaining" requirement to mandate that airport sponsors charge nonaeronautical tenants fair market value for the use of airport land and facilities, while aeronautical tenants must only pay a "reasonable" rate.[15]

Economic Nondiscrimination

The other critical requirement of Grant Assurance No. 22 is that an airport sponsor must make the airport available without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.[16] Determining what constitutes "just" discrimination has led to a substantial body of decisional law through both administrative decisions under Part 16, as discussed below, and appeals court decisions.

In disputes between airport sponsors and aeronautical tenants, tenants often allege that any distinction made by the airport sponsor between the tenant and another similar aeronautical service provider constitutes unjust discrimination. For example, where one FBO has entered into a lease at an airport and, several years later, a second FBO commences operations, one of the two FBOs will often claim that it is the subject of unjust discrimination and thus seek lease terms as favorable as those granted to the rival FBO. The law, however, is that airport sponsors may justly differentiate between similarly situated tenants (or differing classes of tenants) based upon reasonable distinctions, such as the dates the leases were signed and current versus previous market conditions, services provided, and underlying lease requirements, such as where one FBO is required to construct its own facility while another occupies facilities owned by the airport sponsor.[17] In contrast, where two tenants are substantially identical in the services provided and conditions of service, the airport sponsor cannot treat one significantly differently than the other. Thus, an airport sponsor must have reasonable, objective grounds for discriminating among its aeronautical tenants.

Exclusive Rights

Grant Assurance No. 23 prohibits the grant of exclusive rights by an airport sponsor. The FAA interprets this requirement to require an airport sponsor to lease space to an applicant to provide aeronautical services as long as such applicant can meet any reasonable minimum standards for such service(s) established by the airport sponsor and as long as there are either appropriate facilities or space to construct such facilities available, although the sponsor is not required to construct new facilities to accommodate a new entrant. An exclusive right may be conferred either by

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express agreement, by imposition of unreasonable standards or requirements or by other means. One exception to this rule is that where the airport sponsor exercises its proprietary rights to exclusively provide one or more aeronautical services, the sponsor is not required to accommodate a private provider for such services.[18] Even if there are multiple providers of the same aeronautical services at an airport, however, if another potential provider of such services is ready, willing, and able to meet the applicable minimum standards and seeks to operate at an airport, the sponsor must accommodate such provider to the extent that space is reasonably available.

Civil Rights

In addition to the requirement under Grant Assurance No. 1 to comply with a litany of federal laws, regulations and executive orders described below, Grant Assurance No. 30 requires an airport sponsor to take measures to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any activity conducted with, or benefiting from, federal AIP grant funding. Recent amendments to this assurance require that specific language be included in every contract or agreement subject to this requirement, which the FAA reads quite broadly. Thus, the airport sponsor must require its contractors and tenants to abide by these nondiscrimination provisions as well as complying with them itself.

In addition, Grant Assurance No. 37 requires airport sponsors to develop and undertake both disadvantaged business enterprise (DBE) and airport concessions disadvantaged business enterprise (ACDBE) programs consistent with the regulations promulgated at 49 CFR Parts 23 and 26. The DBE requirements apply to any contract for a project for which AIP grant proceeds are providing financial assistance and the ACDBE requirements are applicable to all concessions contracts at an airport.[19] Thus, even in jurisdictions where an airport sponsor is prohibited from establishing requirements mandating a percentage of participation by DBEs or ACDBEs,[20] the sponsor must establish goals for such participation based upon standards set forth in the regulations, and the airport sponsor must use good faith efforts to undertake programs and practices to meet such goals.[21] Concessions agreements with a term of greater than five years that are conducted solely by a single business entity on the entire airport require FAA approval.[22]

To assist in complying with these requirements, many airports have established significant outreach programs and sought means to encourage DBE and ACDBE participation in airport projects and concessions. Some of the more successful airport DBE and ACDBE programs have identified barriers to participation by DBEs and adopted means to mitigate such barriers. For example, many small businesses find obtaining payment and performance bonds difficult and expensive. Some airports have partnered with brokers and insurers to make such bonds more widely available, thus minimizing this impediment to participation by some DBEs. Once some of these barriers are removed, airports have found a larger pool of qualified DBE and ACDBE applicants with whom to contract. In addition, airport sponsors must develop goals for each procurement, include contractual requirements consistent with local law regarding DBE or ACDBE participation, and monitor the compliance of its contractors and concessionaires with such requirements.

Federal Law — Grant Assurance No. 1

As noted above, Grant Assurance No. 1 sets forth a laundry list of federal statutes, regulations, and executive orders with which a grant recipient must comply. These mandated provisions range from the Davis Bacon Act wage requirements to the Uniform Relocation Assistance and Real Property Acquisition Policies Act to the Clean Air Act to the Wild and Scenic Rivers Act. Many of these requirements relate to construction contracts funded with AIP grants, and the FAA and the U.S. Department of Transportation (DOT) have developed standard clauses addressing many of these legal requirements that must be incorporated into the applicable contracts.

Such a wide-ranging and diverse set of requirements presents myriad challenges to the practitioner. One of my responsibilities as an in-house lawyer for the Massachusetts Port Authority, the airport sponsor for three airports—Boston–Logan International, Hanscom Field, and Worcester Regional—was to deliver the legal opinion regarding Massport's authority to enter into AIP grant agreements. The first time that I reviewed the list of legal requirements under Assurance No. 1, I was shocked and daunted by their scope. But as I checked with my colleagues regarding how Massport ensured compliance with these requirements, I was considerably heartened. Massport's form construction documents, for example, included the requisite DOT provisions and were drafted to address the applicable legal requirements set forth in Assurance No. 1. Furthermore, Massport's standard planning and permitting process required analysis of many of the other requirements that are set forth in the assurance. That is not to minimize the scope or challenge of compliance with these requirements; in order to effectively meet them, airports must develop standard forms of agreements, internal policies and procedures, and other practices that are designed to ensure compliance with these legal mandates, and then develop a process for ensuring that the effectiveness of the airport's processes are checked on a regular basis.

Part 16

The FAA and DOT have developed a unique administrative adjudication process for addressing allegations that an airport sponsor has violated its grant assurances or certain other federal requirements relating to airports, set forth at 14 CFR Part 16. The Part 16 process is intended to provide for an expedited determination of such claims by the director of the FAA's Office of Airport Compliance and Management Analysis.[23] A Director's Determination may be appealed to the FAA's associate administrator for airports, and an Administrator's Decision may be appealed to the U.S. Court of Appeals.[24]

Part 16 permits the appointment of an administrative law judge and hearings in exceptional circumstances, but most actions under Part 16 are adjudicated entirely through written pleadings.[25] Once a formal complaint has been filed, either by the FAA or a complainant, the respondent has 20 days from the date that the FAA has docketed the complaint and notified the respondent to either file a motion to dismiss or for summary judgment on the complaint or to file an answer.[26] If a motion to dismiss or for summary judgment is filed, then the requirement to file an answer is tolled until the director either responds or 30 days passes after the filing.[27] (The FAA is not required to respond to motions to dismiss or for summary judgment.) The respondent then has 20 days after the 30-day period passes to file an answer.[28] The complainant then has 10 days to file a reply, and the respondent may then file a rebuttal within 10 days after the reply.[29] Each such pleading may be accompanied by supporting documentation.[30] The director is then required to render an initial determination within 120 days after the last pleading is filed.[31] However, in practice, the FAA typically will extend the deadline. Decisions in Part 16 actions constitute a useful and significant body of law interpreting the grant assurances and other federal requirements applicable to airport sponsors. [32]

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Part 139

The FAA is charged by Congress with oversight of the safe operation of the U.S. aviation system.[33] The FAA discharges this obligation with respect to airports that have scheduled or unscheduled commercial air service largely through the requirements codified at 14 CFR Part 139. Part 139 provides for regular inspection of airports by FAA inspectors as well as development of and compliance with an airport certification manual that addresses the many specific issues outlined in Part 139.[34] In addition, Part 139 sets forth specific requirements regarding a range of issues relating to safety, including personnel training, aircraft rescue and firefighting, development and maintenance of records, development of an airport emergency plan, and maintenance of specified airport facilities.[35] To host operations of commercial aircraft, airport sponsors must meet stated criteria, which escalate as the operations involved larger and more powerful aircraft. Thus, for example, an airport certified to accommodate scheduled commercial service with large jet aircraft must provide significantly greater airfield rescue and fire-fighting capacity than an airport licensed only to accommodate infrequent service by smaller aircraft.[36]

PFCs

Airport sponsors are permitted to impose a charge of up to $4.50—known as a passenger facility charge, or PFC—on eligible departing passengers pursuant to 49 U.S.C. § 40117 (an amount Congress currently is debating increasing nearly two-fold). PFCs must be applied to finance capital projects that increase competition, improve safety and security or enhance capacity at the airport, or reduce noise exposure for residents and certain businesses near the airport.[37] PFCs are collected by the seller of the ticket for air transportation and held by the air carriers until remitted to the applicable airport, although PFCs are considered to be held in trust by the carriers for the benefit of the airports.[38] Treatment of PFCs when a carrier files for bankruptcy protection has now been clarified, but initially, the airports for whom the PFCs were collected were often in conflict with the trustee in bankruptcy over whether the carrier or the airports held title to the PFCs collected by the carrier.

To receive authority from the FAA to impose and use a PFC, an airport sponsor must undertake a substantial public process that includes consultation with the carriers operating at the airport, responding to the carriers' comments, justifying the proposed projects, and obtaining a record of decision from the FAA.[39] In addition, the FAA has promulgated regulations that specify the types of capital projects that are eligible for funding with PFCs as well as detail the PFC approval process. PFCs may also be used to pay debt-service costs for PFC-eligible projects and are a substantial source of funding for airport capital programs.[40] To the extent that the capital cost of a project is funded with PFCs, those costs cannot be included in the rates and charges paid by the carriers for the use of that project, and an airport may not enter into an exclusive long-term lease of PFC financed facilities.[41]

Transportation Security Law

Since the tragic events of Sep. 11, 2001, an entirely new body of law has been developed relating to airport security. The Aviation Transportation Security Act that created the Transportation Security Administration granted the TSA the ability to promulgate regulations to ensure the security of air travel.[42] The TSA regulates both airport sponsors and air carriers, as well as other participants in the air transport system, through a complex set of publicly available regulations and restricted access security directives.[43] Airports are required to develop an airport security plan that must then be approved by the TSA.[44] Security sensitive information (SSI) (including security directives and the airport security plan) must be protected by airports and others possessing SSI and disseminated only to those persons meeting stated criteria.[45] TSA staff monitors compliance with its regulations, security directives, and the airport security plan, and can issue fines or other penalties for violations.

Airport Law in Practice

The above brief tour provides an idea of the breadth and depth of the federal law applicable to airports, but is by no means complete. This section is intended to provide insight into how airports work to comply with those laws in their day-to-day operations. Set forth below are a few examples of typical airport agreements or programs and how the legal requirements noted above are often addressed.

Use and Lease Agreements

An airport use and lease agreement is perhaps the most important agreement that the sponsor of a commercial service airport will enter into, and the standard form is usually negotiated among a committee of the air carriers operating at the airport and the airport sponsor. Typically, the most heavily negotiated provisions in the agreement are the manner in which the landing fee and the terminal space rents are calculated. Where the airport and the airlines signing the agreement can agree on the methodology, such a rate methodology is de facto "reasonable".[46] Nevertheless, the development of a rate-making methodology for any airport is a complex task and usually involves certain compromises and close attention to the legal precedents regarding permissible rates and charges. Thus, the inclusion of certain charges—such as the allocation of general administrative costs among aeronautical cost centers, for which the carriers are responsible, and other cost centers, such as concessions or parking, that do not affect the airlines—can be the subject of intensive negotiations. Incentives to reach agreement may include, for example, sharing a portion of the concessions revenues with the airlines to reduce the landing fee in exchange for the signatory airlines agreeing to lease a certain amount of terminal space for a specified term, which may range from year to year to 30 years. Carriers that do not sign the agreement, known as nonsignatory carriers, typically pay a higher but also uniform rate for landing fees and use of terminal space. The FAA has found that the distinction between signatory carriers that are held to the terms of a lease and nonsignatory carriers that operate at will is not unjustly discriminatory.[47] However, any carrier willing to enter into the use and lease agreement must be given the opportunity to do so.

Many, if not most, use and lease agreements are expressly subject and subordinate to the airport sponsor's federal grant assurances, protecting the airport from claims under state law if an agreement must be modified to meet the airport's grant assurance requirements. Most use and lease agreements also address many of the other legal requirements applicable to airports, either through sections that incorporate federally required clauses, such as nondiscrimination provisions, or reference compliance with applicable laws, as well as regulations or rules promulgated by the airport sponsor itself. Other legal requirements may be dealt with indirectly—for example, requiring single-engine taxiing or the use of preconditioned air and ground power at the gates to reduce emissions from jet engines (including the auxiliary power unit in most aircraft), helping the airport meet Clean Air Act standards. Because security requirements are, at least partially, SSI, the agreement will often require the air carrier to comply with the airport security plan but provide that the relevant provisions of the plan will be provided to the carrier separately. In addition, many agreements will require the air carrier to indemnify the airport sponsor against fines or other charges imposed by the TSA for security violations by the carrier's personnel.

Some use and lease agreements are drafted as licenses to avoid transfer of real property rights to the carrier. In either case, however, these agreements typically reflect state law requirements and matters and address the range of issues typically addressed in a lease, including the lease (or license) of specified premises, payment of rent, term, terms relating to holding over after expiration of the term, permitted and prohibited uses of the premises, and the like. To meet both PFC and grant assurance requirements relating to accommodation of air carriers seeking to enter a new market,[48] space is often leased on a "preferential use" basis, with the airport reserving the right to require the tenant to accommodate operations by other carriers when the gate is not scheduled for use by the tenant carrier. In addition, some airports have developed provisions granting the airport the right to relocate a carrier from one or more gates (or consolidate operations) to accommodate a new entrant carrier or expanded operations by another carrier, often based upon usage standards or operations per gate per day. Not surprisingly, one of the more contentious sections of most use and lease agreements, after the calculations of rates and charges and relocation rights, is responsibility for compliance with environmental laws, especially because state laws vary, sometimes significantly, from jurisdiction to jurisdiction.

Air Service Incentive Programs

As competition for nonstop air service to diverse markets increases and competition among domestic air carriers has decreased through recent mergers, airport sponsors have increasingly sought to entice additional service through the use of air-service incentive programs. The FAA's Revenue Use Policy, however, bars the provision of direct subsidies to air carriers, finding that to be an impermissible use of airport revenue.[49] Instead, the FAA has found that airports may waive aeronautical fees for limited periods to incent carriers to provide additional service, but the foregone costs must be recovered from a nonaeronautical source, such as parking revenues.[50] In addition, any incentive that is offered must be available to any carrier willing to satisfy the stated conditions.[51] Airports are free to develop relatively detailed conditions, such as specifying cities (or airports) to which the airport seeks direct service, but if two or more carriers are willing to provide the service desired, each of the carriers must receive the same incentives to avoid unjust discrimination.

Airport Construction Agreements

In addition to meeting state requirements for public construction contracts, airports must be mindful of and develop strong form agreements that are compliant with the wide range of federal requirements. As noted above, the FAA requires that a number of specific clauses, depending upon the dollar amount of the contract, be included in all construction contracts. In addition, even where specific language is not included, airports must develop provisions that address other applicable federal laws. Thus, for example, many construction contracts include very specific details regarding use of low-emission construction vehicles to meet State Implementation Plan goals under the Clean Air Act or include specific stop-

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work and notification requirements if human remains are found, to meet the Native Graves Repatriation Act mandates.

Conclusion

Federal law specific to airports touches almost every aspect of the operation of airports in the United States. These requirements must be understood and included in the vast majority of agreements entered into and policies adopted by airports. These requirements supplement (and sometimes conflict with) standard provisions in these agreements, requiring airport lawyers to develop familiarity with both substantive state law requirements, such as real estate law or construction law, as well as the relevant federal requirements. The resulting hybrid is a rare bird—an airport lawyer. ⊙

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Endnotes

[1]*The Federal Lawyer*, Sept. 2014 at 14.

[2]49 U.S.C. § 47107; *See* Airport Improvement Program Handbook (*AIP Handbook*), Order 5100.38D (9/30/14). The current grant assurances are available at www.faa.gov/airports/aip/grant_assurances.

[3]Grant Assurance No. 25 (Revenue Use) applies in perpetuity to all airports receiving a grant after 1996. *See* 49 U.S.C. § 47133.

[4]*See, e.g.*, Sections 135, 136 and 140 of the FAA Modernization Act of 2012, Pub. L. 112-95.

[5]49 U.S.C. §§ 47107(b); 47133. *See also* FAA Airport Compliance Manual (*Compliance Manual*), Order 5190.6B (9/30/09) Chapter 15.

[6]49 U.S.C. § 47133.

[7]Policy and Procedures Concerning the Use of Airport Revenue (*Revenue Use Policy*), 64 Fed. Reg. 7696 (2/16/99).

[8]Compliance Manual, § 15.9(i); AIP Handbook, Table P-3.

[9]*See also* 49 U.S.C. § 40116(e)(2).

[10]Policy Regarding Airport Rates and Charges (*Rates Policy*), 61 Fed. Reg. 31994 (6/21/96).

[11]*Air Transp. Assn. of America v. Dept. of Transp.*, 119 F.3d 38 (D.C. Cir. 1997).

[12]*See* 73 Fed. Reg. 40430 (7/14/08).

[13]*See, e.g., Evansville-Vanderburgh Airport Auth. v. Delta Air Lines*, 405 U.S. 707 (1972); *Indianapolis Airport Auth. v. American Airlines*, 733 F.2d 1262 (7th Cir. 1984); *Northwest Airlines Inc. v. County of Kent*, 510 U.S. 355 (1994); *City of Los Angeles Dept. of Airports v. Dept. of Transp.*; 103 F.3d 1027 (D.C. Cir. 1997); *ATA v. Dept. of Transp.*, 119 F.3d 38 (D.C. Cir. 1997); *Air Canada v. Dept. of Transp.*, 148 F.3d 1142 (D.C. Cir. 1998); *Port Authority of N.Y. & N.J. v. Dept. of Transp.*, 479 F.3d 21 (D.C. Cir. 2007).

[14]49 U.S.C. § 47107(a)(13).

[15]*See, e.g.*, Compliance Manual, Ch. 17, § 17.11 (nonaeronautical rates), § 17.10 (aeronautical rates).

[16]49 U.S.C. § 47107(a)(1).

[17]*See* Compliance Manual, Ch. 8.

[18]*Id.*, § 8.9.

[19]49 CFR § 23.9.

[20]*Id.* at § 23.25 ("You must maximize the use of race-neutral measures").

[21]*Id*. at § 23.57.

[22]*See* Principles for Evaluating Long-Term Exclusive Agreements in the ACDBE Program, FAA Office of Civil Rights (6/10/13).

[23]14 CFR § 16.31

[24]14 CFR §§ 16.33, 16.247.

[25]14 CFR Part F.

[26]14 CFR § 16.13.

[27]14 CFR § 16.2.

[28]*Id*.

[29]14 CFR § 16.23 (e); (f).

[30]*Id* at (g).

[31]14 CFR § 16.31.

[32]Part 16 decisions are available at the FAA's website (www.faa.gov/airports). *See also* Airport Cooperative Research Program (ACRP) Legal Research Digest 21, "Compilation of DOT and FAA Airport Legal Determinations and Opinion Letters through December 2012".

[33]*See* 49 U.S.C. § 40101.

[34]14 CFR §§ 139.201, *et seq*.

[35]14 CFR §§ 139.301, *et seq*.

[36]14 CFR §§ 139.315, *et seq*.

[37]49 U.S.C. § 40117(a)(3); *see also* 49 CFR Part 158 (Part 158).

[38]49 CFR §§ 158.41, *et seq*.

[39]49 CFR §§ 158.21, *et seq*.

[40]49 CFR § 158.13.

[41]49 U.S.C. § 40117(f).

[42]Pub. L. 107-71 (11/19/01).

[43]49 CFR §§ 1500, *et seq*.

[44]49 CFR §§ 1542.101, *et seq*.

[45]49 CFR §§ 1520.1, *et seq*.

[46]49 U.S.C. § 47129.

[47]Rates Policy, § 3.1.1.

[48]*See* 49 U.S.C. §§ 40117(k), 47106(f); Grant Assurance No. 39.

[49]Revenue Use Policy, § VI.B.12.

[50]*Id*, Revenue Use Policy § V.A.2.

[51]*Id.*