



# Federal Aviation Administration

## **Information for Airport Sponsors Considering COVID-19 Restrictions or Accommodations**

### **PURPOSE**

This document addresses common issues that have arisen or may arise for airport sponsors during the response to the COVID-19 public health emergency. The Federal Aviation Administration (FAA) Office of Airports will evaluate specific requests regarding restrictions or accommodations on a case-by-case basis. The FAA retains maximum flexibility to consider unique circumstances during this public health emergency.

The FAA separately has published frequently asked questions (FAQs) related to the approximately \$10 billion in grants for airports under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Those FAQs are available at [www.faa.gov/airports](http://www.faa.gov/airports).

### **BACKGROUND**

The FAA has been receiving inquiries from airport operators about their authority to implement a range of restrictions, changes in operations, terminal service consolidations, and other responses to the COVID-19 public health emergency. Many of these inquiries reflect interest in facilitating social distancing or adapting to a reduced level of activity at the airport.

The FAA's primary concern is that federally obligated airports remain safe and open to the traveling public and aircraft. Particularly during this public health emergency, airports play an essential role in transporting medical and emergency equipment and personnel. The FAA continues to expect all airports to operate safely and stay open.

### **APPLICABILITY**

The guidance here is not legally binding in its own right and will not be relied upon by the FAA as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with this guidance, as distinct from existing statutes, regulations, and grant assurances, is voluntary only, and nonconformity will not affect existing rights and obligations.

### **ISSUES**

**Closing airports:** All proposed closing of airport access (i.e., passenger and aircraft access) must be approved in advance by the FAA. As noted in [Compliance Guidance Letter, 2020-01](#), in general, the FAA does not permit temporary closure or restriction of federally obligated airports for non-aeronautical purposes. An airport sponsor must obtain FAA approval to allow airport closure for a non-aeronautical purpose. (Grant Assurance 19 and 49 U.S.C. § 47107(a)(8)). Grant Assurance 19

further requires that airport sponsors will not cause or permit any activity or action on the airport that would interfere with its use for airport purposes. This includes all airport structures and operational areas. If a proposed action suspends or closes an international Port of Entry, then the sponsor may also need approval from U.S. Customs and Border Protection (CBP).

**Prohibiting certain flights (e.g., certain locations, types of aircraft, and types of operations):** As is normally the case, actions such as these may violate Federal law and the airport's grant assurances, unless approved in advance by the FAA (and, in some cases, the Office of the Secretary of Transportation (OST) as well). To seek such approval, the airport sponsor should contact the applicable [FAA Airports District Office](#) to discuss the matter.

**Requiring flights to land at certain airports for screening:** All such requests would ordinarily require prior FAA approval under Grant Assurances 19 and 22 and related statutes. Usually, these restrictions would likely constitute an unreasonable restriction on access; however, FAA has discretion to consider such requests and recognizes the exceptional situation presented by this public health emergency. Depending on the circumstances, such requests might be deemed as reasonable restrictions on access. However, even where FAA is amenable to such a temporary condition, the airport will need to coordinate with OST with regard to requiring route changes, and with CBP if the action appears to suspend or close an international Port of Entry.

**Closing of sections of the airfield to allow for aircraft parking:** Airports should avoid overflow parking of aircraft on runways except as a last resort. If overflow parking of aircraft is needed, airports should first consider using gates, aprons, and non-movement areas. Airports should also consider suggesting that aircraft owners contact other nearby airports where there may be additional aircraft parking capacity. Based on the location(s) selected, the sponsor must be able to respond with aircraft rescue and firefighting (ARFF) capability and provide required notice. In all cases, operators of airports in the National Plan of Integrated Airport Systems should work with local air traffic facilities (if present) to develop a safe and reasonable parking plan and share that information with their servicing FAA Airports District Office, local FAA Air Traffic Manager, and FAA's Flight Standards Service. For part 139 certificated airports, see [Cert Alert 20-02 – Temporary Parking of Overflow Aircraft](#) (updated March 24, 2020).

**Closing restaurants or other retail activities in the terminal:** The closing of restaurants, retail stores, or other non-aeronautical functions in a terminal is not likely to violate FAA grant assurances if driven by public health measures or reduced clientele, and especially if restrictions are applicable to all business entities within the jurisdiction. However, airports should coordinate with the FAA Office of Civil Rights with regard to Airport Concession Disadvantaged Business Enterprise regulations.

**Closing gates or sections of terminals:** In coordination with airport sponsors, airlines, the Transportation Security Administration (TSA), and other entities, closing gates or sections of terminals is likely to be acceptable if the closure is executed in response to reduced passenger volumes and operations, is not discriminatory, and does not provide an unfair competitive advantage to one operator. For example, TSA has reduced lanes or consolidated passenger screening checkpoint operations in numerous airports in response to the reduction in originating passenger volume.

**Allowing terminals to be used for sheltering of people:** This is likely to be acceptable if it does not interfere with airport access or impact security for the traveling public and aircraft operations.

**Screening or quarantining passengers boarding or exiting planes:** State, local, or territorial public health officials may want to screen or quarantine passengers. In most cases, this is likely to be acceptable as long as passengers are not being categorically refused access to air transportation (e.g., through unapproved blanket closures). Airlines may refuse transportation to a passenger because of a communicable disease if the passenger's condition poses a direct threat to the health or safety of others. Care must also be taken in coordinating with airport sponsors, airlines, TSA, airport law enforcement, and other entities on when, where, and how your government conducts this screening and quarantining, with a goal of minimizing burden and maximizing flexibility for operations. Effort also should be made to minimize undesirable queueing or the formation of large groups of passengers.

**Rent abatement / minimum annual guarantee:** A decision to abate rent (including "minimum annual guarantees" and also encompassing fees) is a local decision. Rent abatement should be tied to the changed circumstances caused by the public health emergency, and done in accordance with Grant Assurances 22 and 24, as well as related statutes. Where abatement results in shifting costs between various classes of airport tenants and users, the airport sponsor is encouraged to consult with all affected parties and implement a consensus approach if possible.

If a sponsor (or airport tenant, whether aeronautical or non-aeronautical) desires to renegotiate rent, a reasonable basis for such an action might be established if the underlying basis for such rent has temporarily declined or materially altered due to COVID-19. In such circumstances, the offer of accommodation in the form of rent abatement is not barred by the grant assurances as long as it is reasonable under the circumstances and reflects the decline in fair market value, loss of services, and/or changes to volume of traffic and economy of collection.

Sponsors considering such relief are encouraged to consider the business situation of the tenant; the changed circumstances created by the public health emergency; the desirability of having solvent tenants that can resume normal operations when the emergency ends; the availability of other governmental or insurance relief that such entities have or may receive; an appropriate term for such relief; and possible subsequent conditions that, if triggered, would end the abatement. Such a condition could be the receipt of other governmental forms of relief; insurance recovery, if any; or an end to the emergency.

As noted above, where sponsors have residual lease arrangements with aeronautical users, the reduction of rent for certain non-aeronautical entities may shift costs to the aeronautical users such as airlines. Achieving the appropriate balance between these users is a local responsibility that should be managed in consultation with all affected parties. If rent abatement to non-aeronautical users results in an increase to aeronautical rates, that is not necessarily an impediment from a grant assurance perspective, but the aeronautical rates must remain reasonable. For any actions that reallocate costs, FAA encourages sponsors to carefully balance and consider the equities between all airport users. Additionally, the sponsor is encouraged to consult with all affected parties before making its decision and reach a consensus where possible.

Apart from any Federal obligations, the FAA also recommends that airport sponsors consult their lease agreements to understand their discretion to act, particularly in a residual methodology context. Airport sponsors should also examine any bond covenants to identify any potential restrictions that may exist.

**Deferral of rental payments or other fees:** In cases where bond restrictions or other conditions may prevent airports from offering rent abatements, the deferrals of rents and/or fees may be possible. The terms and interest rates applied should be reasonable and applied fairly to similarly situated businesses. Deferral of rental payments and or fees, if adequately justified, is not likely to violate FAA's grant assurances. A primary goal of the statutory sustainability principle is to keep the airport solvent to ensure that the airport can remain open and operate safely. If a deferral exceeds an annual reporting period, interest should be charged based on Treasury note interest rates beginning the date of the deferral and reported on FAA Form 127. The deferred rent amount should be reported in the fiscal year when the rent would have been due but for the deferral. In the event that the rent payment is deferred and not abated, the deferred rent amount should be reported as unpaid invoices (accounts receivables) which would be reflected in the amount of revenue reported on the FAA Form 127. Neither airports nor the FAA have the legal authority, however, to allow air carriers to defer the remittance of collected Passenger Facility Charge (PFC) revenues.

**Sponsor's request for reducing hours of operation:** If contemplated, it is important that any such proposed action be part of implementing a legitimate public health initiative related to COVID-19. At a minimum, to the extent considered, such an action would require FAA to examine whether it would result in an undue hardship on emergency response or otherwise unjustly discriminate against a specific user of the airport. Finally, FAA is unlikely to approve any such reductions that would restrict either government or emergency operations.

**Sheltering-in-place impacts on airport personnel:** Because airports are essential in transporting emergency and medical supplies and personnel during emergencies, a critical number of airport and Federal employees should be designated as essential to ensure the continuity, safety, and security of airport operations. Also, airport law enforcement should be informed to facilitate their access to airport and airport facilities. This is particularly true for part 139 certificated airports, which require minimum personnel to meet requirements of the regulation. In addition, the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency has issued [guidance](#) that specifically identifies airport operations personnel as part of the "Essential Critical Infrastructure Workforce" who should not be impeded from their efforts to keep airports safe and operational.

**Recreational aeronautical restrictions:** Certain States have issued COVID-19 restrictions on activities they deem "non-essential," including certain aeronautical activities such as flight schools and sky diving. With the goal of keeping airports open to ensure access for the traveling public, emergency and medical equipment and supplies, and emergency transportation, FAA does not object to *temporarily* limiting recreational aeronautical activities that are covered by such restrictions. However, the activities limited by a sponsor should be limited to those falling within the scope of a public health measure by an authority whose jurisdiction covers the airport's geographic area (e.g., a State or local government).

**Prohibiting flights from “hotspot” areas:** Prohibiting flights from “hotspots” or areas of high levels of contagion generally is not acceptable. However, a jurisdiction may choose to consider its authority to impose public health screening or quarantine for passengers entering the jurisdiction. The FAA has published [guidance](#) for consideration when implementing quarantine, screening, or movement restrictions that impact air transportation.

**Sponsor’s Use of Airport Revenue for Public Health Activities:** Federal law requires that federally obligated airports must use airport revenue for the capital or operating costs of the airport. CARES Act grants must be used in the same way as airport revenue and for costs that are directly related to the airport.

Under the extraordinary circumstances of the COVID-19 public health emergency, some activities the airport may undertake to minimize the spread of COVID-19 may be legitimate capital or operating costs of the airport. For example, in this exceptional context, the FAA considers the testing and health screening of airport employees to be a legitimate operating cost of an airport to sustain the airport’s workforce, upon which the continuity of airport operations depends. Additionally, airport operating costs may also include the costs of enhanced cleaning of the terminal and other areas of airport property to minimize transmission of COVID-19. These operating costs may include the purchase of incidentals and supplies to accomplish these purposes, such as screening and testing equipment, cloth face covers, and cleaning and disinfection products. In contrast, the use of airport employees for public health screening is generally not considered a proper use of airport revenue. Airports should properly account for and document allowable costs incurred because of the COVID-19 public health emergency. Airports with specific questions regarding allowable costs related to COVID-19 should contact their Airport District Office.

**Sponsor’s Use of Airport Space for Public Health Activities:** Under the extraordinary circumstances of the COVID-19 public health emergency, airports are permitted to allocate terminal or office space for testing and health screening activities and the related storage of medical equipment and supplies. In this exceptional context, it is also within an airport sponsor’s discretion to allow tenants to have additional space, beyond what their leases include, for testing and health screening and for storage of medical equipment and supplies. Because these uses support the continuity of airport operations, such accommodations can be for no cost as long as they are temporary, necessitated by the public health emergency, and offered in a way that is not unjustly discriminatory.

## CONCLUSION

Airports should be cognizant of, and assume the responsibility for, the implications of their proposed actions in response to COVID-19. Considerations include, among others: (1) coordination with the FAA, (2) coordination with other Federal, State, or local agencies as needed, including airport law enforcement or local law enforcement entities serving the airport; (3) understanding of applicable Federal obligations, (4) impacts on aeronautical use and airport infrastructure; (5) impact on the safe and efficient functioning of air traffic and the National Airspace System; (6) communications and notice requirements; (7) evolving safety and security requirements; (8) the need to document actions; (9) plans for following up on or amending actions as the situation evolves; and (10) the impact to emergency services that rely on air transportation.