

NOTICE OF PROPOSED GUIDANCE DOCUMENT

DTIMBOA43

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIMBOA43, a proposed guidance document.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIMBOA43>

2. Mailing written comments to:

Division of Transportation Investment Management
Wisconsin Department of Transportation
4822 Madison Yards Way
PO Box 7913
Madison, WI 53707-7913

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at wisconsin.dot.gov to allow for ongoing comment.

AGENCY CONTACT

Kaleb Vander Wiele
DOTDTIMGuidanceDocs@DOT.WI.GOV



Non-Aeronautical Events

An Airport Owner and Management Reference Document



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Definitions

Aeronautical Event

An aeronautical event is defined as a temporary use of airport property for a social gathering which features an aeronautical activity. Examples include, but are not limited to: aircraft flight demonstrations, aerobatic contests, static aircraft displays, fly-ins, aviation conventions, parachute demonstrations, and balloon meets and races.

Coordination with the Federal Aviation Administration (FAA) is likely required for some aeronautical events. First, any aeronautical event with an aerial demonstration component may require a Certificate of Waiver or Authorization (FAA Form 7711-1) that has been approved and issued by the appropriate Flight Standards District Office (FSDO). Specifically, a waiver is required whenever activities violate any Federal Aviation Regulation. Common examples include:

1. FAR § 91.117 Aircraft Speed
2. FAR § 91.119 Minimum Safe Altitude
3. FAR § 91.126-131 Airports/Airspace Operations
4. FAR § 91.155 VFR Weather Minimums
5. FAR § 91.303 Aerobatic Flight

For additional information see FAA Advisory Circular 91-45C.

Also, FAR Part 77 requires FAA Form 7460-1 to be filed for any on airport alterations. This requirement includes the temporary placement of supporting event facilities and equipment such as bleachers, portable toilets and trailers.

While not required, coordination with the Wisconsin Bureau of Aeronautics (BOA) is strongly encouraged prior to the hosting of an aeronautical event on an airport.

Non-Aeronautical Event

Non-aeronautical events are defined as a temporary use of airport property for a social gathering which does not feature an aeronautical activity. Examples include, but are not limited to: car shows and races, trade shows, concerts, and community picnics. Coordination is required with BOA prior to hosting any non-aeronautical events at an airport which has accepted federal or state funding.

Part 139 Certificated Airport

An airport certificated by the Federal Aviation Administration as described in 14 CFR Part 139.

Non-Certificated Airport

For the purposes of this guidance document, a non-certificated airport is any public-use, federally obligated airport which has not been certificated by the Federal Aviation Administration under 14 CFR Part 139.



Regulatory Background

The acceptance of federal and state grants requires an airport sponsor to comply with certain obligations and assurances. These obligations, known as the conditions of state aid and the federal grant assurances, become binding contracts between the airport sponsor and the State of Wisconsin and U.S. government respectively. These assurances are intended to reserve airports as aeronautical facilities and preserve the public investment at individual airports.

The obligations put forth by the federal grant assurances apply to any airport property, when described in a grant or defined by an airport layout plan (ALP) or listed in the Exhibit "A" property map, regardless of how and when the property was acquired by the airport. Grant Assurance #19 and #29 directly relate to the use of airport property for non-aeronautical purposes. In addition, FAA Order 5190.6b provides further guidance on the appropriate use of obligated airport property to host non-aeronautical events.

Grant Assurance #19 Operation and Maintenance

"[The Airport] will not cause or permit any activity or action thereon which would interfere with its use for airport purposes."

"Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the [FAA]."

Grant Assurance #29 Airport Layout Plan

"[The Airport] will keep up-to-date at all times an airport layout plan showing...the location of all existing and proposed non-aviation areas and of all existing improvements thereon."

"[The Airport] will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the [FAA] and which might, in the opinion of the [FAA], adversely affect the safety, utility or efficiency of the airport."

FAA Order 5190.6b Airport Compliance Manual

"An airport developed or improved with federal funds may not be closed to use the airport facilities for special outdoor events, such as sports car races, county fairs, parades, car testing, model airplane events, etc., without FAA approval. This has been FAA policy since 1961 as outlined in *Compliance Requirements Part 6.00* (July 1961). In certain circumstances, where promoting aviation awareness through such nonaeronautical activities as model airplane flying, etc., the FAA does support the limited use of airport facilities so long as there is not total closure of the airport. In these cases, safeguards need to be established to protect the aeronautical use of the airport while the nonaeronautical activities are in progress and to ensure that safety is not compromised."

(Page 7-19)



“In some instances, there may be sufficient justification to use part of an airport temporarily for an unusual event of local significance that does not involve closing the entire airport.”

(Page 7-20)

State of Wisconsin Administrative Code Chapter Trans 55.06 *Conditions of State Aid for Airport Improvements* establishes many of the same obligations as the federal grant assurances as they relate to non-aeronautical events on airports.

TRANS 55.06 (2) Airport Operation and Maintenance

“An airport owner shall safely operate and maintain all airport facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States”.

“An airport owner may not permit an activity on airport property that would interfere with air transportation provided that nothing contained in this chapter shall be construed to require an airport be operated during temporary periods when snow, flood, or other conditions beyond the control of the owner prevent its use.”

In addition, property conveyed to the airport under the Surplus Property Act may have additional federal obligations associated with the use of the property.

Wisconsin Bureau of Aeronautics Policy

The aforementioned federal and state obligations and guidance are interpreted to require coordination with either FAA or BOA whenever obligated airport property is to be used for a non-aeronautical purpose. This requirement applies to all types of non-aeronautical use, regardless of the duration or location of the activity. This means that non-aeronautical events, even those which do not result in the full or partial closure of the airport, require coordination with FAA or BOA.

All Part 139 certificated airports shall coordinate non-aeronautical events with their assigned FAA Airport Certification Inspector.

For all non-certificated airports, BOA shall provide guidance to airport sponsors, assist airport sponsors in the development of non-aeronautical event proposals, review all proposed non-aeronautical events, and issue final approval of the event. BOA may at times seek concurrent approval from FAA. Specifically, coordination with FAA is required anytime the entire airport is closed. Early coordination with BOA is strongly recommended; however, all proposals for non-aeronautical events must be submitted to BOA at least 45 days prior to date of the event.

Any proposed use of obligated airport property must show sufficient evidence that the activity will not create a hazard to aircraft or people on the ground or significantly impact the aeronautical use of airport



facilities and the surrounding airspace. Additionally, any non-aeronautical event must provide a fair market value benefit to the airport. The frequency and duration of the event will also be evaluated. Events which last several days or occur more than a few times per year will be more heavily scrutinized.

Roles and Responsibilities

Federal Aviation Administration

FAA is ultimately responsible for interpreting and administering the various commitments airport sponsors make to the United States government as a condition of accepting federal grants. As such, FAA develops and publishes regulatory compliance standards. Examples include: FAA orders, advisory circulars and other FAA policies. Much of the guidance provided herein was developed by the FAA as a means of interpreting the federal grant assurances and FAA Order 5190.6b as they relate to non-aeronautical events on airports. FAA shall review and approve all non-aeronautical events held on certificated airports. In addition, FAA shall review and approve all non-aeronautical events on non-certificated airports proposing a full airport closure.

Wisconsin Bureau of Aeronautics

BOA is responsible for interpreting and administering the various conditions of state aid. Additionally, the State of Wisconsin is a participant in FAA's State Block Grant Program. Under this program, many of the primary FAA responsibilities are delegated to the Wisconsin Bureau of Aeronautics. As they relate to non-aeronautical events at non-certificated airports, BOA is responsible for providing guidance as requested by airport sponsors, assisting in the development of non-aeronautical event proposals, reviewing all proposed non-aeronautical events, and issuing a final approval for all events.

Airport Sponsor

Airport sponsors are held accountable for compliance with all obligations resulting from federal grant assurances and conditions of state aid. Therefore, it is the responsibility of the airport sponsors to coordinate all non-aeronautical events on airport property with FAA or BOA as prescribed herein. In addition, the airport sponsor shall negotiate with event sponsors to protect airport interests, develop all non-aeronautical event proposals for BOA review, and ensure the safeguards established to protect the aeronautical use of the airport during the event are not compromised.

Event Sponsor

The event sponsor shall work directly with the airport sponsor to establish adequate safeguards to protect the aeronautical use of the airport during the event.



Event Proposal

In order to adequately review a proposed non-aeronautical event, BOA requests that the airport sponsor submit a formal, written proposal to BOA at least 45 days prior to the proposed date of the event. However, prior coordination with BOA during the early planning stages is strongly encouraged. Each proposal shall contain, at a minimum, the following information:

Section 1 – Event Details

- 1.01 Provide a Description of the Event
- 1.02 Provide Date(s) of the Event
- 1.03 Discuss Duration of the Event
- 1.04 Provide Expected Attendance

Section 2 – Aeronautical Impact

- 2.01 Discuss the Impact to Airport Facilities and Infrastructure
 - Runways, Taxiways, Aircraft Parking Areas, Hangars, Terminal, Navigational Aids, etc.
- 2.02 Discuss the Impact to Aeronautical Activities
 - Number and Type of Aeronautical Operations Expected to be Affected
 - Steps Taken to Mitigate Impact
- 2.03 Discuss Impact to Safety Critical Areas
 - Runway Safety Areas, Object Free Areas, Runway Protection Zones
- 2.04 Discuss Impact to Navigable Airspace such as Traffic Patterns and Instrument Approaches
 - Part 77 Surfaces
 - FAA Form 7460 filed, as necessary
 - Height Limitation Zoning Ordinance
- 2.05 Discuss Coordination of the Event with Airport Users
- 2.06 Provide Evidence Demonstrating Support from the Airport Users
- 2.07 Discuss Impact to Pilot Visibility
 - High Intensity Lights, Smoke, Dust, or Glare
- 2.08 Provide Draft NOTAM to be submitted for the Event
- 2.09 Discuss any Permanent Alterations or Impacts to the Airport

Section 3 –Property Use Agreement

- 3.01 Provide a copy of the Draft Property Use Agreement between the Airport Sponsor and Event Sponsor

Section 4 – Safety and Security

- 4.01 Provide a Ground Operations Plan
 - Discuss Safeguards Relating to Safety and Security
 - Examples Safeguards: Security Measures, Fencing, Crowd Control, Parking, Traffic Flow, FOD Management, etc.
- 4.02 Discuss Environmental Impacts and Steps Taken to Mitigate Risk



- 4.03 Provide Evidence of Coordination with the Air Traffic Control Tower, as Applicable
- 4.04 As Applicable, Discuss Coordination with:
 - Local Law Enforcement
 - Fire Department
 - Emergency Medical Services
 - Airport Neighbors

Section 5 – Financial and Local Benefits

- 5.01 Discuss Estimated Financial Benefit
- 5.02 Discuss Methodology for Determining Fair Market Value Use Fee
- 5.03 Discuss Intangible Benefits

Section 6 – Location and Use

- 6.01 Discuss Proposed Activities and their Locations
- 6.02 Provide a Map Depicting Proposed Event Activity Locations
 - Include Fencing, Parking, Concessions/Vendors, Seating, Alcohol Consumption Area(s), Staging Area(s), etc., as appropriate.
- 6.03 Discuss Alternative Event Location
 - Why was the Airport the best or only viable location to host the event?



Property Use Agreement

A formal agreement between the airport and the event sponsor is required for all non-aeronautical events. The following section lists recommended terms and conditions to be included in the property use agreement. However, each airport and proposed event will present a unique set of circumstances to be considered when developing an agreement. Prior to executing any such agreement, it is highly recommended that the draft agreement be reviewed by BOA and by legal counsel. This agreement shall also be included in section 3 of the formal event proposal.

Airport Rights

- The AIRPORT reserves the right to further develop or improve the airport as it sees fit, regardless of the desires or view of the EVENT SPONSOR, and without interference or hindrance.
- The AIRPORT reserves the right, but shall not be obligated to the EVENT SPONSOR, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the EVENT SPONSOR in this regard.
- This agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the AIRPORT SPONSOR and the United States, relative to the development, operation, or maintenance of the airport.
- The EVENT SPONSOR agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any temporary structure or building is planned for the event.
- It is clearly understood by the EVENT SPONSOR that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the airport or from performing any aeronautical services.

Property Utilization

- No activities may create a hazard to the aeronautical users of the airport or the general public.
- The AIRPORT may terminate the event at any time should safety to aeronautical users be compromised.
- All activities must comply with applicable federal, state, and local laws and regulations.
- All event activities shall be confined to the designated areas, as shown on the attached map.
- The EVENT SPONSOR is responsible for the installation and removal of all temporary fencing as requested by the AIRPORT.



- The EVENT SPONSOR shall take measures to assure event attendees stay within the designated area for the safety of the public and the protection of the aviation personal property. Measures are to include fencing, signage, and/or barricades.
- The EVENT SPONSOR shall not permit setup or teardown activities to interfere with the access of airport tenants to their personal property or impede the normal aviation activity at the AIRPORT.
- Airport grounds shall be left in the condition in which they were found. Any damage to the property of the AIRPORT, or its users, shall be the responsibility of the EVENT SPONSOR.
- Repair of any damages shall be initiated by the EVENT SPONSOR within 48 hours after the termination of the event.
- Trash shall be collected and removed from the property by the EVENT SPONSOR.
- The EVENT SPONSOR shall provide portable sanitation units which will adequately support the expected attendance of the event.
- Providing electrical power shall be the responsibility of the EVENT SPONSOR.
- The EVENT SPONSOR shall bear the cost of providing emergency services in the event of an emergency.
- When alcohol is present, it must be consumed only within the designated area(s).

Insurance

- The EVENT SPONSOR shall provide the AIRPORT with a certificate of insurance verifying that the EVENT SPONSOR has a comprehensive, general liability insurance policy covering the interests of the AIRPORT and the EVENT SPONSOR against liability for any personal injury or property damage.
- In the event alcohol is sold, the EVENT SPONSOR shall provide the AIRPORT with a certificate of insurance verifying that the EVENT SPONSOR has a liquor liability insurance policy covering the interests of the AIRPORT and the EVENT SPONSOR. Additionally, all vendors committing to and selling alcohol at the EVENT shall provide the AIRPORT an individual liquor liability policy.
- Said insurance policies for this event shall be in the amount of one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) for all uses.



Rental Payment

- The use fee for the designated airport property shall be _____ (\$____) payable to the AIRPORT.
- The use fee does not include the costs of additional maintenance, personnel expenses, or repair of damage sustained at the AIRPORT as a result of the EVENT.
- Any additional costs incurred through use of airport property for this event shall be the responsibility of the EVENT SPONSOR.

Hold Harmless

- Any damage to airport property or incidents, activities which interferes with the use of the airport by airport users for airport purposes will result in denial of future of the airport for non-aeronautical events. The EVENT SPONSOR hereby agrees to save and hold harmless the AIRPORT, from all cost, injury and damage from any other injury or damage to any person or property whatsoever which is caused by an activity, condition or event arising out of the EVENT.

Wisconsin Bureau of Aeronautics Approval

- The EVENT SPONSOR recognizes that use of airport property for a non-aeronautical event is subject to approval by the Wisconsin Department of Transportation, Bureau of Aeronautics in accordance with FAA Order 5190.6b and all other established guidance and policies associated with the Federal Grant Assurances.

Event Map

- Map depicting designated event activity area(s). Activities to include as necessary:
 - Fencing, Parking, Concessions/Vendors, Seating, Alcohol Consumption Area(s), Staging Area(s), etc.



Airport Sponsor Checklist

- Event Sponsor Approaches the Airport Sponsor with a Proposal
 - Activities will not require full airport closure
 - Adequate safeguards can be established to protect the airport, its facilities, and its users
 - Fair market value benefit will be provided
- Airport Sponsor Agrees to Pursue Approval
- Airport Sponsor Makes Initial Contact with BOA
- Draft Property Use Agreement developed
- Event Proposal Submitted to BOA for Review and Approval
- BOA Approves Event and/or Provides Feedback
- Property Use Agreement Executed with Event Sponsor
- Airport Sponsor Ensures Established Safeguards are not Compromised during the Event

Additional References

1. FAA Airport Sponsor Grant Assurances
http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf
2. FAA Order 5190.6B, *Airport Compliance Manual*
http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/
3. Wisconsin Administrative Code Chapter Trans 55.06, *Conditions of State Aid*
http://docs.legis.wisconsin.gov/code/admin_code/trans/55/06/1