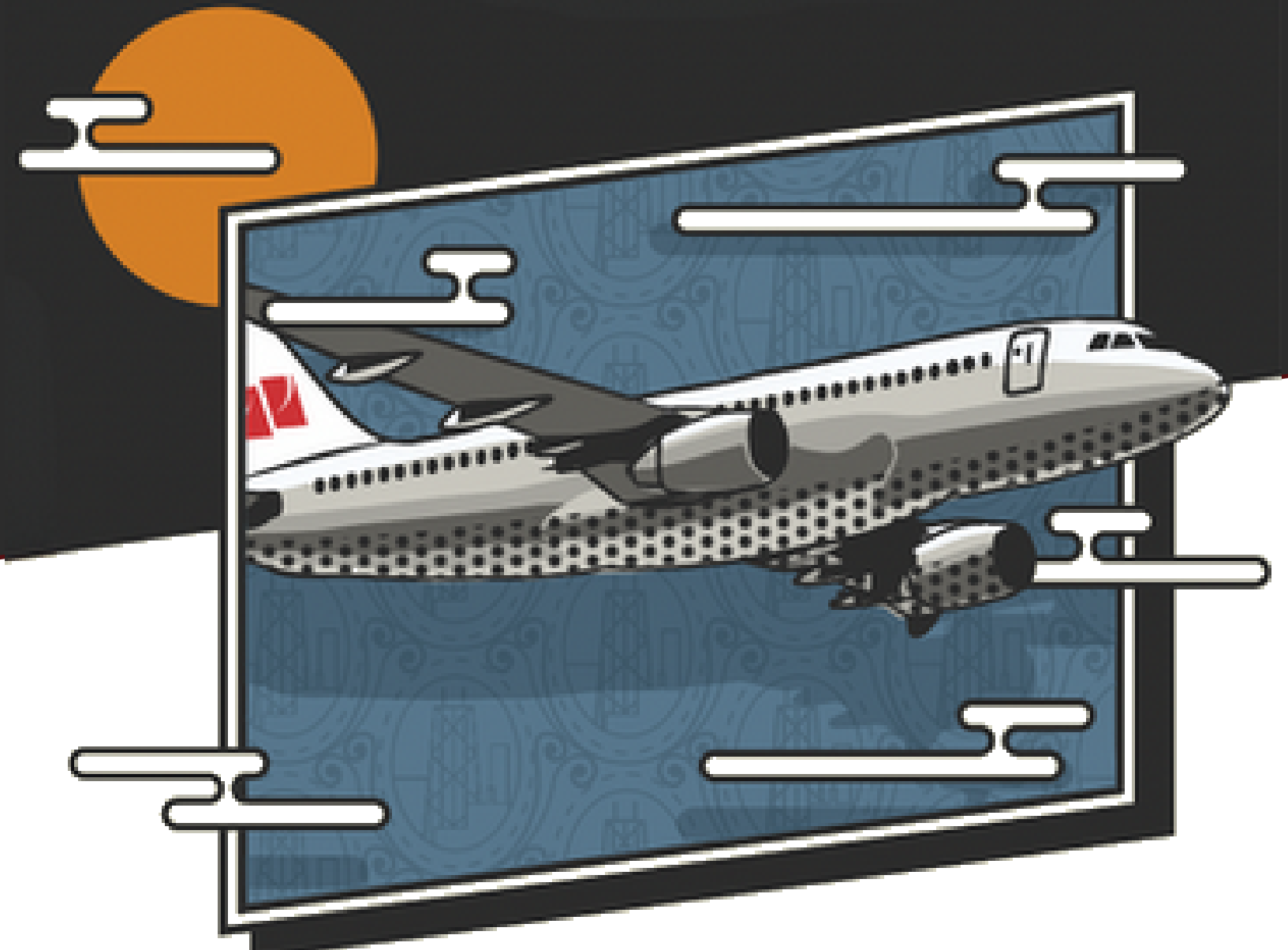




40th Annual
Airport Law Workshop



Session 2: Fundamentals

Understanding Federal Regulation of Airports: the Grant Assurances

Speakers

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Overview

Background and Key Grant Assurances

- Background: the Grant Assurance concept
- Key Grant Assurances
 - 1 General Federal Requirements
 - 5 Preserving Rights and Powers
 - 19 Operation and Maintenance
 - 22 Economic Nondiscrimination
 - 23 Exclusive Rights
 - 29 Airport Layout Plan
- FAA grant enforcement: an overview

Background

The Grant Assurances

The Concept

Contractual terms with regulatory effect

- 39 contract terms (+1 pending?)
sponsors must accept for AIP grants
- Many – not all – required by statute
- Functionally, but not formally, regulatory
- Most bind for 20 years; 3 are perpetual
- Enforced through 14 C.F.R. Parts 13 and 16



The law behind the Grant Assurances

49 U.S.C. § 47107(a)

*The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives **written assurances**, satisfactory to the Secretary, that [include various specified provisions].*

The AIP Grant Assurances

The Full List

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

Time and place

Where and when the Assurances apply

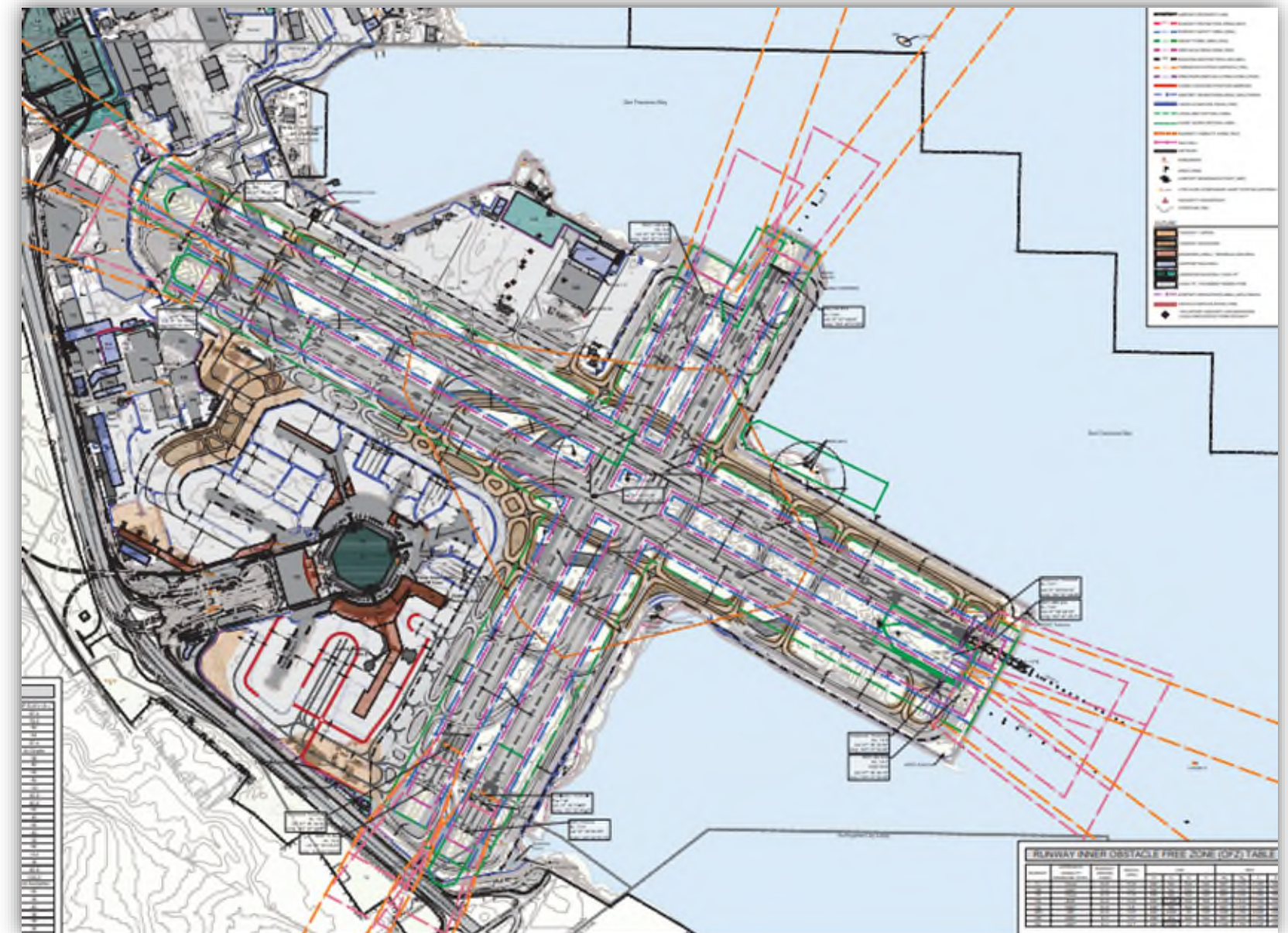


- Usual duration: “**useful life**” of facility/equipment
 - In practice, **20 years**
- For real property purchases: apply **in perpetuity**
- Three **perpetual** assurances:
 - GA 23: Exclusive Rights
 - GA 25: Airport Revenues
 - GA 30: Civil Rights

Time and place

Where and when the Assurances apply

- Historically, assurances applied across “**Exhibit A**” airport property map
- Under **Section 743**, may be more limited
 - Awaiting FAA guidance



Credit: San Francisco International Airport

Key Grant Assurances

Assurance 1

General federal requirements

- Requires compliance with federal—
 - Statutes
 - Regulations
 - OMB guidance
 - Executive orders
- Mechanism to enforce federal law through Assurances
- Obligates sponsors to include “**required contract provisions**” in *every* contract

Practice tip: Review those provisions

1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

FEDERAL LEGISLATION

- 49 U.S.C. subtitle VII, as amended.
- Davis-Bacon Act, as amended — 40 U.S.C. §§ 3101-3105.
- Federal Fair Labor Standards Act — 29 U.S.C. §§ 201-213.
- Hatch Act — 5 U.S.C. § 1501, et seq.²
- Uniform Relocation Assistance and Real Property Acquisition Procedures Act — 42 U.S.C. § 4601, et seq.^{1, 2}
- National Historic Preservation Act — 16 U.S.C. §§ 470-479.
- Archeological Resources Protection Act — 16 U.S.C. §§ 479a-479j.
- Native American Graves Protection and Repatriation Act — 25 U.S.C. §§ 3001-3007.
- Clearing and Grading Operations on Federal Lands — 36 CFR Part 228.
- Coastal Zone Management Act — 16 U.S.C. §§ 1601-1609.
- Florida Antiquities Act — 16 U.S.C. § 431.
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EXECUTIVE ORDERS

- Executive Order 11246 — Equal Employment Opportunity.
- Executive Order 11990 —
- Executive Order 11991 —

- 28 CFR Part 35 — Nondiscrimination on the Basis of Disability in State and Local Government Services.
- 28 CFR § 50.3 — U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.
- 29 CFR Part 1 — Procedures for Predetermination of Wage Rates.¹
- 29 CFR Part 3 — Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.¹
- 29 CFR Part 5 — Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).¹
- 41 CFR Part 60 — Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).¹
- 49 CFR Part 20 — New Restrictions on Lobbying.
- 49 CFR Part 21 — Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.
- 49 CFR Part 23 — Participation by Disadvantage Business Enterprise in Airport Concessions.
- 49 CFR Part 24 — Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.^{1, 2}
- 49 CFR Part 26 — Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- 49 CFR Part 27 — Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.¹
- 49 CFR Part 28 — Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.
- 49 CFR Part 30 — Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
- 49 CFR Part 32 — Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).
- 49 CFR Part 37 — Transportation Services for Individuals with Disabilities (ADA).
- 49 CFR Part 38 — Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.
- 49 CFR Part 41 — Seismic Safety.

Assurance 1

Requires compliance with federal policies

Examples of laws and policies :

- The Hatch Act
- The Build America, Buy America Act
- Executive Order 14008 (climate change)
- 29 C.F.R. Part 1 (wage rates)
- 49 C.F.R. Part 23 (ACDBEs)
- 49 C.F.R. Part 32: (Drug-Free Workplace)



Assurance 5

Preserving rights and powers

*[The sponsor] will not **take or permit** any action which would . . . **deprive it of any of the rights and powers** necessary to perform . . . this grant agreement . . .*

...

*[The sponsor] will **act promptly** to acquire, extinguish or modify any outstanding rights or claims . . . which would interfere with such performance*



Assurance 5

Practice tips

When drafting leases and agreements:

- Retain “rights and powers”
- Reserve approval over subleases
- Limit lease duration
- Use reversionary & subordination clauses
- Review lender provisions

Assurance 19

Operations and maintenance

*The airport ... shall be operated at all times in a **safe and serviceable condition** and in accordance with [requirements] ... prescribed by applicable Federal, state, and local agencies for maintenance and operation.*

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

Assurance 19

Requires a functioning airport

- Keeping airport **safe** and **open** for aircraft
- FAA approval for nonaeronautical closure
- Contingency planning
- Relates to:
 - Assurance 11 (Pavement maintenance)
 - Assurance 29 (Airport Layout Plan)
 - Part 139

- 
- ✓ Maintain, inspect, and repair facilities regularly
 - ✓ Keep airport open for public use
 - ✓ Mark hazards and warn pilots of airport conditions

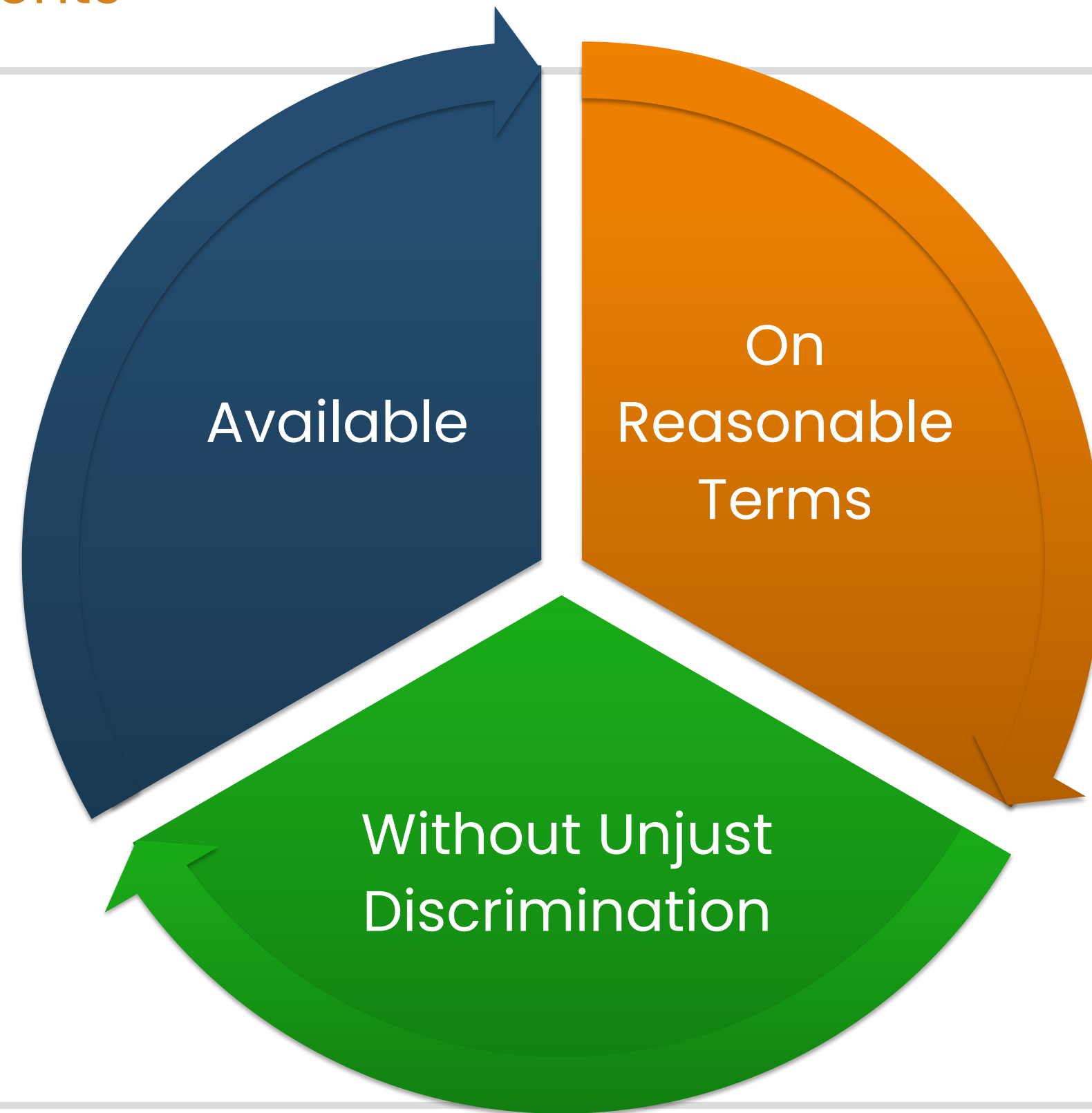
Assurance 22

Economic nondiscrimination

*[The sponsor] will make the airport **available** for public use on **reasonable terms** and **without unjust discrimination** to all types, kinds and classes of aeronautical activities . . .*

Assurance 22

Several key components



Assurance 22

Does **not** require acquiescence to all tenant demands

Assurance 22 requires

- Good-faith consideration of applications
- Access to airfield
- Reasonable and not unjustly discriminatory terms

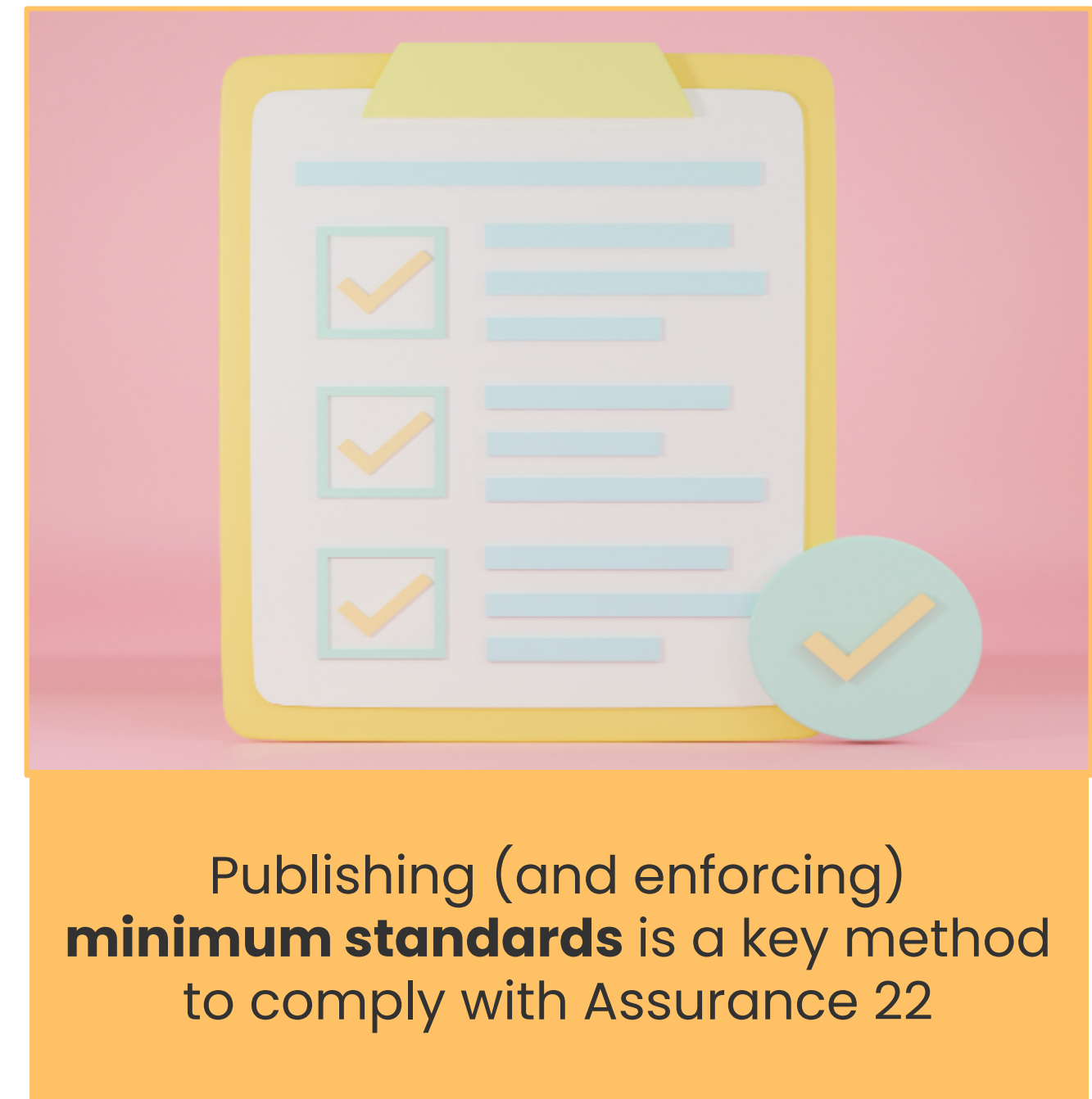
It doesn't require

- Operator's preferred site
- Operator's preferred terms
- Through-the-fence access
- Unsafe or unsightly operations
- Sponsor's development of facilities

Assurance 22

Requires **reasonable** and **not unjustly discriminatory** terms

- Terms must be:
 - Attainable
 - Rational
 - Uniformly applied
- Treat **similarly situated** aeronautical operators similarly
 - Facilities
 - Investment/risk
 - Signatory status
 - Time



Assurance 22

Other important requirements



- **Tenants:** cannot unjustly discriminate with aeronautical services
- Right to self-service and **self-fuel**
- Air carriers may use the FBO of their choice
- Sponsors: limited right to restrict aeronautical operators for **bona fide** safety and efficiency

Assurance 23

Exclusive rights

[The sponsor] will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. ...

Assurance 23

Bars **express** and **implied** exclusive rights

- Unlawful exclusive rights may be:
 - Express
 - Implied
- Having sole service provider not *inherently* unlawful
- Sponsor retains **proprietary exclusive** right – subject to conditions

Assurance 29

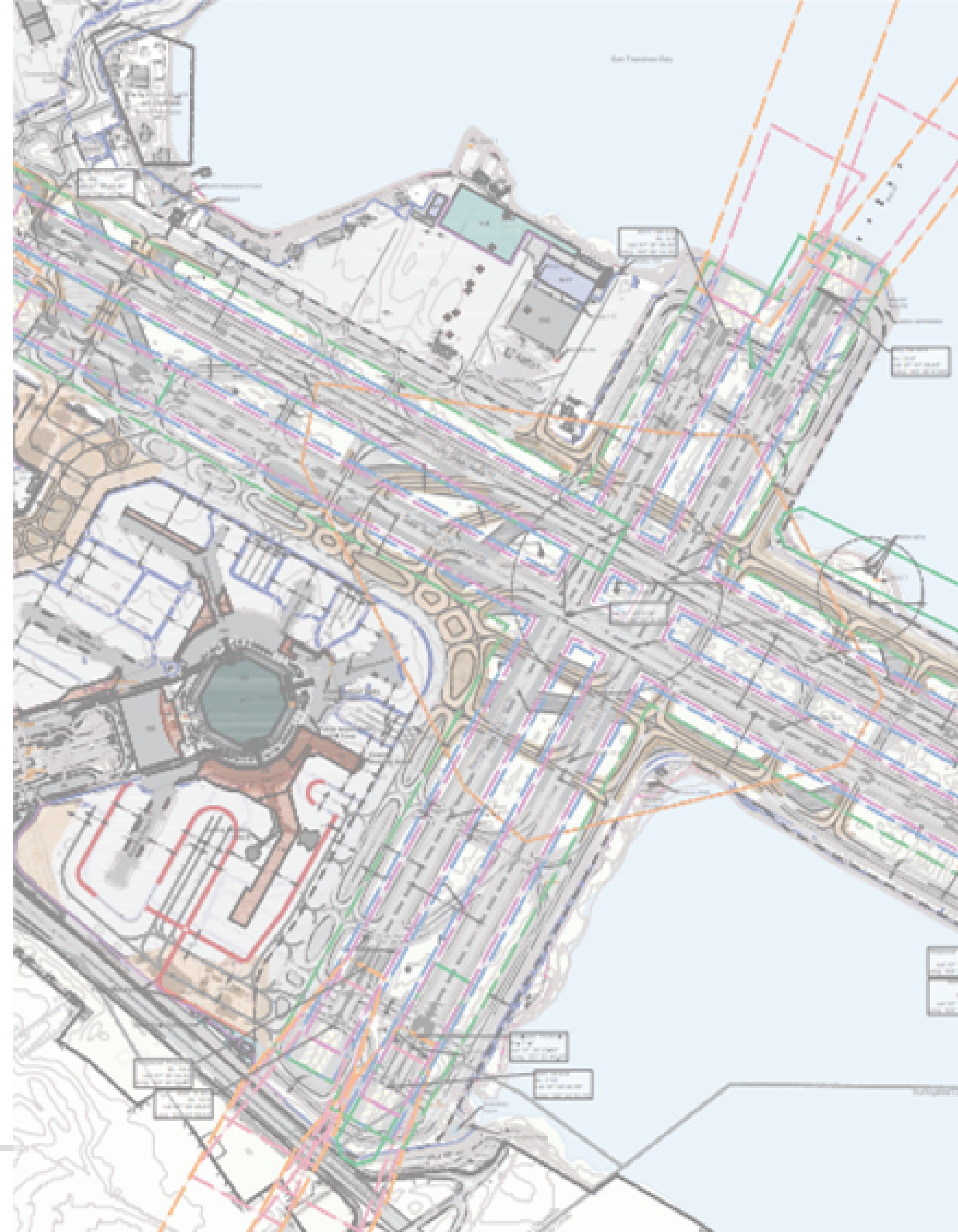
Airport Layout Plan

*[The sponsor] will **keep up to date** at all times an airport layout plan of the airport...*

Assurance 29

Airport Layout Plan

- Depict airport's current and proposed:
 - Boundaries
 - Facilities and structures
 - "Non-aviation areas"
 - Access points
- Subject to FAA approval
- Generally must conform development to approved ALP
 - **But see Section 743**

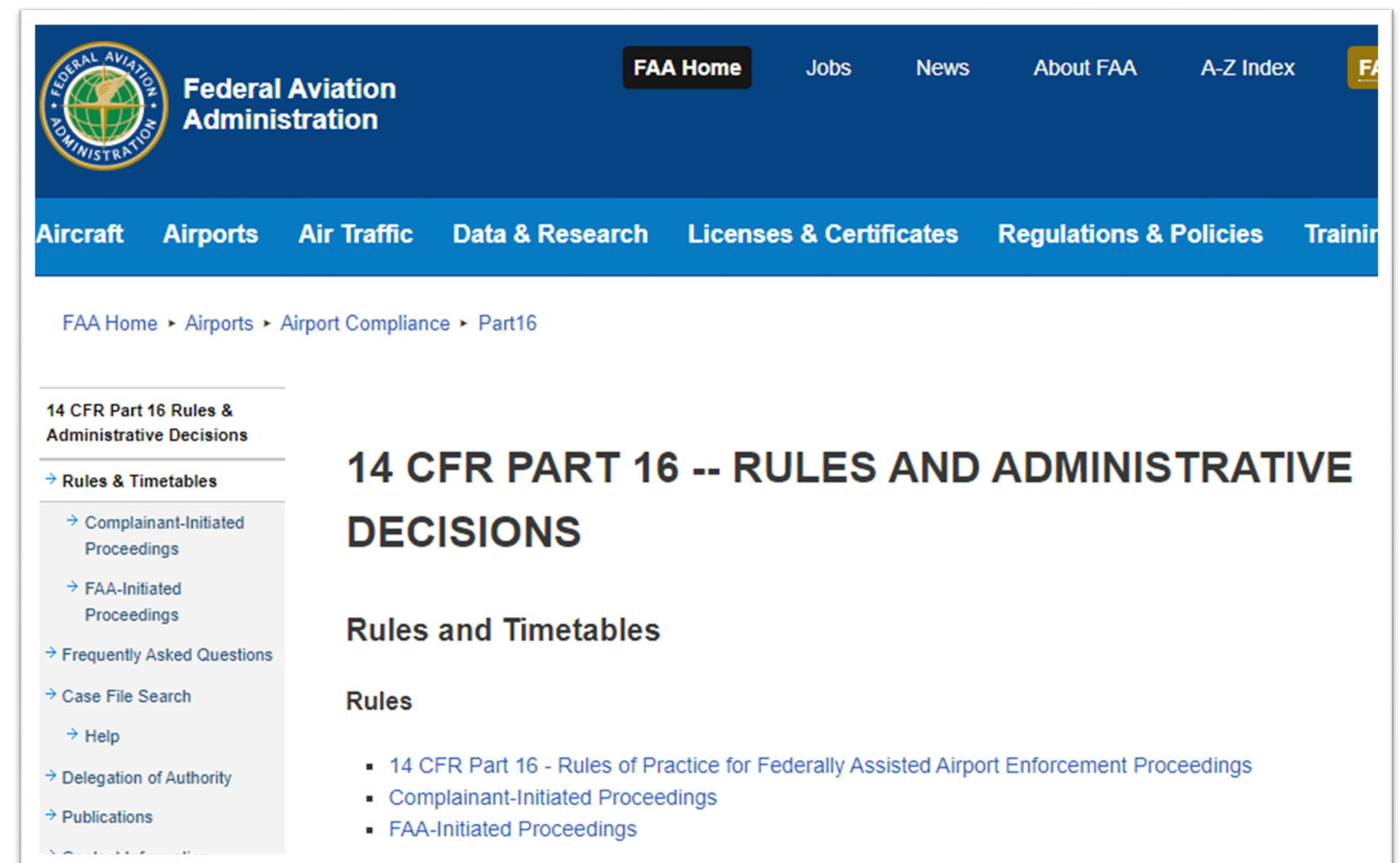


Enforcement and Resources

Grant assurance enforcement

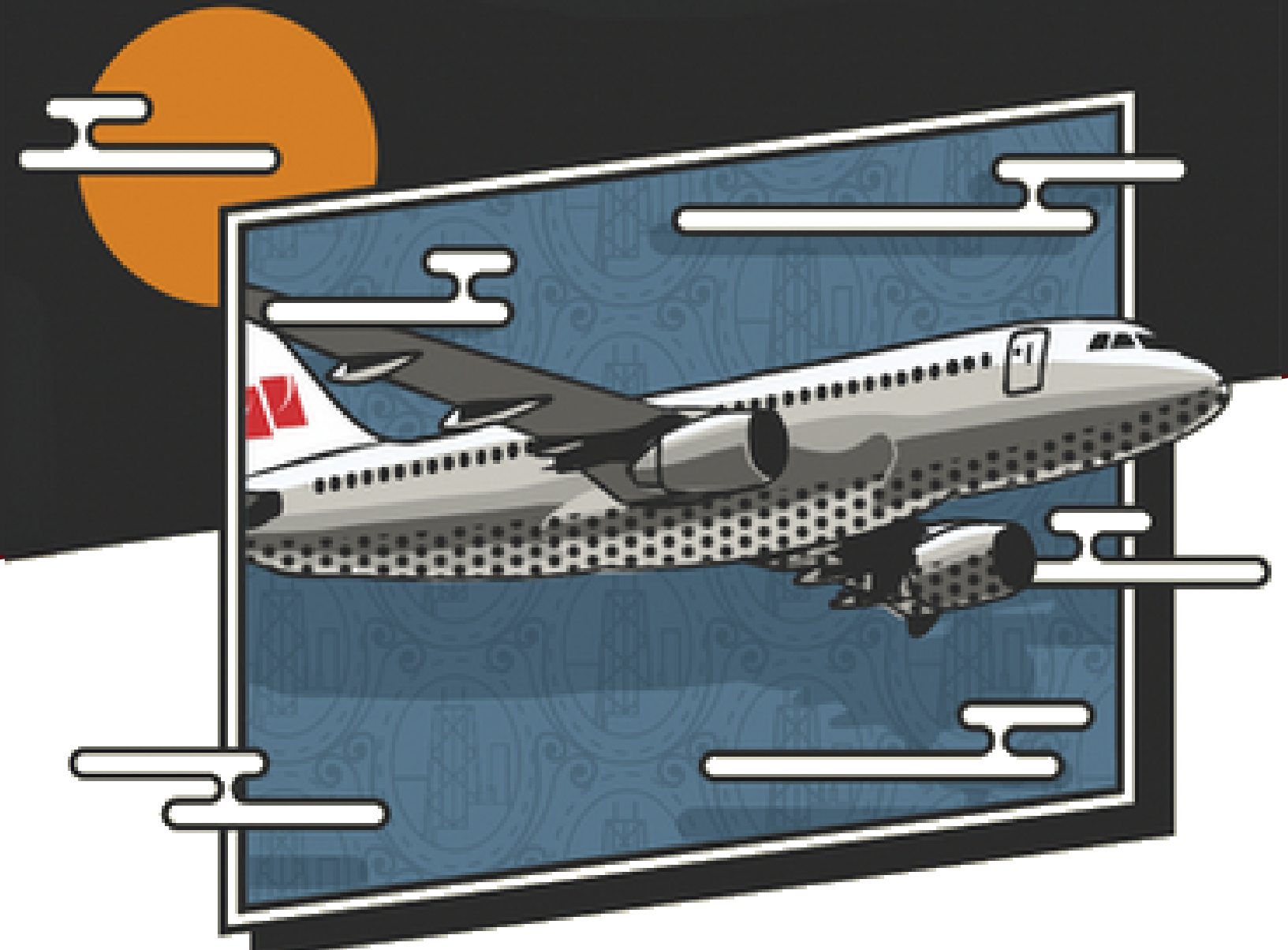
Formal and informal enforcement actions

- Two types of grant enforcement
 - 14 C.F.R. **Part 13** (“informal”)
 - 14 C.F.R. **Part 16** (“formal”)
- Focus on current compliance
 - Strong preference: voluntary compliance
- Maximum penalty: Loss of grant eligibility





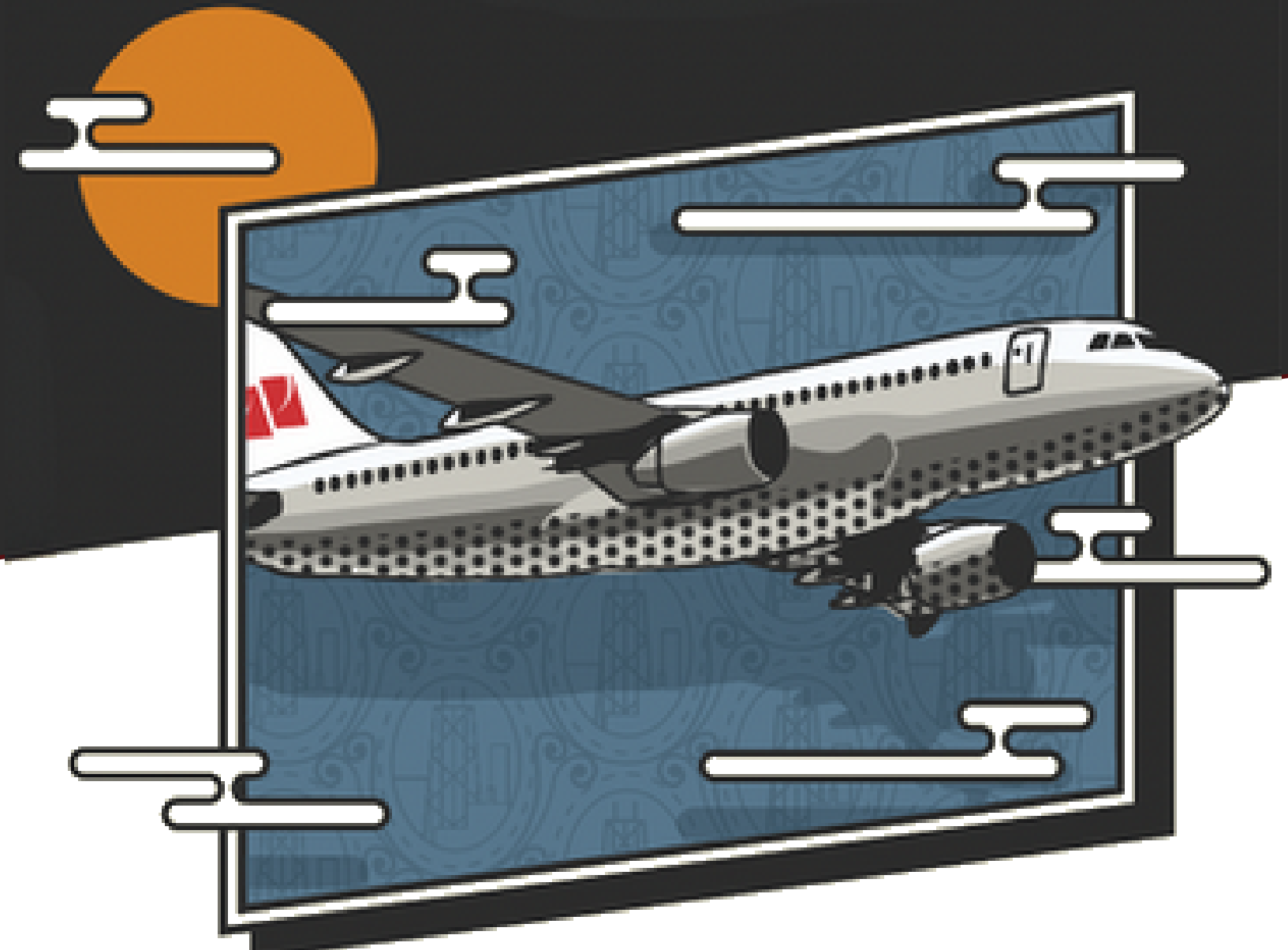
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QUESTIONS?



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THANK YOU!