



# Oregon

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Independence Airpark Homeowners Association  
Board of Directors  
PO Box 31  
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Dear IAHA Board of Directors,

On July 16, 2013, the Federal Aviation Administration adopted "Compliance Guidance Letter 2013-01 – FAA Review of Existing and Proposed Residential Through-the Fence (RTTF) Access Agreements." This letter is to provide guidance with regard to RTTF operations at federally funded airports and assist in interpreting section 136 of the FAA Modernization and Reform Act of 2012. Failure of the Airport Sponsor to comply with this law and guidelines may result in further compliance action, up to and including loss of federal money to maintain the airport and an economic responsibility to pay back federal grant monies already received.

This law was passed to allow RTTF access at federally funded, general aviation airports; however, it requires the property owner to comply with the following conditions:

- Pay access charges that the sponsor determines to be comparable to those fees charged to tenants and operators on-airport making similar use of the airport;
- Bear the cost of building and maintaining the infrastructure the airport sponsor determines is necessary to provide access to the airfield from property located adjacent to or near the airport;
- Maintain the property for residential, noncommercial use for the duration of the agreement;
- Prohibit access to the airport from other properties through the property of the property owner; and
- Prohibit any aircraft refueling from occurring on the property.

In order to remain in compliance and to insure that Federal Grant Assurances are maintained, the Oregon Department of Aviation is providing this letter as a reminder and to expound on the FAA's intent and our understanding of that intent.

The first two bullet points are easier for the ODA and FAA to ensure proper compliance. The last three bullet points are where airport sponsors find property owners skirting the line and sometimes blatantly crossing over the line between compliance and non-compliance. In order to remain compliant and guarantee that federal funding will not be lost and access points closed. ODA offers the following information:

1. **Commercial Activities:** Section 136 of P.L. 112-95 states that residential property owners must maintain their property for residential, noncommercial use for the duration of the agreement. The FAA interprets this as a **prohibition on commercial aeronautical services offered by residential through-the-fence users or any third parties that might compete with on-airport aeronautical service providers**. In implementing this provision, FAA will limit the scope of this condition to commercial aeronautical activities only. The FAA will not concern itself with unrelated commercial activities that may be permitted by local regulation.

Advisory Circular 150/5190-7 **defines aeronautical activities** to include, but is not limited to; "any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations. Activities within this definition, commonly conducted on airports, include, but are not limited to, the following: general and corporate aviation, air taxi and charter operations, scheduled and nonscheduled air carrier operations, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute or ultralight activities, and any other activities that, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities."

So, **commercial aeronautical activities (services)** would be aeronautical activities "offered by residential through-the-fence users or any third parties that might compete with on-airport aeronautical service providers" for compensation or profit. Please keep in mind that the FAA has ruled on several occasions that compensation can be something other than money!

An example of a common violation of this rule is hiring a third party aircraft mechanic to come onto property and repair or inspect aircraft, where that property benefits from access to a federally funded airport. This directly competes with on airport business and is a violation of FAA Grant Assurance 22. Because of the property owner's access to a federally funded airport, the property owner is subject to the same Grant Assurance requirements as a hangar owner on airport. An on airport hangar owner is not required to use only on airport mechanics, they have a right to fly their aircraft to whomever they wish to work on it. However, if they bring an off airport mechanic on to the field to work on their aircraft they are in violation of their lease agreement.

2. **Authorized Access:** "Section 136 of P.L. 112-95 states that residential property owners must prohibit access to the airport from other properties through the property of the property owner. The FAA interprets this as a prohibition on unauthorized access to the airport; this condition does not necessarily prescribe a scenario in which all residential through-the-fence users must have their own dedicated access point to enter the airport. **Compliance with this condition will require access agreements stipulate that residential through-the-fence access agreement holders are prohibited from permitting unauthorized**



users (any individual not a party to an access agreement with the airport sponsor) to pass through or "piggy back" on their access in order to enter the airport. The FAA expects airport sponsors to establish their own policies, restrictions, and/or requirements to be imposed on fly-in guests who taxi from the airport to visit off-airport residents. Going forward, FAA will encourage sponsors of general aviation airports proposing to establish new residential through-the-fence agreements to limit the number of access points in a manner that is consistent with airport planning practices."

For this reason, access agreements contain language that require the property owner to "make reasonable efforts to control all of the points of ingress/egress to prevent use by persons not allowed under" the access agreement.

3. **Fueling:** "Section 136 of P.L. 112-95 states that residential property owners must prohibit any aircraft refueling from occurring on the property. **The FAA interprets this as a prohibition on the sale of fuel from residential property.** The FAA will not concern itself with self-fueling activities which may be permitted by local regulation."

Oregon Department of Aviation appreciates the long and valuable relationship that is in place between the Department and HOA's at the Independence State Airport. ODA has always been a strong proponent of RTTF that is properly regulated, closely monitored and that provides a positive airport experience for both on and off airport users. Any questions can be directed to Matthew Maass, State Airports Manager at [matthew.d.maass@aviation.state.or.us](mailto:matthew.d.maass@aviation.state.or.us).

Sincerely,



Matthew D. Maass, C.M.  
State Airports Manager