

**Appendix X. Competition Plans**

**X-1. Legislative History.**

AIR-21 (Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106-181), Section 155, required the submission of a Competition Plan by certain large and medium hub airports (covered airports) for an AIP grant to be issued beginning in fiscal year 2001. The most current Competition Plan requirements are found in 49 USC § 47106(f).

**X-2. Purpose.**

Per FAA policy, major airports must be available on a reasonable basis to all carriers wishing to serve the airport. The underlying purpose of the competition plan is for the airport to demonstrate how it will provide for new entrant access and expansion by incumbent carriers.

**X-3. Covered Airports.**

Per 49 USC § 47106(f)(4) Completion Plans are required for covered airports that meet the conditions outlined in Table X-1.

**Table X-1 Airports Falling Under the Competition Plan Requirements**

<b>If the following two conditions exist at an airport, the airport is considered a covered airport...</b>
<b>a.</b> The airport is a medium or large hub airport.
<b>b.</b> One or two air carriers control more than 50% of the passenger boardings.

**X-4. Prohibition on Grant Execution.**

49 USC § 47106(f) prohibits the FAA from issuing an AIP grant to a covered airport unless the airport has submitted a written Competition Plan. It is FAA policy that AIP grants cannot be issued unless a required Competition Plan or Competition Plan update has been *approved* by the FAA.

**X-5. Requirements for Initial Plan Submittal and Updates.**

Per FAA policy, covered airports must submit Competition Plans and updates as required in Table X-2. The FAA encourages covered airport to file their initial Competition Plan as close as possible to the start of the fiscal year. Covered airports must either provide two copies of their Competition Plan or Competition Plan update to APP-1 or file an electronic version as directed by the APP-510. In addition, covered airports must also submit one copy of their Competition Plan or update to the ADO and regional office.

**Table X-2 Completion Plan and Update Requirements**

For the following situation...	The sponsor must...
<p><b>a.</b> The sponsor is a covered airport and has not submitted an initial Competition Plan.</p>	<p>Submit an initial plan to the FAA. The FAA will send written notification letters to airports that will be required to file initial Competition Plans as close to the beginning of the fiscal year as possible. The FAA encourages covered airports to file their initial Competition Plan as close as possible to the start of the fiscal year to avoid undue delay in AIP grants.</p>
<p><b>b.</b> The FAA has approved an initial plan, and the sponsor is on the first or second update.</p>	<p>Submit the update within 18 months of the latest FAA approval letter. The FAA will send written notification letters to airports that will be required to file Competition Plan updates as close to the beginning of the fiscal year as possible. The FAA encourages covered airports to file each update as close as possible to the start of the fiscal year to avoid undue delay in AIP grants.</p>
<p><b>c.</b> The FAA has approved an initial plan and two updates.</p>	<p>Submit an update if either of the following special conditions arise. Per FAA policy, covered airports must file these updates within 60 days of these conditions arising to avoid undue delays in AIP grants.</p> <p><b>(1) Denial of Access.</b> An airport files a competitive access report as required by 49 USC § 47107(s) stating it had denied access to an air carrier for gates or facilities within the last six months. 49 USC § 47107(s) requires any medium or large airport that has denied a carrier’s request or requests for access to file a report with the Secretary of Transportation describing the carrier’s requests, providing an explanation as to why the requests could not be accommodated, and providing a time frame within which, if any, the airport will be able to accommodate the requests. Reports are due each February and August. The FAA expects the airport’s written Competition Plan to detail any changes since the previous submittal and any issues raised in the FAA’s approval letter.</p> <p><b>(2) New Lease and Use Agreement.</b> An airport executes a new master lease and use agreement, or significantly amends a lease and use agreement, including an amendment due to use of Passenger Facility Charge financing for gates. The FAA encourages airports to consult with the FAA about new lease provisions and to provide the FAA the opportunity to review the new or amended provisions prior to formal execution.</p>

**X-6. Initial Competition Plan Contents.**

Per 49 USC § 47106(f), initial Competition Plans must include the information in Table X-3 in order for the FAA to accept a filing.

**Table X-3 Required Initial Competition Plan Content**

Per 49 USC § 47106(f), Competition Plans must include...	Per FAA policy, the following information must be provided to meet the requirements in 49 USC § 47106(f):
<p>a. The availability of airport gates and related facilities.</p>	<ol style="list-style-type: none"> <li>(1) Number of gates available at the airport by lease arrangement, i.e., exclusive, preferential, or common-use, and current allocation of gates.</li> <li>(2) Whether any air carriers that have been serving the airport for more than three years are relying exclusively on common-use gates.</li> <li>(3) Diagram of the airport's concourses.</li> <li>(4) Description of gate use monitoring policies, including any differences in policy at gates subject to Passenger Facility Charge assurance # 7 and samples of gate use monitoring charts, along with a description of how the charts are derived and how they are used by the airport.</li> <li>(5) Description of the process for accommodating new service and for service by a new entrant.</li> <li>(6) Description of any instances in which the Passenger Facility Charge competitive assurance #7 operated to convert previously exclusive-use gates to preferential-use gates or it caused such gates to become available to other users.</li> <li>(7) Gate utilization (departures/gate) per week and month reported for each gate.</li> <li>(8) The circumstances of accommodating a new entrant or expansion during the 12 months preceding filing, including the length of time between initial carrier contact of airport and start of service, the identity of the carriers and how they were accommodated.</li> <li>(9) Resolution of any access complaints by a new entrant or an air carrier seeking to expand service during the 12 months preceding the filing, including a description of the process used to resolve the complaint.</li> <li>(10) Use/lose, or use/share policies and recapture policies for gates and other facilities. If no such policies exist, an explanation the role, if any under-utilized gates play in accommodating carrier requests for gates must be provided.</li> <li>(11) Plans to make gates and related facilities available to new entrants or to air carriers that want to expand service at the airport and methods of accommodating new gate demand by air carriers at the airport (common-use, preferential-use, or exclusive-use gates).</li> <li>(12) Availability of an airport competitive access liaison to assist requesting carriers, including new entrants.</li> <li>(13) Number of aircraft remain overnight (RON) positions available at the airport by lease arrangement, i.e., exclusive, preferential, common-use or unassigned, and distribution by carrier. This should include a description of the procedures for monitoring and assigning RON positions and for communicating availability of RON positions to users.</li> </ol>

**Table X-3 Required Initial Competition Plan Content**

Per 49 USC § 47106(f), Competition Plans must include...	Per FAA policy, the following information must be provided to meet the requirements in 49 USC § 47106(f):
<p><b>b.</b> Leasing and subleasing arrangements.</p>	<ul style="list-style-type: none"> <li>(1) Whether a subleasing or handling arrangement with an incumbent carrier is necessary to obtain access.</li> <li>(2) How the airport assists requesting airlines to obtain a sublease or handling arrangement.</li> <li>(3) Airport policies for sublease fees levels (e.g., maximum 15% above lease rates), and for oversight of fees, ground/handling arrangements and incumbent schedule adjustments that could affect access to subtenants.</li> <li>(4) Process by which availability of facilities for sublease or sharing is communicated to other interested carriers and procedures by which sublease or sharing arrangements are processed.</li> <li>(5) Procedures for resolving disputes or complaints among carriers regarding use of airport facilities, including complaints by subtenants about excessive sublease fees or unnecessary bundling of services.</li> <li>(6) Resolution of any disputes over subleasing arrangements in the 12 months preceding filing.</li> <li>(7) Accommodation of independent ground service support contractors, including ground handling, maintenance, fueling, catering or other support services.</li> <li>(8) Copies of lease and use agreements in effect at the airport.</li> </ul>
<p><b>c.</b> Gate use requirement.</p>	<ul style="list-style-type: none"> <li>(1) Gate use monitoring policy, including schedules for monitoring, basis for monitoring activity (i.e., airline schedules, flight information display systems, etc.), and the process for distributing the product to interested carriers.</li> <li>(2) Requirements for signatory status and identity of signatory carriers.</li> <li>(3) Where applicable, minimum use requirements for leases (i.e., frequency of operations, number of seats, etc.).</li> <li>(4) The priorities, if any, employed to determine carriers that will be accommodated through forced sharing or sub-leasing arrangements. This must include a description of how these priorities are communicated to interested carriers.</li> <li>(5) Justifications for any differences in gate use requirements among tenants.</li> <li>(6) Usage policies for common-use gates, including, where applicable, a description of priorities for use of common-use gates. This should include an explanation of how these priorities are communicated to interested carriers.</li> <li>(7) Methods for calculating rental rates or fees for leased and common-use space. This should include an explanation of the basis for disparities in rental fees for common-use versus leased gates.</li> </ul>

**Table X-3 Required Initial Competition Plan Content**

<b>Per 49 USC § 47106(f), Competition Plans must include...</b>	<b>Per FAA policy, the following information must be provided to meet the requirements in 49 USC § 47106(f):</b>
<b>d.</b> Gate-assignment policy.	<p>(1) Gate assignment policy and method of informing existing carriers and new entrants of this policy. This must include standards and guidelines for gate usage and leasing, such as security deposits, minimum usage, if any, fees, terms, master agreements, signatory and non-signatory requirements.</p> <p>(2) Methods for announcing to tenant carriers when gates become available. The description must discuss whether all tenant air carriers receive information on gate availability and terms and conditions by the same process at the same time.</p> <p>(3) Methods for announcing to non-tenant carriers, including both those operating at the airport and those that have expressed an interest in initiating service, when gates become available, and policies on assigning remain overnight (RON) positions and how RON position availability announcements are made.</p>
<b>e.</b> Financial constraints.	<p>(1) The major source of revenue at the airport for terminal projects.</p> <p>(2) Rates and charges methodology (residual, compensatory, or hybrid).</p> <p>(3) Past use, if any, of Passenger Facility Charges for gates and related terminal projects.</p> <p>(4) Availability of discretionary income for airport capital improvement projects.</p>
<b>f.</b> Airport controls over air and ground-side capacity.	<p>(1) Majority-in-interest (MII) or no further rates and charges clauses covering groundside and airside projects.</p> <p>(2) Any capital construction projects that have been delayed or prevented because an MII was invoked.</p> <p>(3) Plans, if any, to modify existing MII agreements.</p>
<b>g.</b> Whether the airport intends to build or acquire gates that would be used as common facilities.	<p>(1) The number of common-use gates that the airport intends to build or acquire and the timeline for completing the process of acquisition or construction. This must include a description of the intended financing arrangements for these common-use gates, and whether the gates will be constructed in conjunction with preferential or exclusive-use gates.</p> <p>(2) Whether common-use gates will be constructed in conjunction with gates leased through exclusive or preferential-use arrangements.</p> <p>(3) Whether gates being used for international service are available for domestic service.</p> <p>(4) Whether air carriers that only serve domestic markets now operate from international gates. This must include a description and explanation of any disparity in their terminal rentals versus domestic terminal rentals.</p>

**Table X-3 Required Initial Competition Plan Content**

Per 49 USC § 47106(f), Competition Plans must include...	Per FAA policy, the following information must be provided to meet the requirements in 49 USC § 47106(f):
h. Per 49 USC § 47107(a)(15), the method for making the Competition Plan available to the public.	(1) 49 USC § 47107(a)(15) requires sponsors to make special airport financial reports available to the public. Therefore, the Competition Plan must include the covered airport's method of satisfying this requirement. If web posting is employed, the filing must identify the precise web address where the Competition Plan material may be found. Per FAA policy, if a web posting is not employed, the reasons for this decision must be discussed in the submission.

**X-7. Competition Plan Update Contents.**

Per FAA Policy, Competition Plan updates must include the information in Table X-4.

**Table X-4 Required Competition Plan Update Content**

Per FAA Policy, Competition Plan updates must include also include...
<b>a. Changes from Last FAA Approval.</b> Information regarding new relevant changes in competitive circumstances at the airport since the previous FAA approval. If there have been no changes in competitive filing information, the airport must state that there has been no change since the previous plan approval. For new master lease agreements or significantly amended lease agreements, this includes a copy of the agreement, a written description of the changes in lease terms, and leasing practices or policies included in the lease document.
<b>b. Reasons for Not Instituting FAA Recommendations.</b> In instances in which the FAA has recommended that an airport adopt a particular management or operating practice and the airport has declined the recommendation, per FAA policy, the airport must explain the activities and/or procedures it is performing that would achieve the same result as the FAA's recommended practice.
<b>c. Responses to FAA Questions.</b> Responses to questions raised or recommendations included in previous FAA approvals.
<b>d. Public Availability.</b> 49 USC § 47107(a)(15) requires sponsors to make special airport financial reports available to the public. Therefore, the Competition Plan update must include the covered airport's method of satisfying this requirement. If web posting is employed, the filing must identify the precise web address where the Competition Plan update material may be found. If a web posting is not employed, the reasons for this decision must be discussed in the submission.

**X-8. Sponsor Guidance.**

Additional guidance that sponsors can use to reduce barriers to entry and enhance competitive access is contained in the current version of the document titled Highlights of Reported Actions

to Reduce Barriers to Entry and Enhance Competitive Access. Additional useful information is contained in the U.S Department of Transportation report titled Airport Business Practices and Their Impact on Airline Competition. See Appendix B for references and links to these documents.

**X-9. Plan Review Process.**

Per FAA policy, a joint OST/FAA team will review each plan to determine that the Competition Plan or Competition Plan update satisfies statutory requirements. APP-1 will advise the covered airport and the applicable regional office and ADO of all acceptances, identified deficiencies, or rejections in writing. The OST/FAA team has the option to contact the airport informally during the course of the Competition Plan review. This contact will generally take the form of a telephone conference call and may include a site visit.

**X-10. Additional FAA Actions.**

Per FAA policy, the FAA has the option to periodically review the implementation of competition plans of all covered airports and may conduct site visits to meet our obligation to ensure that each covered airport successfully implements its approved plan.

**X-11. Plan Development Eligibility.**

Per FAA Policy, competition plans and updates are only eligible for AIP funding as part of an eligible master planning project (not as a stand-alone project). Additionally, the scope of work for full master planning studies and updates for the full study must include a Competition Plan development or update as part of the effort (if the studies or updates include a review of terminal development and the airport is a covered airport). However, this requirement would not apply to master planning efforts that are either minor in scope or that are occurring at times that would create a duplication of effort with recently completed plans or updates.