



Semi-annual Airport Law Digest – 2017 Year in Review

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As so often happens with a change in administration, the federal government saw considerable upheaval in 2017. Many federal agencies, including FAA, found themselves short-staffed and adjusting to a change in political policies. A number of senior agency executives saw the new administration as an opportunity to leave the FAA to take new positions within the agency. That being said, FAA saw fewer changes than many other federal agencies in part because the Administrator's term does not expire until January 2018. Administrator Huerta is due to leave his position in early January, so there will be at least an Acting Administrator to begin the new year. Notwithstanding the White House order that discourages new regulation, the new Administrator is likely to prompt at least some regulatory shifts at FAA in 2018.

This Digest contains short articles on several important developments in airport law in 2017 and also includes: a listing of principal cases decided last year; new FAA rules, policies, and guidance; and reports, studies, and articles of particular interest to airport legal professionals. Note that materials about drones (or UAS) appear at the end of the Digest in a separate category. We have attempted to provide links to publically available documents, and most other documents are available via subscription services such as Westlaw or LexisNexis. The Digest also includes a look-ahead to some of the important legal and political developments we expect to see in 2018.

We hope you find this Digest useful in your efforts to remind current in the always-evolving legal and regulatory framework that governs airports.

Articles

NextGen Implementation Sees Shakeup in Phoenix

FAA continues to work towards implementation of its Next Generation (NextGen) navigation system, an effort to improve efficiency in so-called "Metroplexes." The agency continues to face significant resistance from community groups in the form of public comments and litigation across the country. While the experience in each metropolitan area has been different, FAA has received considerable resident complaints that the changes in flight patterns wrought by NextGen have considerably increased aircraft overflight noise in their communities without warning.

Affected communities scored a win in August 2017, when the United States Court of Appeals for the District of Columbia Circuit issued a groundbreaking opinion vacating NextGen patterns serving Sky Harbor International Airport in Phoenix, Arizona. The court agreed with the City of Phoenix that FAA violated the National Environmental Policy Act, National Historic Preservation Act, and Section 4(f) of the Department of Transportation Act when it issued new NextGen procedures without adequate public notice and consultation. The City and FAA have since agreed to a settlement that will require FAA to conduct additional community outreach while temporarily reverting to the original, pre-NextGen routes.

Similar cases are pending across the country. In Washington, DC—one of the first Metroplexes to be considered "complete"—community groups sued FAA alleging that the federal environmental approval was obtained without sufficient public involvement. The Governor of Maryland has formally requested that the FAA revert to pre-NextGen flight patterns and has threatened litigation if the agency does not acquiesce. Another lawsuit is pending in Southern California. While the Phoenix case was factually and legally unique in many respects, communities nationwide have taken the D.C. Circuit decision as a signal that litigation over NextGen procedures is an effective tool for achieving relief. It remains to be seen the



extent to which the Phoenix litigation will influence these other pending cases and, more importantly, what procedural changes FAA implements as a result of lessons from that case. The agency has informally taken a pause in implementation of its Metroplex plans as it assesses how to involve the public in NextGen more generally.

Santa Monica Settlement Agreement Faces Resistance Issues New UAS Regulations

A year ago, in January 2017, the City of Santa Monica and FAA announced an historic settlement agreement that resolved decades of litigation and controversy over the future of Santa Monica Airport (SMO) by, among other things, allowing the City to reduce SMO's runway by almost one-third of its length in the immediate future and to close SMO entirely after 2028. We reviewed this settlement agreement in depth on page 5 of our June 2017 Semi-annual Airport Law Digest and noted that the National Business Aviation Association (NBAA) has challenged FAA's authority to enter into the consent decree.

Since June, the briefing in the NBAA case has concluded, and oral arguments will likely be scheduled for early 2018. In addition, a local citizens' group challenged the City's decision to enter into the consent agreement, arguing that the City violated state open meetings laws. After briefly granting a temporary restraining order that prohibited the City from shortening the runway, a federal district court dismissed the case in mid-December. Like virtually every decision concerning SMO, it is likely that the settlement agreement will be subject to future litigation.

Impact of Executive Orders Still Unclear

On page 2 of our June 2017 Semi-annual Airport Law Digest, we discussed at length the President's various Executive Orders aimed at reducing regulations, streamlining federal environmental approvals, and reorganizing the federal government. The President added another Executive Order in August, directing federal agencies to explore ways to streamline environmental approvals with a specific focus on infrastructure projects. Thus far, it is unclear how these Executive Orders will influence airport projects. Past efforts to streamline environmental reviews have met with mixed success and have, in some cases, introduced additional paperwork without real improvement in the environmental process. However, with the possibility of both FAA reauthorization and an infrastructure package on the horizon, these Executive Orders may become important tools in expediting approvals for new airport projects. This will become an especially important arena in coming years as airport sponsors face mammoth infrastructure needs after almost a decade of modest airport development.

What to Watch for in 2018

New Kid in the Air: FAA Will Have a Fresh Administrator in January

FAA Administrator Michael Huerta's term expires on January 7, 2018, and thus far, there has been no indication if the President has any candidates for a permanent replacement. In late June, Dan Elwell was sworn in as the FAA Deputy Administrator, and he is set to become the Acting Administrator upon Huerta's departure. Among other important issues, the next Administrator will shape agency policy on NextGen, UAS, and air traffic control reform. The Administrator is also likely to lead the agency through the reauthorization process. It is also possible that the President will appoint a permanent replacement for the vacant Associate Administrator for Airports position, which has been held in an acting capacity by Winsome Lenfert since the departure of Eddie Angeles over one year ago.

Waiting for Go(DOT): Long-Awaited Federal Rules Still On Hold

Since taking office in January, the President has made regulatory rollbacks a prominent part of his agenda. DOT and FAA have followed suit and have yet to issue a number of expected rules that are of particular interest to airport sponsors and local governments. As one prominent example, FAA rescinded its draft Passenger Facility Charge (PFC) Order on November 4, 2016, and there has been no apparent movement to reissue a new draft or final Order. FAA also published a Supplemental Notice of Proposed Rulemaking for Safety Management System (SMS) for Certificated Airports nearly 18 months ago. The



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final SMS rule was initially expected in early 2017, but that timeline has been extended multiple times, and it is now unclear when, if ever, a final rule may be published. Finally, in mid-2016, FAA issued operational regulations for unmanned aircraft systems (UAS) at 14 C.F.R. Part 107. 14 C.F.R. § 107.39 specifically prohibits the operation of UAS over most people, and FAA has stated that regulations which would permit such operations are forthcoming. While no rule has been published, there has been some movement on this issue in the form of FAA's UAS Integration Pilot Program. In the meantime, UAS operators may continue to apply for a waiver of this prohibition. New and clarified regulations on UAS remote identification and possible air traffic control for UAS are also being held. Airport sponsors should continue to watch out for these and other federal rules.

Kick the Can Down the Road: Congress Again Confronted with Expiration of FAA Authorization

When FAA authorization was set to expire in September 2017 (after only a short 18-month reauthorization), there was expected to be fierce debate on the potential privatization of air traffic control, a rollback of FAA authority to regulate non-aeronautical development on airports, the potential to raise (or uncap) the PFC authorization, and other topics of importance. While some of that debate did occur, Congress instead saw the clock winding down and elected to punt the discussion by extending FAA's authorization through March 2018. In the coming months, Congress will again be presented with these tough issues, and industry groups such as ACI-NA and AAAE expect to play a major role. While short-term extensions are not unusual (the last reauthorization came after 23 short-term extensions), the current Congressional majority is likely to exert significant pressure on policy issues in advance of the 2018 elections. That being said, Congress has not shown great ability to tackle politically complex and divisive issue so a further short-term extension is possible. (While short-term extensions allow FAA and the AIP program to continue, short-term extensions of less than one year can play havoc with AIP-funded projects since airport sponsors cannot responsibly plan for funding multiyear projects when AIP funding levels are only established for a few months at a time.) The recent news of House Transportation & Infrastructure Committee Chairman Rep. Bill Shuster's impending retirement adds another layer of uncertainty to the reauthorization process.

White House Promises Infrastructure Plan for January

Throughout the first year of his term, the President has continued to state that he believes the country should invest in infrastructure, including roads, bridges, and airports. To date, there has been little in the way of detail about or action on these issues outside of a six-page Fact Sheet associated with the 2018 budget published last May.

However, the White House announced in early December that it planned to deliver an infrastructure plan to Congress in January 2018, stating that it will outline the President's principles and priorities for infrastructure development. It is expected that any such plan will be heavily weighted towards encouraging private investment while deemphasizing direct federal funding. In addition, it is unclear if the infrastructure plan will be designed to utilize any elements of the President's Executive Orders on streamlining federal environmental approvals (see above).

Regardless of how it is funded, the infrastructure initiative will undoubtedly prove important for airport sponsors as they simultaneously face a serious backlog of capital investment and a rapidly growing interest in private sector investment. Many airports have taken their own initiative in seeking private investment—privatization efforts at Westchester County (NY), Kansas City (MO), and St. Louis (MO) have received some of the greatest press attention—and those efforts are expected to intensify with a federal infrastructure initiative.

Noise, What Noise?

As a result of the coincidence of many factors (e.g., NextGen implementation, air traffic growth, real estate encroachment), airports who have noticed noise problems gradually decrease since 2000 are now realizing an increase in noise complaints and community outcry. This dynamic has been especially dramatic at general aviation airports, which were the last to see the phase out of the noisiest jets and



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were the last to see growth after the end of the Great Recession. FAA is looking at modifying how it reports noise impacts for NextGen and is in the midst of a multi-year study on if their decades-year-old reliance on the DNL metric and the 65 decibel threshold remain appropriate today. There should be new developments in both areas in 2018, with or without new litigation.

Litigation

Court Decisions

Preemption. *SilverWing at Sandpoint, LLC v. Bonner Cty.*, No. 15-35589 (consolidated), 2017 U.S. App. LEXIS 21970 (9th Cir. Nov. 1, 2017) (affirming district court decision holding that plaintiff's state law claims of breach of good faith were preempted by federal law because the sponsor was acting to comply with federal obligation, and also that the plaintiff's § 1983 claims failed for similar reasons).

Regulatory Takings. *Dryden Oaks, LLC v. San Diego Cty. Reg'l Airport Auth.*, 16 Cal. App. 5th 383 (as modified Oct. 19, 2017) (affirming trial court grant of summary judgment for defendant where plaintiff alleged a regulatory taking based on the sponsor's adoption of an Airport Land Use Compatibility Plan, but where the City had actual zoning authority).

Labor Law and Preemption. *Airline Serv. Providers Assn. v. L.A. World Airports*, 873 F.3d 1074 (9th Cir. Oct. 16, 2017) (holding that a City policy requiring airport service providers to enter into "labor peace agreements" with employee organizations upon request was not preempted by federal law because the City was acting as a market participant).

Preemption. *Tweed-New Haven Airport Auth. v. Jepsen*, No. 3:15-cv-01731, 2017 U.S. Dist. LEXIS 162356 (D. Conn. Sept. 30, 2017) (holding that a Connecticut statute limiting the length of a runway was not preempted by federal aviation safety laws).

NextGen Flight Procedures. *City of Phoenix v. Huerta*, 869 F.3d 963 (D.C. Cir Aug. 28, 2017) (striking down new NextGen routes because FAA did not adequately perform appropriate environmental or historical review).

Environmental Review. *Barnes v. FAA*, 865 F.3d 1266 (9th Cir. Aug. 3, 2017) (denying petition for review and finding that FAA did not act arbitrarily and capriciously by accepting a supplemental environmental assessment and issuing a FONSI for a new runway project).

Airline Seats. *Flyers Rights Educ. Fund, Inc. v. FAA*, 864 F.3d 738 (D.C. Cir. July 28, 2017) (requiring FAA to reconsider earlier decision not to promulgate regulations on size of airline seats because the agency provided no evidence to support that decision).

Preemption and Governance. *Jackson Mun. Airport Auth. v. Bryant*, No. 16-cv-246, 2017 U.S. Dist. LEXIS 115839 (S.D. Miss. July 25, 2017) (dismissing complaint of local airport authority that alleged state statute transferring governance of the airport to a state entity was preempted by federal law).

Contracts Clause. *Gary Jet Ctr., Inc. v. AFCA AVports Mgmt. LLC*, 863 F.3d 718 (7th Cir. July 13, 2017) (dismissing allegations of Constitutional Contracts Clause violations where sponsor enacted minimum standards that required FBO to pay certain fees to sponsor in contravention of the sponsor-FBO lease because other remedies were available).

Use Restrictions and ANCA. *Town of E. Hampton v. Friends of the E. Hampton Airport, Inc.*, 137 S. Ct. 2295 (June 26, 2017) (denying petition for certiorari in review of 2nd Circuit decision holding that Town's use restrictions were enacted in violation of the procedural requirements of ANCA).



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Takings and Exhaustion of Remedies. *Hadar v. Broward Cty.*, No. 16-14569 (11th Cir. May 31, 2017) (unpublished) (affirming district court dismissal of complaint alleging taking by aircraft overflights where plaintiff had not availed himself of available state remedies).

Grant Assurances. *Vietnam Helicopters v. Cnty. of Contra Costa*, No. 17-cv-01743-MMC, 2017 U.S. Dist. LEXIS 49728 (N.D. Cal. Mar. 31, 2017) (denying motion for temporary restraining order where plaintiff alleged airport sponsor was preparing to lease hangar in violation of Grant Assurances and where Part 16 complaint was pending).

Settlements. *United States ex rel. Shepard v. Tippetts*, No. 13-cv-00736-CMA, 2017 U.S. Dist. LEXIS 27083 (D. Colo. Feb. 27, 2017) (over objections by qui tam relators, approving settlement between FAA and Grand Junction Regional Airport Authority regarding possibly fraudulent statements made to FAA in application for grant funds).

Gate Allocation. *City of Dallas v. Delta Airlines, Inc.*, 847 F.3d 279 (5th Cir. Feb. 2, 2017), *reh'g en banc denied* (affirming district court grant of preliminary injunction regarding gate allocation at Love Field following the expiration of certain provisions of the Wright Amendment).

Pending Cases

Area Navigation. *Citizens Assn. of Georgetown v. FAA*, No. 15-1285 (D.C. Cir. oral argument scheduled Jan. 11, 2018) (challenging RNAV procedures in the D.C. Metroplex area).

Air Tours. *Pub. Employees for Env't'l Responsibility v. FAA*, No. 17-cv-2045 (D.D.C. motion to dismiss filed Dec. 14, 2017) (seeking injunctive relief requiring FAA to develop Air Tour Management Plans for various national parks and recreation areas).

Subject Matter Jurisdiction. *Kaufmann v. FAA*, No. 17-3152 (6th Cir. argued Dec. 5, 2017) (appeal of the district court decision dismissing complaint alleging FAA noncompliance with NEPA and NHPA because complaint should have been filed in the circuit court).

Airport Closure. *Nat'l Bus. Aviation Ass'n v. Huerta*, No. 17-1054 (D.C. Cir. respondent's final brief filed Dec. 4, 2017) (challenging FAA settlement agreement with the City of Santa Monica that permits closure of the airport in 2028); *see also Scott v. City Council for the City of Santa Monica*, No. 17-07329 (C.D. Cal. Dec. 15, 2017) (dismissing complaint alleging that City Council failed to hold a public hearing in violation of California state law before entering into settlement agreement).

Premises Liability. *Afoa v. Port of Seattle*, 189 Wn.2d 1015 (Oct. 5, 2017) (granting partial review of Washington Court of Appeals decision holding that the Port had a "nondelegable duty to ensure a safe workplace" on the airfield at Seattle-Tacoma Airport, and was therefore liable for the injuries of an independent contractor's employee).

First Amendment. *McDonnell v. City & Cnty. of Denver*, No. 17-1071 (10th Cir. argued Aug. Sept. 26, 2017) (appealing the district court order requiring City and County officials to "timely process a permit application" to protest Executive Order barring individuals from seven predominantly Muslim countries from entering the United States at Denver International Airport).

Gate Allocation. *In re. Compliance with Federal Obligations by the City of Dallas, Texas*, FAA Docket No. 16-15-10 (Notice of Investigation served Aug. 7, 2015) (FAA investigation into possible grant assurance violations related to a failure to accommodate air carrier requesting gate space).

Administrative Decisions

Exclusive Rights. *Mansfield Heliflight, Inc. v. City of Burlington*, FAA Docket No. 16-14-06, Director's Determination (Sept. 5, 2017) (granting sponsor's motion for summary judgment because complainant had provided insufficient evidence of sponsor's refusal to negotiate for space at the airport).



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Economic Nondiscrimination. *ComAv, LLC v. S. Cal. Logistics Airport Auth.*, FAA Docket No. 16-16-10, Director's Determination (Aug. 21, 2017) (finding no exclusive rights or economic discrimination violations where complainant was outbid for a particular leasehold and still maintained business operations elsewhere on the airport).

Revenue Diversion. *Air Transport Assn. of Am., Inc. v. Port of Portland*, FAA Docket No. 16-16-04, Director's Determination (Aug. 17, 2017) (finding no violation of Grant Assurance 25 where airlines alleged that airport sponsor had impermissibly charged them certain utility fees it then paid to the City of Portland).

Economic Nondiscrimination. *Signature Flight Support Corp. v. Cty. of Orange*, FAA Docket No. 16-17-02, Director's Determination (July 21, 2017) (granting sponsor's motion for summary judgment on allegations of Grant Assurance 22 violations associated with a public RFQ and bid selection process).

Acquisition of Property. *Boggs v. City of Cleveland*, FAA Docket No. 16-16-15, Order of the Director (Jan. 24, 2017) (dismissing complaint alleging Grant Assurance violations where sponsor chose not to acquire private property shown on the Airport Layout Plan).

Federal Legislation

National Defense Authorization Act for Fiscal Year 2018, Pub. Law No. 115-91 (signed Dec. 12, 2017) (reinstating FAA authority to regulate recreational drones).

Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. Law No. 115-63 (signed Sept. 29, 2017) (extending FAA authorization through March 31, 2018).

Consolidated Appropriations Act, 2017, Pub. Law No. 115-31 (signed May 5, 2017) (extending federal government funding at largely current levels through September 2017).

Federal Rules, Orders, and Guidance

Presidential Executive Orders

Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, Exec. Order 13,807, 82 Fed. Reg. 40,463 (Aug. 15, 2017) (directing federal agencies with environmental review and approval components in infrastructure projects to set performance goals and cooperate with other federal agencies in the environmental review process).

Buy American and Hire American, Exec. Order 13,788, 82 Fed. Reg. 18837 (Apr. 21, 2017) (requiring all executive branch agencies to "scrupulously monitor, enforce, and comply with Buy American Laws, to the extent they apply, and minimize the use of waivers, consistent with applicable law").

Comprehensive Plan for Reorganizing the Executive Branch, Exec. Order 13,781, 82 Fed. Reg. 13959 (Mar. 16, 2017) (requiring that within 180 days, "the head of each agency shall submit to the Director [of the Office of Management and Budget] a proposed plan to reorganize the agency, if appropriate, in order to improve the efficiency, effectiveness, and accountability of that agency").

Reducing Regulation and Controlling Regulatory Costs, Exec. Order 13,771, 82 Fed. Reg. 9339 (Jan. 30, 2017) (requiring that "whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed").



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Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, Exec. Order 13,766, 82 Fed. Reg. 8657 (Jan. 24, 2017) (setting process by which project proponents can request “high priority” status for infrastructure projects and petition the White House CEQ for expedited environmental review).

Department of Transportation and FAA

Q&As – FBO Industry Consolidation and Pricing Practices (Dec. 7, 2017).

AC 150/5360-14A, Access to Airports by Individuals with Disabilities (Dec. 6, 2017).

Notice and Request for Comments, FAA Aircraft Noise Complaint and Inquiry System (FAA Noise Portal), 82 Fed. Reg. 50,932 (Nov. 2, 2017) (seeking comment on FAA’s intention to request OMB approval for a voluntary information collection regarding aircraft noise complaints).

Notice of Withdrawal of Proposed Rulemaking, Geographic-Based Hiring Preferences in Administering Federal Awards, 82 Fed. Reg. 46,716 (Oct. 6, 2017).

Final Rule, Stage 5 Airplane Noise Standards, 82 Fed. Reg. 46,123 (Oct. 4, 2017).

ARP SOP 10.00, Administrative Closeout of Airport Improvement Program Grants (Oct. 1, 2017).

Competition Plan Covered Airport List for FY 2018 (Aug. 2017).

AC 150/5100-17, Change 7, Land Acquisition and Relocation Assistance for Airport Improvement Program (AIP) Assisted Projects (July 10, 2017).

Program Guidance Letter No. 17-01, Aircraft Rescue and Firefighting (ARFF) Equipment Above Minimum Part 139 Index Requirements (June 27, 2017).

AC 150/5000-17, Critical Aircraft and Regular Use Determination (June 20, 2017).

Notice and Request for Input, Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation, 82 Fed. Reg. 25734 (June 8, 2017) (“to solicit input from...affected stakeholders to help the Department identify requirements that the Department imposes through rules, or interpretations found in policy statements or guidance, that unjustifiably delay or prevent completion of surface, maritime, and aviation transportation infrastructure projects”).

ARP SOP 5.1, CATEX Determinations (June 2, 2017).

Order 8040.4B, Safety Risk Management Policy (May 2, 2017).

JO 7400.2L, Procedures for Handling Airspace Matters (eff. Apr. 27, 2017).

Department of Homeland Security

Fact Sheet: Aviation Security Enhancement for Select Last Point of Departure Airports with Commercial Flights to the United States (Mar. 21, 2017) (banning large electronic devices on flights originating from 10 Middle Eastern airports).

Other Federal Entities

Council on Environmental Quality, Notice, Publication of Initial List of Actions Pursuant to Executive Order 13,807, 82 Fed. Reg. 43,226 (Sept. 14, 2017) (listing actions CEQ “will take to enhance and modernize the Federal environmental review and authorization process”).



Reports, Studies, Articles, and Other Publications

U.S. Department of Transportation

Draft Strategic Plan for FY 2018-2022 (Oct. 19, 2017) (public comment closed Nov. 13, 2017).

Office of Inspector General, Report No. AV2018001, FAA Has Made Progress Implementing NextGen Priorities, but Additional Actions Are Needed to Improve Risk Management (Oct. 18, 2017).

Office of Inspector General, Letter to Chairman Bill Shuster and Chairman Frank L. LoBiondo Regarding FAA's July 2016 NextGen Business Case (Aug. 15, 2017) (stating that NextGen benefit estimates are "overly optimistic").

Key Staff Appointments (May 20, 2017) (listing recent senior political appointees to the Department).

National Transportation Noise Map (showing noise impacts from airports and highways).

U.S. Government Accountability Office

International Travelers: CBP Collaborates with Stakeholders to Facilitate the Arrivals Process, but Could Strengthen Reporting of Airport Wait Times, GAO-17-470 (Mar. 30, 2017).

Airport Funding: FAA's and Industry's Cost Estimate for Airport Development, GAO-17-504T (Mar. 23, 2017).

Transportation Research Board, Airport Cooperative Research Program

Legal Research Digests

Legal Research Digest 33: Overview of Airport Duties and Standards of Care in Airfield Accident Cases (Oct. 2017).

Legal Research Digest 32: Evolving Law on Airport Implications by Unmanned Aerial Systems (Oct. 2017).

Legal Research Digest 31: Preemption of Worker-Retention and Labor-Peace Agreements at Airports (Feb. 2017).

Reports

Report 181: Assessing Community Annoyance of Helicopter Noise (Nov. 2017).

Report 180: Guidebook for Quantifying Airport Ground Access vehicle Activity for Emissions Modeling (Nov. 2017).

Report 177: Enhancing Airport Wayfinding for Aging Travelers and Persons with Disabilities (Oct. 2017).

Report 179: Dispersion Modeling Guidance for Airports Addressing Local Air Quality Health Concerns (Sept. 2017).

Report 176: Generating Revenue from Commercial Development On or Adjacent to Airports (Aug. 2017).

Report 178: Guidance for Usage of Permeable Pavement at Airports (Aug. 2017).



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Report 175: Improving Intelligibility of Airport Terminal Public Address Systems (July 2017).

Report 174: Green Stormwater Infrastructure, Volume 1: Primer and Volume 2: Guidebook (June 2017).

Report 173: Use and Potential Impacts of AFFF Containing PFASs at Airports (May 2017).

Report 172: Guidebook for Considering Life-Cycle Costs in Airport Asset Procurement (Apr. 2017).

Report 171: Establishing a Coordinated Local Family Assistance Program for Airports (Apr. 2017).

Report 170: Guidebook for Preparing Public Notification Programs at Airports (Apr. 2017).

Report 166: Interpreting the Results of Airport Water Monitoring (Mar. 2017).

Report 169: Clean Water Act Requirements for Airports (Jan. 2017).

Report 168: Runway Protection Zones (RPZs) Risk Assessment Tool Users' Guide (Jan. 2017).

Report 167: Guidebook for Developing Ramp Control Facilities (Jan. 2017).

Synthesis Reports

Synthesis 83: Preparing Airports for Communicable Diseases on Arriving Flights (Sept. 2017).

Synthesis 86: Transportation Network Companies: Challenges and Opportunities for Airport Operators (Aug. 2017).

Synthesis 85: Alternative Fuels in Airport Fleets (Aug. 2017).

Synthesis 82: Uses of Social Media to Inform Operational Response and Recovery During an Airport Emergency (Aug. 2017).

Synthesis 81: Food and Beverage and Retail Operators: The Costs of Doing Business at Airports (Aug. 2017).

Synthesis 80: Estimating Truck Trip Generation for Airport Air Cargo Activity (Aug. 2017).

Synthesis 79: Funding Industrial Aviation (July 2017).

Web-Only Documents

Web-Only Document 33: Assessing Aircraft Noise Conditions Affecting Student Learning—Case Studies (Nov. 2017).

Web-Only Document 32: Improving AEDT Noise Modeling of Mixed Ground Surfaces (June 2017).

Web-Only Document 31: Improving Stakeholder Engagement in Aircraft Accident Response Planning (Apr. 2017).

Web-Only Document 30: Development of a NO_x Chemistry Module for EDMS/AEDT to Predict NO₂ Concentrations (Mar. 2017).

General Articles



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Kim Stevens, FAA Announces New Regional Administrators, State Aviation Journal, Oct. 30, 2017.

Mike Ives, In a Warming World, Keeping the Planes Running, N.Y. Times, Sept. 30, 2017.

Kaplan Kirsch & Rockwell LLP, P3 Airport Projects: An Introduction for Airport Lawyers (May 2017).

Airports Council International – North America, Airport Infrastructure Needs 2017 – 2021 (Mar. 2017).

Environmental Law Institute, Regulatory Reform in the Trump Era (Mar. 2017).

Unmanned Aircraft Systems

Decided Cases

Singer v. City of Newton, No. 17-100071-WGY, 2017 U.S. Dist. LEXIS 153844 (D. Mass. Sept. 21, 2017) (finding local drone ordinance requiring registration of drones and various operational restrictions preempted by federal law).

Taylor v. Huerta, 856 F.3d 1089 (D.C. Cir. May 19, 2017) (holding that FAA did not have authority to promulgate regulations requiring hobbyist drone owners to register with the agency, but staying enforcement pending a petition for rehearing); *but see* National Defense Authorization Act of Fiscal Year 2018, Pub. Law No. 115-91 (signed Dec. 12, 2017) (reinstating FAA authority to regulate recreational drones).

Boggs v. Merideth, No. 3:16-CV-00006-TBR, 2017 U.S. Dist. LEXIS 40302 (W.D. Ken. Mar. 21, 2017) (dismissing complaint alleging the defendant shot down plaintiff's unmanned aircraft while over defendant's property for lack of subject matter jurisdiction and stating that tort claims were properly brought in state court).

Pending Cases

Elec. Privacy Info. Ctr. v. FAA, Case No. 16-1297 (D.C. Cir. Argument scheduled Jan. 25, 2018) (challenging FAA's decision not to promulgate privacy-specific UAS regulations).

FAA Rules, Orders, and Guidance

UAS Integration Pilot Program (announced as "an opportunity for state, local, and tribal governments to partner with private sector entities, such as UAS operators or manufacturers, to accelerate safe UAS integration").

Proposed Federal Legislation

House Resolution 2930, Drone Innovation Act of 2017 (introduced June 16, 2017) (proposing to require the Secretary of Transportation to develop policies on drone regulation in cooperation with State and local governments while preserving rights to privacy and local causes of action for trespass, etc.).

Reports, Studies, and Articles

Michael Laris, Federal drone advisory panel knocked for 'lack of transparency and poor management', The Washington Post, Nov. 8, 2017.

Alliance for System Safety of UAS through Research Excellence, UAS Airborne Collision Severity Evaluation Final Report (Nov. 2017).

Bard College, Center for the Study of the Drone, Drone Registrations – A Preliminary Analysis (Nov. 2017).



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FAA Drone Advisory Committee – Task Group 3, Tasking on Unmanned Aircraft Systems (UAS) Funding (Mar. 7, 2017).

A PDF of this Semi-annual Airport Law Digest is available.