




KAPLAN KIRSCH ROCKWELL

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AIRPORT LAW DIGEST
2023 YEAR IN REVIEW

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INTRODUCTION

We are pleased to share Kaplan Kirsch & Rockwell's Airport Law Digest - 2023 Year in Review.

This Airport Law Digest includes a list of key airport-related cases decided during 2023, new DOT and FAA rules, policies, and guidance, and reports, studies, and articles of interest to airport legal professionals. We have attempted to provide links to publicly available documents, and most other documents are available via subscription services such as Westlaw or LexisNexis.

We hope you find this Digest useful in your efforts to remain current in the always-evolving legal and regulatory framework that governs airports. If you have questions about any of the materials in this Digest, please contact editors [Nicholas Clabbers](#) and [Adam Gerchick](#), or [any other Kaplan Kirsch & Rockwell attorney](#) who normally represents you. As with all of our Kaplan Kirsch & Rockwell publications, this Digest is not intended to provide legal advice which requires a specific analysis of how the law applies to particular facts. Please consult with your counsel if you wish to understand how the cases and other materials cited in the Digest apply to your own situation.

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A Flurry of Policies from the FAA

The final months of 2023 saw a rush of airport-related policy proposals and pronouncements from the FAA. These include proposals to expand the definition of “aeronautical activity” and revise the PFC-approval process, and the release of final policies on airport land use and air carrier incentive programs. Each proposed or final policy could affect airport sponsors significantly, and sponsors would be well-advised to review each carefully.

Land Use Policy: The FAA capped off 2023 with a new final [policy](#) on airport land-use approvals that will change the way the FAA reviews and consents to the non-aeronautical and “mixed” use of most airport property. The policy sets a process and criteria for how and whether the FAA will approve a sponsor’s request for such use. Notably, the policy effectively eliminates the prior practice of designating airport property as non-aeronautical on an Airport Layout Plan, as the FAA’s position is that all property is now aeronautical by default until approved for another, specific, non-aeronautical use. The policy gives local and regional FAA officials substantial discretion in implementing the process and standards for approval. Despite questions from numerous commenters, the FAA specifically did not address whether the land-use approvals described in the policy would be subject to federal environmental review. Importantly, the policy, which took effect this January 8, is not retroactive. For further analysis, please review Kaplan Kirsch & Rockwell’s [Airport Law Alert](#) concerning the policy.

ACIP Policy: Also in December, the FAA [issued](#) a final policy concerning airport sponsors’ air carrier incentive programs (ACIPs). The policy, which supersedes the FAA’s 2010 ACIP guidebook, generally gives sponsors more flexibility to develop ACIPs than the guidebook offered. Among other things, the new policy allows a sponsor to offer an airline incentives to “significant[ly] increase” its capacity on an existing route and permits sponsor staff to provide technical advice to non-sponsor entities, such as a local chamber of commerce, on crafting their own ACIPs using non-sponsor funds. However, the policy also is somewhat more constraining in other respects, requiring a sponsor to provide public notice before entering into an ACIP agreement and prohibiting ground handling or fueling incentives, even when provided by the sponsor. Our firm issued an [Airport Law Alert](#) to clients regarding the new ACIP policy in December.

“Aeronautical Activities” Redefinition: In November, the FAA [proposed](#) to redefine the term “aeronautical activity” for purposes of airport sponsors’ federal grant obligations. The FAA would expand the term to include “certain unmanned aircraft systems (UAS), advanced air mobility (AAM) operations, [and] commercial space vehicle operations,” but not “recreational UAS operations.” The proposed redefinition could have a significant impact on airport sponsors because, under the Airport Improvement Program (AIP) grant assurances, a sponsor must make its airport available “for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities,” and may not grant an exclusive right to such operator. Airport-industry groups have expressed concern that some UAS, AAM, and space-launch activities are not practicably compatible with many airports’ operations, creating the potential for disputes over whether a sponsor can accommodate them. The above is just one example of the potential impact of the redefinition; because “aeronautical activity” is used in a wide range of FAA policies and guidance, this definition is critically important. Kaplan Kirsch & Rockwell further analyzed the proposed redefinition in an [Airport Law Alert](#).



PFC Approval Process: In September, the FAA [issued](#) a proposal to revise its regulations for approving airport sponsors' plans to impose passenger facility charges (PFCs). The proposed rule would generally streamline the PFC process for sponsors of hub airports by allowing them to submit notices of intent, rather than applications, to impose and use PFCs, a practice non-hub sponsors may currently employ. The rule would also rescind several other procedural requirements. However, the rule would add certain conditions and reporting requirements.

FAA Reauthorization Waits in the Senate

In the second half of 2023, legislative efforts to reauthorize the FAA came in with a bang and went out with a whimper. In July, the House [passed](#) H.R. 3935, a bill to extend the FAA's authority, and many federal aviation programs, for five years. In a deeply partisan Congress, the House voted for passage 351-69, an overwhelming and bipartisan margin.

Since then, however, the legislation has been stuck in the Senate. On June 15, the Senate Commerce Committee abruptly canceled a meeting to amend the Senate's FAA reauthorization legislation after committee Democrats strongly objected to a proposal by senators Kyrsten Sinema (I-AZ) and John Thune (R-SD) to amend the bill by allowing airline pilots to credit more simulator time toward the flight-hours requirement for their licenses. Since then, Democrats in charge of the committee have refused to take up the bill, concerned that Sinema and committee Republicans would have the votes to adopt the amendment. In recent weeks, senators on the Commerce Committee reportedly reached a tentative deal on the pilot-training requirement, but the legislation remains stuck in committee.

Because the FAA's existing authority was set to expire last year, on September 30, Congress has passed two short-term extensions of that authority while reauthorization waits in the Senate; the current extension is set to expire on March 8.

LITIGATION

Note that some cases with only Lexis or Westlaw citations may be published at a later date.

COURT DECISIONS

Federal Appellate Courts

Standing; Flight Procedures

Town of Milton v. FAA, 87 F.4th 91 (1st Cir. 2023) (town could not demonstrate injury-in-fact to itself, and therefore lacked standing to challenge FAA's revision of arrival and departure procedures at nearby airport).

Grant Assurances

Marina Aviation, LLC v. FAA, Case No. 22-70173, 2023 U.S. App. LEXIS 30794 (9th Cir. Nov. 20, 2023) (dismissing petition for review of FAA's Part 16 decision that airport sponsor did not breach its grant obligations by declining to extend the lease of a tenant with a history of late rent payments).

NEPA

Lowman v. FAA, 83 F.4th 1345 (11th Cir. 2023) (FAA adequately considered air quality and cumulative impacts of airport-development project, even if petitioners would have preferred FAA study a broader geographic scope).

Air Traffic Control

Hodges v. United States, 78 F.4th 1365 (11th Cir. 2023) (FAA's air traffic controller owed no duty, and thus was not negligent, to pilot who collided with another aircraft outside of the controller's jurisdictional airspace).

Preemption

Airlines for Am. v. City & Cnty. of San Francisco, 78 F.4th 1146 (9th Cir. 2023) (by requiring airlines using its airport to provide certain healthcare benefits to employees, airport sponsor was acting as a regulator, and not as a market participant).

Obstructions; Notice Requirement

Backcountry Against Dumps v. FAA, 77 F.4th 1260 (9th Cir. 2023) (because FAA failed to give organization notice of the comment period on an aeronautical study of a wind-turbine proposal, FAA was wrong to deny the organization’s petition for review of a “no hazard” determination regarding that proposal on the ground that the organization had not previously commented on the aeronautical study).

Air Carriers

Warbird Adventures, Inc. v. FAA, Case No. 22-13765, 2023 U.S. App. LEXIS 17046 (11th Cir. July 6, 2023) (when flight school instructor flew with a paying student, flight school “carried” that student “for compensation or hire” under 14 C.F.R. § 91.315 and was thus appropriately penalized for doing so in an unauthorized aircraft).

Drones

Nat'l Press Photographers Ass'n v. McCraw, 84 F.4th 632 (5th Cir. 2023) (rehearing pending) (Texas's prohibitions on using UAS to record individuals on private property, and to fly UAS low over certain sites, did not facially violate the First Amendment).

NEPA

City of Los Angeles v. Dickson, 2023 U.S. App. LEXIS 5669 (9th Cir. Mar. 9, 2023) (ordering FAA to provide status updates on progress of environmental review of new LAX flight routes following FAA’s “unreasonable delay” of nearly five years from publication of flight routes and 19 months since Ninth Circuit’s mandate to conduct review).

NEPA

City of L.A. v. FAA, 63 F.4th 835 (9th Cir. 2023) (ordering the FAA to redo the noise-impact analysis in its environmental impact study for the Burbank airport’s terminal redevelopment because FAA unreasonably assumed that construction workers would not operate multiple pieces of noisy construction equipment simultaneously).

Pandemic Restrictions

Health Freedom Def. Fund v. President of United States, 2023 U.S. App. LEXIS 15719 (11th Cir. June 22, 2023) (vacating as moot district court’s order nullifying CDC’s air-travel mask mandate, since the president had subsequently rescinded the emergency declaration on which the mandate was based and was not likely to reinstate it).

Airport Control

Jackson Mun. Airport Auth. v. Harkins, 67 F.4th 678 (5th Cir. 2023) (vacated; en banc hearing pending) (when state legislators attempted to terminate airport commission, airport commissioners had standing to sue because the loss of their benefits (per diems and positions of authority) would constitute concrete, particularized injuries).

Federal Tort Claims Act

Leuthauser v. United States, 2023 U.S. App. LEXIS 15985 (9th Cir. June 26, 2023) (a person assaulted by a Transportation Security Officer (TSO) may sue the federal government under the Federal Tort Claims Act because TSOs are legally authorized to “execute searches” of air travelers and are therefore “investigative or law enforcement officers” of the United States).

Osmon v. United States, 66 F.4th 144 (4th Cir. 2023) (reaching the same conclusion as *Leuthauser v. United States*, above, for essentially the same reasons).



Local Regulation; Pandemic Restrictions

Seaplane Adventures, LLC v. Cnty. of Marin, 2023 U.S. App. LEXIS 15995 (9th Cir. June 26, 2023) (affirming district court's holding that county's prohibition on recreational flights during COVID-19 pandemic was constitutional under rational-basis standard).

Airport Control; Private Right of Action

Tule Lake Comm. v. FAA, 2023 U.S. App. LEXIS 10553 (9th Cir. May 1, 2023) (private organization lacked right to challenge city's transfer of airport to tribe, since historic federal land grant to airport did not confer private right of action or provide a basis for federal jurisdiction).

Takings

Yates v. City of Chicago, 58 F.4th 907 (7th Cir. 2023) (implying, though not expressly holding, that city-employed airport-security officers had no constitutionally cognizable property interest in being categorized as law-enforcement officers, and thus lacked a constitutional claim when city decided to stop categorizing them as such).

Federal District Courts

Pandemic Restrictions

Saliba v. Spokane Int'l Airport Bd., Case No. 2:23-cv-00218-MKD, 2023 U.S. Dist. LEXIS 214343 (E.D. Wash. Dec. 1, 2023) (dismissing pro se airline captain's complaint against airport sponsor for preventing him from proceeding to gate area for 15 minutes because he refused to wear a mask; holding, *inter alia*, that various regulations cited by pilot did not provide a private right of action, and that he was not detained for Fourth Amendment purposes).

Federal Liability

United States v. Sanders, Case No. 23-cv-1000-W-DDL, 2023 U.S. Dist. LEXIS 173239 (S.D. Cal. Sept. 27, 2023) (when federal government sued local airport sponsor for negligence in allowing private aircraft to collide with parked military aircraft, claim was subject to state law, so federal government had to comply with state notice requirement).

TSA

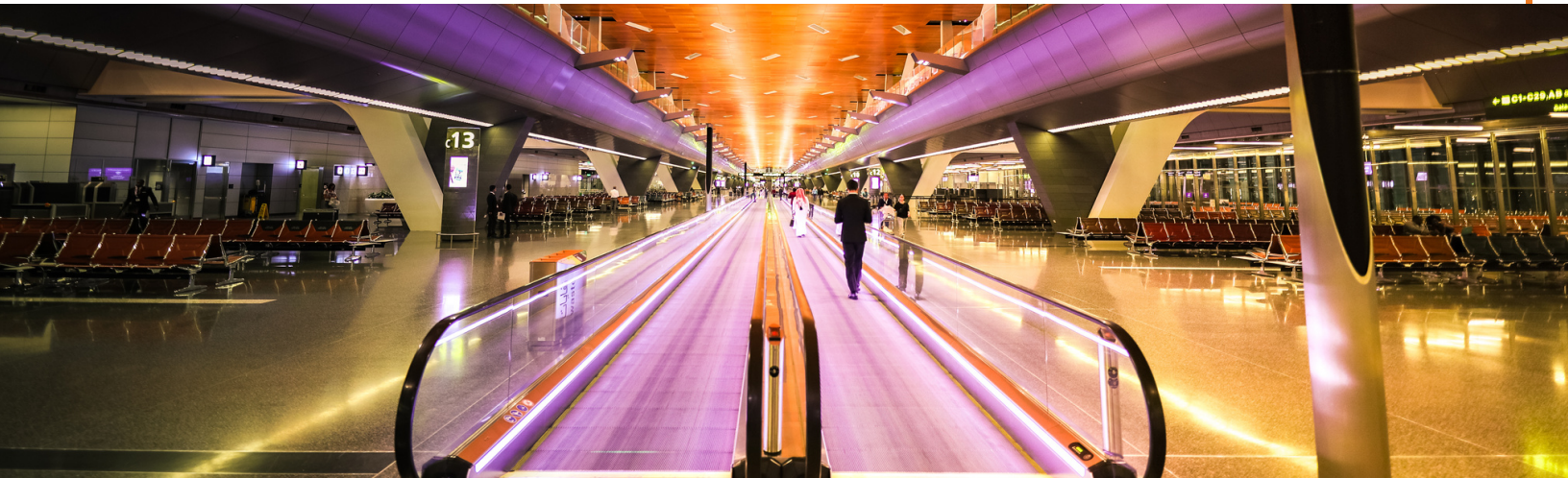
Allen-Fillmore v. United States, Civ. Action No. 22-1610, 2023 U.S. Dist. LEXIS 154021 (E.D. Pa. Aug. 31, 2023) (in case of slip-and-fall at TSA checkpoint, denying summary judgment because there were triable issues of fact over whether airport sponsor or TSA was in possession of checkpoint area and which party was liable for keeping it clean and maintained).

Property Damages

Corotoman, Inc. v. Cent. W. Va. Reg'l Airport Auth., Inc., Civ. Action No. 2:21-cv-00545, 2023 U.S. Dist. LEXIS 130091 (S.D. W. Va. July 27, 2023) (appeal filed) (when airport sponsor breached contract to overblast private property, property owner was entitled to diminution in property's value, but owner failed to prove damages, so none were awarded).

False Claims Act; Grant Compliance

United States ex. rel Smith v. Odom, Case No. 3:20cv3678-MCR-ZCB, 2023 U.S. Dist. LEXIS 143046 (N.D. Fla. June 22, 2023) (dismissing relator's claim that airport sponsor violated False Claims Act by submitting grant applications despite allegedly being noncompliant with existing grant assurances; holding, among other things, that relator had not established a grant violation and that, in any event, FAA was aware of allegations such that any false statement would not have been material).



Preemption

Air Transp. Ass'n of Am., Inc. v. Campbell, 2023 U.S. Dist. LEXIS 96216 (D. Mass. June 2, 2023) (Airline Deregulation Act preempts Massachusetts Earned Sick Time Law (MESTL) with respect to airlines' in-flight and ground employees, since evidence shows that MESTL increases those employees' sick calls and thus substantially affects airlines' services).

Sovereign Immunity

Chey v. Metro. Airports Comm'n, 2023 U.S. Dist. LEXIS 34139 (D. Minn. Mar. 1, 2023) (dismissing various tort claims against public airport sponsor because sponsor's policy regarding passenger drop-off locations was a discretionary function covered by state's discretionary-immunity statute).

Section 1983

Columbare v. S.W. Airlines Co., 2023 U.S. Dist. LEXIS 13383 (N.D. Tex. Jan. 10, 2023) (neither airline's contracts with public airport sponsor nor airline's cooperation with prosecutors rendered it a state actor for purposes of a 42 U.S.C. § 1983 claim for violation of constitutional rights).

Section 1983

Fogg v. TSA, 2023 U.S. Dist. LEXIS 91057 (E.D.N.C. May 24, 2023) (plaintiff could not sustain Section 1983 claim against municipal airport authority following allegedly improper arrest because she failed to plausibly allege that the authority had a "policy or custom" that caused alleged deprivation of her federal rights).

Preemption

Horowitz v. SkyWest Airlines, Inc., 2023 U.S. Dist. LEXIS 89440 (N.D. Cal. May 22, 2023) (with respect to airline pilots, the Federal Aviation Act preempts state requirements for meal and rest breaks).

Condemnation

Lonestar Airport Holdings, LLC v. City of Austin, 2023 U.S. Dist. LEXIS 15779 (W.D. Tex. Jan. 31, 2023) (in private terminal operator's breach-of-contract case against public airport sponsor, denying operator's motion to preliminarily enjoin sponsor from taking possession of operator's terminal or developing new airport facilities because claim was remediable with damages).

Civil Procedure

Suriel v. Port Auth. of N.Y. & N.J., 2023 U.S. Dist. LEXIS 56968 (E.D.N.Y. Mar. 31, 2023) (because airline had no contractual duty to provide security-camera footage to airport sponsor, sponsor did not "control" such footage, so sponsor had no duty to preserve it as part of a litigation hold).

Antitrust

United States v. Am. Airlines Grp. Inc., 2023 U.S. Dist. LEXIS 87867 (D. Mass. May 19, 2023) (ordering American Airlines and JetBlue Airways to unwind their "Northeast Alliance" partnership because it violates the Sherman Antitrust Act).



Local Regulation; Immigration; Surplus Property Act

United States v. King Cnty., 2023 U.S. Dist. LEXIS 55523 (W.D. Wash. Mar. 30, 2023) (interpreting federal use of an airport to include use by federal contractors; holding that county's executive order prohibiting FBOs from servicing ICE deportation flights violated both the Supremacy Clause and the airport's instrument of transfer, the latter of which requires the county to make airport publicly accessible and allow the federal government to use it).

State Courts

Takings

State ex rel. Boggs v. City of Cleveland, 2023-Ohio-3871 (Ohio Ct. App. 8th 2023) (under state law, homeowners lacked standing to compel airport sponsor to exercise eminent domain over home under flight path).

Taxes

DeKalb Cnty. v. City of Chamblee, 894 S.E.2d 59 (Ga. Ct. App. 2023) (county's operation of public airport did not constitute a business, so it did not owe occupancy taxes to municipality).

Hillsborough Cnty. Aviation Auth. v. Henriquez, 370 So. 3d 334 (Fla. Ct. App. 2d 2023) (under Florida law, public airport authority's FBO leaseholds were exempt from ad valorem taxation).

Administrative Decisions

Non-aeronautical Use

In re: Compliance with Federal Obligations by the City of Zephyrhills, FAA Dckt. No. 16-22-01, Director's Determination (Sept. 22, 2023) (sponsor violated several grant assurances by issuing an aeronautical tenant a lease that allowed the tenant to host a residential RV park on airport property and failed to charge fair market value for such non-aeronautical use).

Surplus Property Act

Horry Cnty. v. City of Myrtle Beach, FAA Dckt. No. 16-21-07, Director's Determination (July 17, 2023) (ordering non-sponsor owner of former airport property subject to Surplus Property Act to apply proceeds of the property's sale to airport use).

Revenue Diversion

United Airlines, Inc. v. Port Auth. of N.Y. & N.J., FAA Dckt. No. 16-14-13, Final Agency Decision (FAA May 10, 2023) (affirming, on remand, Director's determination that the Port Authority's right to divert airport revenue to other Port Authority facilities was grandfathered under applicable statute).

Safety

Dakota Terr. Tours, A.C.C. v. Yavapai Cnty., FAA Dckt. No. 16-17-18, Final Agency Decision (FAA May 9, 2023) (appeal filed) (because FAA is final arbiter of aviation safety, sponsor did not have authority to decide for itself whether properly certificated aeronautical operator met safety qualifications to operate).

Skydiving

Theuma v. Arizona, FAA Dckt. No. 16-19-16, Final Agency Decision (FAA Mar. 2, 2023) (affirming, on remand, the Director's determination that sponsor (a) could not require skydiving operator to obtain insurance that was not reasonably available, (b) had not provided sufficient justification for an insurance requirement, and (c) had unjustly prohibited solo jumps in skydiving operator's lease; but holding, contrary to Director, that sponsor may treat a skydiving operator differently from other operators with respect to lease terms and rates and charges so long as the different treatment is reasonable and does not deny the skydiving operator airport access).



Noise Regulation; Flight Operations

Timberview Helicopters v. Okaloosa Cnty., FAA Dckt. No. 16-21-14, Director's Determination (Feb. 21, 2023) (holding sponsor compliant with Grant Assurance 19 and numerous other assurances but holding it noncompliant with Grant Assurance 22 for attempting to regulate flight operations, regulating helicopter noise without following Airport Noise and Capacity Act (ANCA) protocols, and enforcing lease terms inconsistently).

Lease Terms

Occhiuzzo v. City of Westfield, FAA Dckt. No. 16-21-02, Director's Determination (Jan. 5, 2023) (holding that difference in hangar rents, "in and of itself, is not evidence of unreasonableness or unjust economic discrimination"; that relocating a tenant to a comparable hangar for operational reasons was not unjustly discriminatory or an exclusive-rights violation; and that the existence of only one FBO at an airport does not mean the FBO holds an exclusive right).

FEDERAL LEGISLATION

[Airport and Airway Extension Act of 2023, Part II](#) (Pub. L. No. 118-34) (Dec. 26, 2023) (extending FAA authorization through March 8, 2024).

[Further Continuing Appropriations and Other Extensions Act, 2024](#) (Pub. L. No. 118-22) (Nov. 16, 2023) (continuing federal discretionary funding through January 19, 2024 for some federal agencies, including DOT and FAA, and through February 2, 2024 for certain others, including the Department of Homeland Security).

[Continuing Appropriations Act, 2024 and Other Extensions Act](#) (Pub. L. No. 118-15) (Sept. 30, 2023) (continuing federal discretionary funding through November 17, 2023, and extending FAA authorization through December 31, 2023).

[Fiscal Responsibility Act of 2023](#) (Pub. L. No. 118-5) (June 3, 2023) (suspending the debt ceiling and authorizing an overall federal budget cap for FY 2024; streamlining certain NEPA environmental-review requirements; and rescinding funds from certain federal grant programs, including CARES and CRRSA, that had not yet been committed to a particular project or grantee).

[NOTAM Improvement Act](#) (Pub. L. No. 118-4) (June 3, 2023) (directing FAA to establish a task force to recommend improvements to the NOTAM system).

[Relating to a National Emergency Declared by the President on March 13, 2020](#) (Pub. L. No. 118-3) (Apr. 10, 2023) (terminating the COVID-19 national emergency and, by extension, the emergency orders predicated thereon).

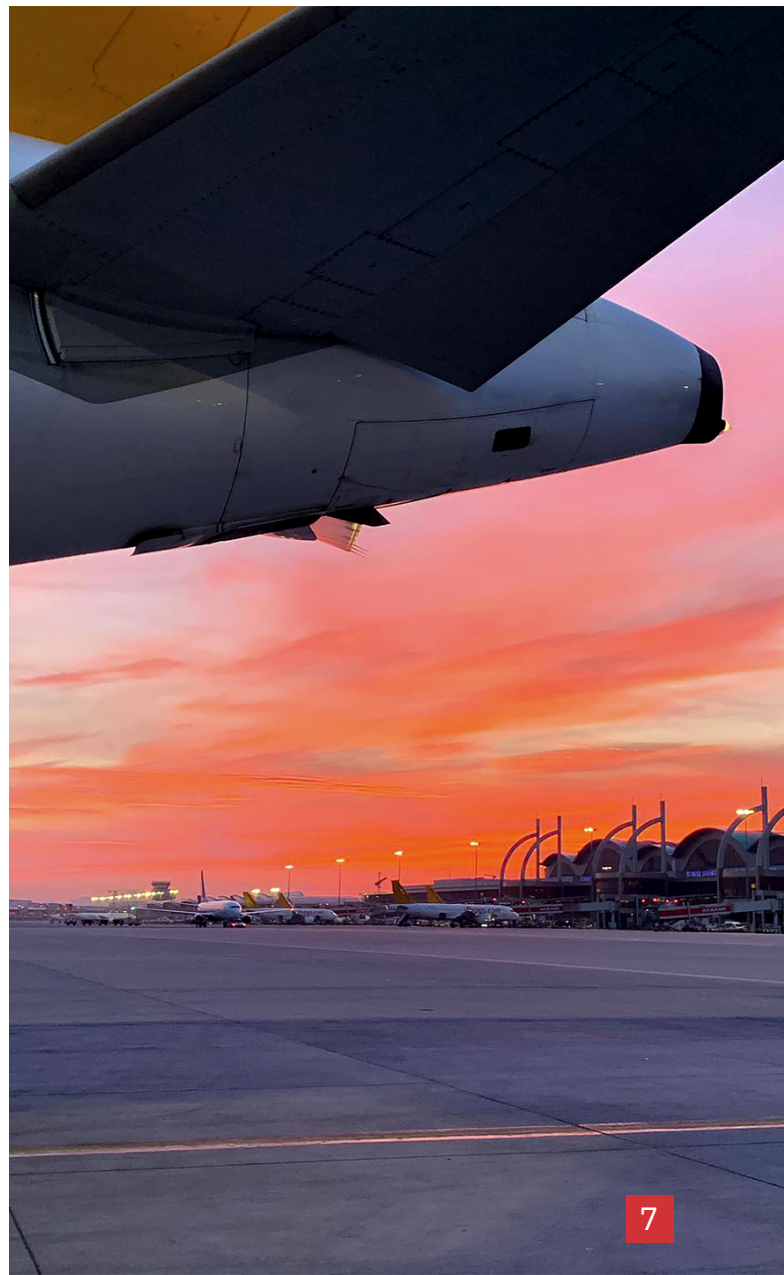
FEDERAL RULES, ORDERS, & GUIDANCE

THE WHITE HOUSE

Statement, [Biden-Harris Administration Takes New Action to Protect Communities from PFAS Pollution](#) (Mar. 14, 2023) (highlighting EPA's issuance of national drinking-water standards for PFAS contaminants and noting FAA's guidance to airport operators on reducing PFAS-containing firefighting foam).

OFFICE OF MANAGEMENT AND BUDGET

[Memorandum, Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#) (Oct. 25, 2023) (supplemental guidance to the heads of federal agencies on Build America, Buy America Act (BABA) preferences in federal infrastructure grant programs and the process for waiving that preference).



Final Rule, [Guidance for Grants and Agreements](#), 88 Fed. Reg. 57,750 (Aug. 23, 2023) (guidance to federal agencies regarding implementation of the BABA provisions of the Bipartisan Infrastructure Law).

[Proposed Rule, Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (Feb. 9, 2023) (proposing to update OMB's guidance regarding federal grants and contracts to incorporate Buy America provisions of the Infrastructure Investment and Jobs Act).

COUNCIL ON ENVIRONMENTAL QUALITY

Notice of Proposed Rulemaking, [National Environmental Policy Act Implementation Regulations Revisions Phase 2](#), 88 Fed. Reg. 49,924 (July 31, 2023) (proposing to significantly revise federal regulations governing environmental reviews under the National Environmental Policy Act).

[National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change](#), 88 Fed. Reg. 1196 (Jan. 9, 2023) (guidance to federal agencies on how to analyze greenhouse-gas emissions and climate impacts when conducting environmental studies under NEPA).

DEPARTMENT OF DEFENSE

QPL-32725, [Fire Extinguishing Agent, Fluorine-Free Foam \(F3\) Liquid Concentrate, for Land-Based, Fresh Water Applications](#) (Aug. 17, 2023) (the first approval of a PFAS-free firefighting foam for use in military firefighting, and, by extension, at Part 139 airports).

MIL-PRF-32725, [Performance Specification: Fire Extinguishing Agent, Fluorine-Free Foam \(F3\) Liquid Concentrate, For Land-Based, Fresh Water Applications](#) (Jan. 6, 2023) (setting out military's specifications, adopted by FAA, for non-PFAS firefighting foams).

DEPARTMENT OF TRANSPORTATION AND FAA ORDERS, POLICIES, & ADVISORY CIRCULARS

Final Policy, [Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land](#), 88 Fed. Reg. 85,474 (Dec. 8, 2023) (substantially expanding the scope of airport land uses subject to FAA approval and scaling back the FAA's practice of permanently designating certain airport land as "non-aeronautical").

Final Policy, [FAA Policy Regarding Air Carrier Incentive Program](#), 88 Fed. Reg. 85,344 (Dec. 7, 2023) (generally increasing airport sponsors' flexibility with respect to air carrier incentive programs (ACIPs), but requiring sponsors to provide additional public notice before entering into ACIPs).

Advisory Circular 150/5190-8, [Minimum Standards for Commercial Aeronautical Activities](#) (Dec. 7, 2023) (recommendations on the development of minimum standards).

Program Guidance Letter 23-02, [Further Extension of Eligibility for Stand-Alone Acquisition of Input-Based Testing Equipment and Truck Modification](#) (Nov. 28, 2023) (extending, through Nov. 1, 2025, the period during which airport sponsors may acquire input-based aqueous film forming foam (AFFF) testing equipment, as an allowable cost under the Airport Improvement Program (AIP), without the purchase of an aircraft rescue and fire-fighting vehicle).

Advisory Circular 150/5210-6E, [Aircraft Fire Extinguishing Agents for Airports](#) (Nov. 27, 2023) (guidance on use of aircraft fire-extinguishing agents under 14 C.F.R. part 139).

Frequently Asked Questions, [Bipartisan Infrastructure Law](#) (Nov. 22, 2023) (updating prior guidance).

Proposed Policy, [Policy on the Definition of Aeronautical Activities](#), 88 Fed. Reg. 78,448 (Nov. 15, 2023) (proposing to redefine "aeronautical activity," for purposes of airport sponsors' AIP grant obligations, to include "certain unmanned aircraft systems (UAS), advanced air mobility (AAM) operations, [and] commercial space vehicle operations" but not "recreational UAS operations").



Report, [National Airspace System Safety Review Team: Discussion and Recommendations to Address Risk in the National Airspace System](#) (Nov. 15, 2023) (report to FAA administrator from blue-ribbon panel, finding that air traffic control short-staffing and underfunding, and antiquated technologies, “erod[e] the safety margin” in the national airspace system).

Notice of Funding Opportunity, [FAA Contract Tower Competitive Grant Program; Fiscal Year \(FY\) 2024 Funding Opportunity](#), 88 Fed. Reg. 75,083 (Nov. 1, 2023).

Notice of Proposed Rulemaking, [Update and Clarification of the Passenger Facility Charge Regulations](#), 88 Fed. Reg. 66,319 (Sept. 27, 2023) (proposing to revise process for approving airport sponsors’ passenger facility charge (PFC) proposals, including by permitting hub sponsors to submit “notices of intent” to impose PFCs, rather than applications).

Advisory Circular 120-57C, [Low Visibility Operations/Surface Movement Guidance and Control Systems](#) (LVO/SMGCS) (Sept. 26, 2023) (guidance for developing LVO/SMGCS plans).

Grants Notice, [Fueling Aviation’s Sustainability Transition via Sustainable Aviation Fuels \(FAST-SAF\) and Low-Emission Aviation Technologies \(FAST-Tech\) Grant Program](#) (Sept. 25, 2023) (soliciting applications for \$291 million in grants to promote the transition to sustainable aviation fuels).

Order 5190.6B, Change 3, [Airport Compliance Manual](#) (Sept. 15, 2023) (revision to several chapters of the FAA’s Airport Compliance Manual, following two prior revisions to other chapters in 2021 and 2022).

Notice of Funding Opportunity, [Airport Terminal Program; FY 2024 Funding Opportunity](#), 88 Fed. Reg. 63,189 (Sept. 14, 2023).

CertAlert No. 23-07, [Availability of Fluorine Free Foam \(F3\) on the Navy’s Qualified Products List \(QPL\)](#) (Sept. 13, 2023) (announcing that U.S. Navy has approved a fluorine-free firefighting foam for military use, such that it may now be used at Part 139 airports).

Request for Comments, [Revisions to the Regulatory Definitions of “On-Demand Operation”, “Supplemental Operation” and “Scheduled Operation”](#), 88 Fed. Reg. 59,480 (Aug. 29, 2023) (seeking comment on whether the FAA should revise regulatory definitions to subject public charter operations to various requirements applicable to Part 121 air carriers).

Notice of Proposed Rulemaking, [U.S. Commercial Space Launch Competitiveness Act Incorporation](#), 88 Fed. Reg. 56,546 (Aug. 18, 2023) (proposing to amend and expand the FAA’s regulation of commercial spaceflight).

Notice, [Waiver of Buy America Requirements for De Minimis Costs and Small Grants](#), 88 Fed. Reg. 55,817 (Aug. 16, 2023) (exempting, from BABA requirements, small purchases of iron, steel, manufactured products, and construction materials for projects funded by AIP or the Bipartisan Infrastructure Law).

[Staffing Related Relief Concerning Operations at DCA, JFK, LGA, and EWR through October 28, 2023](#), 88 Fed. Reg. 54,873 (Aug. 14, 2023) (temporarily extending waiver of use-it-or-lose-it requirements for slots at DCA, LGA, and JFK, and approved operating timings at EWR, in response to staffing shortages at New York-area TRACON).



Final Rule, [Update to Air Carrier Definitions](#), 88 Fed. Reg. 48,072 (July 26, 2023) (modifying certain regulatory definitions to allow air carriers to conduct commercial operations using powered-lift aircraft).

Advisory Circular 150/5220-9B, [Aircraft Arresting Systems on Civil Airports](#) (July 10, 2023) (FAA standards and recommendations for installing aircraft arresting systems on civil airports not owned by the Department of Defense).

Notice of Proposed Rulemaking, [Integration of Powered-Lift: Pilot Certification and Operations: Miscellaneous Amendments Related to Rotorcraft and Airplanes](#), 88 Fed. Reg. 38,946 (June 14, 2023) (proposing certification requirements for powered-lift pilots and operating rules for powered-lift aircraft).

Advisory Circular 90-66C, [Non-Towered Airport Flight Operations](#) (June 6, 2023) (providing guidance to aircraft operators on operating at airports without a full-time control tower).

Final Rule, [Airworthiness Directives; Transport and Commuter Category Airplanes](#), 88 Fed. Reg. 34,065 (May 26, 2023) (requiring (a) transport and commuter aircraft to be equipped with 5G C-band-compatible altimeters to conduct low-visibility operations at certain airports starting July 1, 2023 and (b) requiring all aircraft conducting Part 121 operations to be so equipped by February 1, 2024).

Request for Comment, [UAS Beyond Visual Line-of-Sight Operations](#), 88 Fed. Reg. 33,855 (May 25, 2023) (seeking public comment on various specific questions regarding regulation of beyond-line-of-sight drone operations).

Advisory Circular 150/5210-23A, [ARFF Vehicle and High Reach Extendable Turret \(HRET\) Operation, Training and Qualifications](#) (May 24, 2023) (updating FAA guidance on training firefighters to use certain aircraft rescue and fire-fighting (ARFF) vehicles).

[Request for Information on Advanced Air Mobility](#), 88 Fed. Reg. 31,593 (May 17, 2023) (seeking public comment as FAA develops strategy for regulating advanced air mobility (AAM) industry).

Policy Statement, [Notice of Final Policy and Procedures on the Temporary Closure of Airports for Non-aeronautical Purposes](#), 88 Fed. Reg. 30,640 (May 12, 2023).

Draft Advisory Circular 150/5200-32C, [Reporting Wildlife Aircraft Strikes](#) (May 12, 2023) (providing guidance on using and accessing the FAA's reporting platform for wildlife aircraft strikes).

Advisory Circular 150/5220-26, Change 3, [Airport Ground Vehicle Automatic Dependent Surveillance - Broadcast \(ADS-B\) Out Equipment](#) (May 10, 2023) (technical correction to preexisting guidance on developing, installing, and maintaining ADS-B Out squitter units for airport ground vehicles).

[Aircraft Firefighting Foam Transition Plan](#) (May 8, 2023) (providing guidance to airport operators on transitioning from PFAS-containing firefighting foams to non-PFAS foams, including guidance on firefighter training).

Fact Sheet, [Buy American Preference: Implementation of IJJA, BABA, and Executive Order 14005](#) (May 8, 2023) (overview) of Build America, Buy America Act (BABA) requirements and provisions of President Biden's made-in-America executive order).

Fact Sheet, [Buy American Preference: BABA Implementation](#) (May 8, 2023) (describes process and requirements for obtaining waiver of BABA's domestic-sourcing requirements).



[Request for Comments on the Federal Aviation Administration’s Review of the Civil Aviation Noise Policy, Notice of Public Meeting](#), 88 Fed. Reg. 26,641 (May 1, 2023) (seeking public comment on four key considerations affecting FAA’s aviation-noise policy, including research on effects of aviation-noise exposure, FAA’s DNL metric for aircraft noise, FAA’s “significant noise exposure” definition, and what level of noise exposure is “normally compatible” with airport operations).

Engineering Brief No. 107, [Aeronautical Study of 5G C-Band Antennas](#) (Apr. 19, 2023) (guidance on FAA’s process for approving 5G C-band antennae on or near public airports).

[Notice of Funding Opportunity, Fiscal Year 2023 Competitive Funding Opportunity: Airport Improvement Program Discretionary Grants](#), 88 Fed. Reg. 23,491 (Apr. 17, 2023).

Advisory Circular 150/5300-20, [Submission of On-Airport Proposals for Aeronautical Study](#) (Apr. 5, 2023) (providing guidance on filing proposals for airport construction or alteration to facilitate FAA study thereof).

Limited Waiver, [Staffing Related Relief Concerning Operations at DCA, JFK, LGA, and EWR](#), 88 Fed. Reg. 18,032 (Mar. 27, 2023) (conditionally waiving minimum-usage requirements for takeoff/landing slots or timed departures at four D.C.- and New York-area airports between May 15, 2023 and September 15, 2023 due to ATC short-staffing).

Frequently Asked Questions, [Airport Coronavirus Response Grant Program](#) (Mar. 27, 2023) (updating prior guidance).

Frequently Asked Questions, [Airport Rescue Grants](#) (Mar. 27, 2023) (updating prior guidance).

Frequently Asked Questions, [CARES Act Airport Grants](#) (Mar. 27, 2023) (updating prior guidance).

Final Rule, [Airport Safety Management System](#), 88 Fed. Reg. 11,642 (Feb. 23, 2023) (requiring certain airports that are hubs, have substantial operations, or host international service to implement and adhere to a safety management system).

Advisory Circular 150/5200-37A, [Safety Management Systems for Airports](#) (Feb. 16, 2023) (guidance for developing and implementing an airport safety management system).

Proposed Policy, [Draft FAA Policy Regarding Air Carrier Incentive Program](#), 88 Fed. Reg. 7502 (Feb. 3, 2023) (announcing proposed policy update and soliciting comments).

Advisory Circular 150/5390-2D, [Heliport Design](#) (Jan. 5, 2023).



ENVIRONMENTAL PROTECTION AGENCY

Final Action, [Finding That Lead Emissions From Aircraft Engines That Operate on Leaded Fuel Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare](#), 88 Fed. Reg. 72,372 (Oct. 20, 2023) (finding, pursuant to the Clean Air Act, that lead emissions from avgas may be reasonably expected to harm public health, and triggering the future development of leaded-avgas emissions standards for aircraft engines).

Advance Notice of Proposed Rulemaking, [Addressing PFAS in the Environment](#), 88 Fed. Reg. 22,399 (Apr. 13, 2023) (proposing to designate seven types of PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); EPA previously proposed to designate two other forms of PFAS (PFOA and PFOS) as hazardous substances under CERCLA last year).

Proposed Rule, [PFAS National Primary Drinking Water Regulation Rulemaking](#), 88 Fed. Reg. 18,638 (Mar. 29, 2023) (proposing national drinking-water standards for PFOA and PFOS, two common PFAS chemicals).

TRANSPORTATION SECURITY ADMINISTRATION

National Amendment TSA-NA-23-02 (available on Homeland Security Information Network to authorized users) (requiring operators of category X, 1, and 2 airports to begin randomly screening aviation workers entering the airports' sterile areas in 2023 and use explosives-detection systems for such worker screening by 2026).

Joint Emergency Amendment TSA-EA-23-01 (available on Homeland Security Information Network to authorized users but [summarized](#) in a TSA press release) (to enhance airport cybersecurity, requiring certain categories of airport operators to strengthen digital-systems access controls, establish policies and practices to isolate digitally compromised systems, implement security-monitoring protocols for digital systems, patch and update systems as necessary, and submit cybersecurity implementation plans to TSA for approval).

Security Directive Pipeline-2021-02D, [Pipeline Cybersecurity Mitigation Actions, Contingency Planning, and Testing](#) (July 27, 2023) (requiring designated owners or operators of hazardous liquid or natural gas pipelines or certain other natural gas facilities to take various steps in protect their digital systems' cybersecurity).

REPORTS, STUDIES, ARTICLES, & OTHER PUBLICATIONS

In Reverse Chronological Order

U.S. DEPARTMENT OF TRANSPORTATION

[Federal Aviation Administration](#)

FAA, Report to Congress, [2023 Aviation Safety Workforce Plan](#) (2023).

FAA, Report to Congress, [FY2021 Safety Incident Report](#) (Dec. 5, 2023).

FAA, Report to Congress, [Report on the Airport Improvement Program \(AIP\) for Fiscal Year \(FY\) 2020 and 2021](#) (Nov. 3, 2023)

FAA, Report to Congress, [Commercial Human Spaceflight Activities](#) (Sept. 29, 2023).

FAA, Report to Congress, [Safety of Air Ambulance Operations, 2022](#) (Sept. 26, 2023).

FAA, Report to Congress, [Risk Associated with Reentry Disposal of Satellites from Proposed Large Constellations](#) (Sept. 22, 2023).

FAA, Report to Congress, [Foreign-Object Debris](#) (Sept. 7, 2023).

FAA, Report to Congress, [Noise and Community Outreach](#) (Aug. 18, 2023).



FAA, Report to Congress, [2022 Research and Development Annual Review](#) (Aug. 2023).

FAA, Report to Congress, [Assistance to Foreign Aviation Authorities, FY22](#) (July 19, 2023).

FAA, Report to Congress, [Air Transportation Centers of Excellence](#) (July 3, 2023).

FAA, Report to Congress, [Unmanned Aircraft Systems Traffic Management Implementation Plan](#) (July 31, 2023).

FAA, Report to Congress, [UAS Firefighting Interference](#) (Aug. 2, 2023).

FAA, Report to Congress, [Plan and Schedule for System Design Approval of Remote Tower Systems](#) (Aug. 25, 2023).

FAA, Report to Congress, [Noise and Community Outreach](#) (Aug. 18, 2023).

FAA, Report to Congress, [Beyond Visual Line of Sight \(BVLOS\) Safety](#) (June 8, 2023).

FAA, Report to Congress, [2023 Aviation Safety Workforce Plan](#) (May 23, 2023).

FAA, Report to Congress, [Part 135 Operations for UAS Deliveries](#) (May 22, 2023).

FAA, Report to Congress, [UAS Part 107 Waivers Report](#) (May 5, 2023).

FAA, Report to Congress, [Study of Operators Regulated Under Part 135](#) (Mar. 28, 2023).

FAA, Report to Congress, [Counter UAS Interagency Coordination Process](#) (Mar. 17, 2023).

FAA, Report to Congress, [Effects of Regulatory Changes to Medical Certification of Certain Small Aircraft Pilots](#) (Mar. 10, 2023).

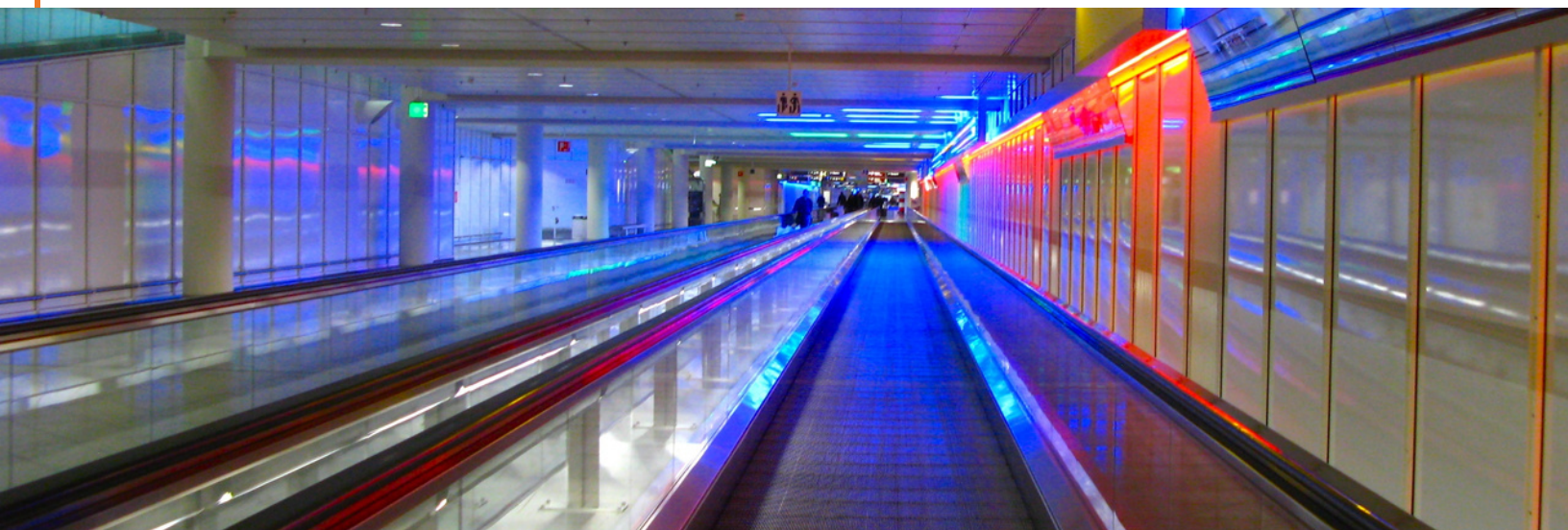
FAA, Report to Congress, [Procurement of Foreign Manufactured Articles](#), FY22 (Mar. 10, 2023).

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FAA, Report to Congress, [Second Update for Cooperative Efforts to Ensure Compliance with Aviation Safety Regulations for Lithium Batteries](#) (Feb. 6, 2023).

FAA, Report to Congress, [Office of Audit and Evaluation Report for FY 2022](#) (Jan. 23, 2023).



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Office of Inspector General, [Report No. AV2024012](#), OST Complied With Federal Regulations, Policies, and Procedures Regarding Executive Travel on DOT Aircraft, but FAA Needs To Enhance Controls for Updating Flight Hour Rates (Dec. 18, 2023).

Office of Inspector General, [Report No. AV2024011](#), FAA Addresses Resiliency in IIJA Aviation Programs but Lacks Data and a Framework for Prioritizing Climate Change Projects (Dec. 13, 2023).

Office of Inspector General, [Report No. AV2024010](#), FAA Has Made Progress Verifying Compliance With Aviation Fuel Tax Requirements, but Challenges Remain With Testing and Enforcement (Dec. 13, 2023).

Office of Inspector General, [Report No. SA2024009](#), Summary Report on Significant Single Audit Findings Impacting DOT Programs for the 3-Month Period Ending September 30, 2023 (Nov. 21, 2023).

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Office of Inspector General, [Report No. IT2024001](#), DOT Needs To Improve Its High-Value Assets Governance Program To Effectively Identify, Prioritize, and Secure Its Most Critical Systems (Oct. 30, 2023).

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Office of Inspector General, [Report No. AV 2023037](#), Regulatory Gaps and Lack of Consensus Hindered FAA's Progress in Certifying Advanced Air Mobility Aircraft, and Challenges Remain (June 21, 2023).

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Office of Inspector General, [Report No. QC2018](#), Quality Control Review of the Management Letter for the Federal Aviation Administration's Audited Financial Statements for Fiscal Years 2022 and 2021 (Feb. 8, 2023).

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Office of Inspector General, [Report No. PT2023013](#), FAA's Office of Audit and Evaluation Adheres to Investigative Practice Standards but Lacks Comprehensive Standard Operating Procedures (Jan. 25, 2023).

Office of Inspector General, [Report No. AV2023011](#), FAA Has Taken Steps to Validate Its Air Traffic Skills Assessment Test but Lacks a Plan to Evaluate Its Effectiveness (Jan. 11, 2023).

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[Report No. GAO-24-105561](#), Commercial Space Transportation: FAA Should Improve Its Mishap Investigation Process (Dec. 2023)

[Report No. GAO-24-105254](#), Air Traffic Control Modernization: Program Management Improvements Could Help FAA Address NextGen Delays and Challenges (Nov. 2023)

[Report No. GAO-24-106280](#), Discretionary Transportation Grants: DOT Should Better Align Its Application Evaluation Process with Federal Guidance (Nov. 2023)

[Report No. GAO-23-105967](#), Travel and Tourism: DOT Should Improve Strategic Planning and Data Collection (May 2023).

[Report No. GAO-23-105571](#), Aviation Workforce: Current and Future Availability of Airline Pilots and Aircraft Mechanics (May 2023).

[Report No. GAO-23-105300](#), Sustainable Aviation Fuel: Agencies Should Track Progress Toward Ambitious Federal Goals (Mar. 2023, revised May 2023).

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[Report No. GAO-23-106031](#), Cybersecurity: DOT Defined Roles and Responsibilities, but Additional Oversight Needed (May 2023).

[Report No. GAO-23-105524](#), Airline Passenger Protections: Observations on Flight Delays and Cancellations, and DOT's Efforts to Address Them (Apr. 2023).

[Report No. GAO-23-105189](#), Drones: FAA Should Improve Its Approach to Integrating Drones into the National Airspace System (Jan. 2023).



[Report No. GAO-24-107094](#), Aviation Security: TSA Could Better Ensure Detection and Assess the Potential for Discrimination in Its Screening Technologies (Oct. 2023).

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[Report No. IF12553](#), National Park System: Air Tour Management Issues (Dec. 18, 2023).

[Report No. IN12206](#), House-Passed FAA Bill Leaves Existing Reagan National Airport Slot and Perimeter Rules Intact (July 27, 2023).

[Report No. R47608](#), Federal Aviation Administration (FAA) Reauthorization Issues for the 118th Congress (June 28, 2023).

[Report No. LSB10925](#), Airline Deregulation Act of 1978: Preemption of State Consumer Protection Laws (Mar. 1, 2023).

[Report No. IN12118](#), Monitoring the Sovereign Skies (Feb. 27, 2023).

[Report No. IF11696](#), Aviation, Air Pollution, and Climate Change (updated Feb. 24, 2023).

[Report No. IN12078](#), Federal Aviation Administration's (FAA's) Troubled NOTAM System Has Been on Congress's Radar for Years (updated Jan. 19, 2023).

[Report No. IN12077](#), Southwest Airlines Disruptions and Airline Consumer Protection Rules (Jan. 11, 2023).

TRANSPORTATION RESEARCH BOARD, AIRPORT COOPERATIVE RESEARCH PROGRAM

Ordered by Report Number

Research Reports

[Research Report 259](#): Methods to Manage Tree Growth Near Airports (Nov. 2023).

[Research Report 258](#): The Evolution of Knowledge Management at Airports (Nov. 2023).

[Research Report 257](#): Guide for Treatment of Airport Stormwater Containing Deicers: Update (Oct. 2023).

[Research Report 256](#): Virtual Airport Ramp Control Operations Facilities: A Guide (Sept. 2023).

[Research Report 255](#): PFAS Source Differentiation Guide for Airports (July 2023).

[Research Report 254](#): Strategies to Address Homelessness at Airports (June 2023).

[Research Report 253](#): Airport Lessons Learned from the COVID-19 Pandemic (June 2023).

[Research Report 252](#): Airport Baggage Handling System Decision-Making Based on Total Cost of Ownership (May 2023).

[Research Report 251](#): Digital Marketing to Enhance Customer Experience and Increase Airport Revenue (June 2023).

[Research Report 250](#): Program Evaluation Report Card Tool for Wildlife Hazard Management Plans: User Guide (May 2023).

[Research Report 249](#): Developing an Airport Program to Address Human Trafficking: A Guide (Feb. 2023).

[Research Report 248](#): Airport Insurance Requirements (Feb. 2023).

[Research Report 242](#): Transformation in Wireless Connectivity: Guide to Prepare Airports (May 2023).

[Research Report 239](#): Assessing Airport Programs for Travelers with Disabilities and Older Adults (Apr. 2023).



Legal Research Digests

[Legal Research Digest 45](#): Airport Customer Facility Charges: Analysis of Laws, Regulations, and Case Law (2023).

[Legal Research Digest 44](#): Airports Responding to Public Health Emergencies: Legal Considerations (2023).

Synthesis Reports

[Synthesis 132](#): Airport Landside Data: Collection and Application (Nov. 2023).

[Synthesis 131](#): State of Airport Loyalty Programs (Oct. 2023).

[Synthesis 130](#): Airport-Centric Advanced Air Mobility Market Study (Oct. 2023).

[Synthesis 129](#): Landscape of the FBO Industry in 2022 (Oct. 2023).

[Synthesis 128](#): Airfield Turf and Vegetation Management Practices (Sept. 2023).

[Synthesis 127](#): Airport Programs That Reduce Landside Vehicle Carbon Emissions (Sept. 2023).

[Synthesis 126](#): Impacts of COVID-19 on Airport Work Models and Strategies (Aug. 2023).

[Synthesis 125](#): Communication, Implementation, and Outcomes of Airport Economic Impact Studies (Aug. 2023).

[Synthesis 124](#): Automated Payment Condition Survey Practices at Airports (Aug. 2023).

[Synthesis 123](#): State Aviation Funding: Project Prioritization and Selection Processes (Apr. 2023).

[Synthesis 122](#): Airfield Apron and Ramp Surface Markings (Mar. 2023).

[Synthesis 121](#): Managing a Flight Diversion with an Emergency Response at Small, Non-Hub, or General Aviation Airports (Feb. 2023).

WebResources

[WebResource 15](#): Assessment Tool for Transformation in Wireless Connectivity (May 2023).

[WebResource 14](#): Tools to Assess Airport Programs for Travelers with Disabilities and Older Adults (Apr. 2023).

[WebResource 13](#): Airside Planning, Design, Construction, Operations, and Maintenance (Mar. 2023).

ADDITIONAL SCHOLARSHIP

David Y. Bannard, [ESG and Airports: The Benefits and Risks of ESG Reporting for US Airports](#), 17 J. Airport Mgmt. 248–265 (2023) (discussing elements of ESG reporting, surveying airports' current reporting, and addressing legal and financial benefits and risks of such reporting).





EDITORS' NOTE

Kaplan Kirsch & Rockwell's airports practice is one of the largest and most experienced in the country. The Firm's attorneys have counseled clients on issues associated with complex airport development and master planning projects, land use, environmental review, rates and charges, airline incentives, finance, security, safety, airport proprietors' rights, and compliance with federal requirements. The Firm has represented clients throughout the nation in regulatory and legislative advocacy on a wide range of policy matters and in litigation related to airport operations and development. The Firm's clients have included airport proprietors, local and state governments, airport tenants, and users and businesses affected by airport operations.

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If you have any questions or would like to learn more about the topics addressed in this Digest, please contact the attorney who normally represents you or contact us at info@kaplankirsch.com or at one of our offices below.

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