



KAPLAN KIRSCH

**SEMI-ANNUAL**  
**AIRPORT LAW DIGEST**  
**2025 MID-YEAR UPDATE**

July 2025  
NO. 41



## INTRODUCTION

We are pleased to share Kaplan Kirsch's Airport Law Digest - 2025 Mid-Year Update.

This Airport Law Digest includes a list of key airport-related cases decided during 2025, new DOT and FAA rules, policies, and guidance, as well as 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 editor [Nicholas Clabbers](#) or [any other Kaplan Kirsch attorney](#) who normally represents you. As with all of our Kaplan Kirsch 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.

## CONTENTS

- 1 | Articles
- 3 | Litigation
- 6 | Federal Legislation
- 6 | Federal Rules, Orders, & Guidance
- 8 | Reports, Studies, Articles, & Other Publications

# On New FAA Grant Requirements, Ongoing Uncertainty Remains

In the months since the new administration began, the DOT and FAA have made significant changes to the Airport Improvement Program (AIP) and other federal grant conditions to reflect the new administration's priorities. Most prominently, new language in the grant agreement requires that a grantee:

- Certify that it does not operate “any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws.”
- Acknowledge that the above certification is “material” to the government’s payment decisions and may subject the grantee to liability under the False Claims Act if the certification is determined to be inaccurate.
- Agree to “cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE).”

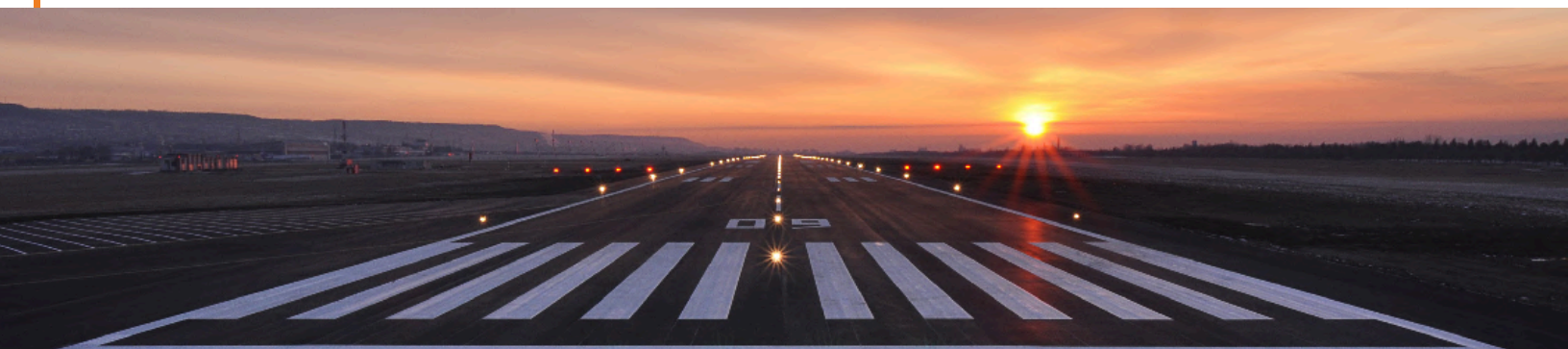
On the same day that these conditions were released to the public, DOT Secretary Duffy sent a letter to all DOT grant recipients. This letter suggested that in addition to the new grant conditions, DOT now intends to interpret existing grant agreements to prohibit DEI initiatives and require cooperation with immigration enforcement in a manner consistent with the new grant conditions.

Almost immediately, a number of airport sponsors brought litigation in several courts challenging the new conditions and the interpretations set forth in the Duffy Letter. The plaintiffs have generally argued that the conditions exceed FAA’s and DOT’s legal authority, are arbitrary and capricious, and are unconstitutional under the anti-commandeering doctrine of the Tenth Amendment. Thus far, district courts have preliminarily enjoined the enforcement of (a) the immigration enforcement condition in twenty states (*California v. DOT*, below) and as applied to several so-called “sanctuary” jurisdictions (*City and Cnty. of S.F. v. Trump*, below) and (b) the immigration enforcement and DEI conditions as applied to a set of 31 plaintiff municipal governments (*Martin Luther King, Jr. Cnty. v. Turner*, below), about half of which are airport sponsors. All of this litigation is ongoing, and given the Supreme Court’s recent decision limiting the scope of universal injunctions (see *Trump v. CASA, Inc.*, below), the national implication of these cases is unclear.

These issues are complex and dynamic, and delays in issuing grants are almost inevitable as the FAA parses its ability to include these conditions in grants after the recent court rulings. Furthermore, given that the current injunctions are different in the various cases and, in any event, do not apply nationwide, FAA will need to have different grant agreements for different airport sponsors. Lawyers for airport sponsors considering whether to execute new grant agreements should assess whether they can, or will, comply with the grant conditions or whether compliance presents a conflict with existing state, local or sponsor laws, ordinances, or policies. But sponsors should also be cognizant of the administration’s stated goal of eliminating DEI and requiring immigration enforcement assistance even under existing grant agreements.

Earlier this month, Secretary Duffy issued another letter indicating that the DOT “considers any policies or requirements not based in statute or regulation ... to be null and void.” The policies which are the focus of the latest letter are those adopted during the prior administration “which reference or relate in any way to climate change, ‘greenhouse gas’ emissions, racial equity, gender identity, ‘diversity, equity, and inclusion’ goals, environmental justice, or the Justice 40 Initiative.” The letter does not purport to rescind any formal regulations applicable to these areas.

Sponsors are advised to keep abreast of the ongoing litigation, as the situation is changing on a near-weekly basis. For more information, contact [Peter J. Kirsch](#), [Steven L. Osit](#), or [Slone P. Isselhard](#).





# NEPA Practice To Change in Wake of Supreme Court Decisions, New DOT/FAA Publications

As we discussed in detail in a recent [Airport Law Alert](#), environmental reviews under the National Environmental Policy Act (NEPA) for airport projects will now look significantly different than even one year ago. The details are complex, but the overall trend is clearly towards limiting the scope of NEPA review and speeding the overall process of environmental reviews, including the imposition of statutory page limits and time limits. These changes were kickstarted by a November 2024 decision from the U.S. Court of Appeals for the D.C. Circuit invalidating longstanding CEQ regulations, and have continued with the recent publication of a new FAA National Environmental Policy Act Implementing Procedures Order 1050.1G, Environmental Impacts: Policies and Procedures. Congress also recently amended NEPA to allow sponsors to pay for even more expedited NEPA reviews, though the FAA has not indicated how it intends to implement this provision. For more information, contact [Catherine M. van Heuven](#).

## DBE Program Faces Potential Fundamental Changes

For the moment, the DOT's Disadvantaged Business Enterprise (DBE) program remains in effect but changes are likely in the near future. As potential settlement of ongoing litigation in the U.S. District Court for the Eastern District of Kentucky, the DOT and several plaintiffs have proposed a joint consent order asking the court to declare that a racial and/or gender-based presumption of disadvantage – the basic underpinning of the DBE program – “is not supported by the U.S. Constitution as currently interpreted under equal protection jurisprudence.” See *Mid-America Milling Co. v. DOT* (below). The consent order would effectively declare the DOT's DBE program in its current form to be unconstitutional, and if the consent order is entered, it is not clear how or whether DOT might modify or just rescind the DBE program. Intervenors in the case are expected to oppose the consent order, and there is no firm timeline for a final decision from the court. For a more detailed analysis of the potential consent order, see our recent [State of Play alert](#) or contact [Tracy Davis](#).



# LITIGATION

## COURT DECISIONS

### U.S. Supreme Court

**Nationwide Injunctions.** *Trump v. CASA, Inc.*, No. 24A884, 2025 U.S. LEXIS 2501 (June 27, 2025) (holding that universal injunctions likely exceed the authority of federal district courts).

**Judicial Review.** *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, No. 23-1226, 2025 U.S. LEXIS 2385 (June 20, 2025) (holding that district courts are not bound by agency legal interpretations in agency orders even if the original agency order was not challenged within the prescribed time).

**NEPA.** *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, No. 23-975, 145 S. Ct. 1497 (May 29, 2025) (holding that in NEPA analysis, agencies are not required to consider environmental effects of upstream and downstream projects that are separate in time or place from the project under review).

### U.S. Circuit Courts

**Air Tour Management Plans.** *Helicopter Ass'n Intl. v. FAA*, No. 24-1008, 2025 U.S. App. LEXIS 14076 (9th Cir. June 5, 2025) (denying petition for review of FAA and NPS Air Tour Management Plan for Volcanoes National Park because agencies clearly considered public comments).

**Grant Assurances.** *Kunz v. FAA*, No. 22-9583, 2025 U.S. App. LEXIS 12283 (10th Cir. May 20, 2025) (upholding Part 16 determination concluding that airport sponsor has no obligation to acquire property or compensate property owners that are adjacent to an airport solely because the airport receives federal grants).

**Administrative Procedure.** *Airlines for America v. DOT*, 127 F.4th 563 (5th Cir. Jan. 28, 2025) (remanding DOT's rule requiring airlines to disclose certain fees when customers search for flights because it violated the APA by relying on data that was not available to the public during the notice and comment period).

**Takings; Qualified Immunity.** *De Leon v. Munoz*, No. 24-40215, 2025 U.S. App. LEXIS 7424 (5th Cir. Mar. 31, 2025) (airport director was entitled to qualified immunity against takings and Fourth Amendment claims for decision to temporarily bar lessee from the airport during investigation of alleged burglaries and subsequent arrest for trespass).



## U.S. District Courts

**Grant Conditions.** *City and Cnty. of S.F. v. Trump*, No. 25-cv-01350-WHO, 2025 U.S. Dist. LEXIS 118990 (N.D. Cal. June 23, 2025) (after issuing preliminary injunction in earlier orders, finding that application of immigration-related conditions on federal transportation grants to so-called sanctuary jurisdictions would violate that preliminary injunction).

**Grant Conditions.** *California v. DOT*, No. 1:25-cv-00208, 2025 U.S. Dist. LEXIS 117033 (D. R.I. June 19, 2025) (in order applicable to 20 states and their political subdivisions, enjoining DOT's attempt to condition federal grant funding for transportation projects on requirement that grantees affirmatively "cooperate" with federal immigration enforcement).

**Federal Jurisdiction.** *Great Horned Owls, LLC v. Okla. City Airport Trust*, Case No. CIV-25-747-G, 2025 U.S. Dist. LEXIS 106926 (W.D. Okla. June 5, 2025) (in breach of contract case concerning oil and gas lease on airport property, remanding to state court because plaintiff's claim did not invoke a federal question despite concerning access to federally-regulated property).

**Grant Conditions.** *Martin Luther King, Jr. Cnty. v. Turner*, No. 2:25-cv-814, 2025 U.S. Dist. LEXIS 105379 (W.D. Wash. June 3, 2025) (order granting 31 municipal plaintiffs' motions for preliminary injunction against federal agencies' (including DOT's) use of various grant conditions pertaining to immigration enforcement, DEI, gender ideology and other administration priorities unrelated to the purpose of the grants).

**Discrimination; Preemption.** *American Car Rental Ass'n v. Humphreys*, No. 1:24-cv-02450-DDD-KAS, 2025 U.S. Dist. LEXIS 122043 (D. Colo. May 29, 2025) (granting defendant's motion for summary judgment and concluding that a state law imposing a \$3 per day fee on car rental transactions was not preempted by federal law because it did not disproportionately target businesses located at a commercial service airports).

**Disadvantaged Business Enterprises.** *Mid-America Milling Co. v. DOT*, No. 3:23-cv-00072-GFVT-EBA (E.D. Ky. May 28, 2025) (joint motion for entry of consent order that would determine presumption of disadvantage based on race or sex and application to DOT's DBE program is unconstitutional).

**Breach of Contract.** *Allegiant Air, LLC v. Lonestar Airport Holdings, LLC*, No. 1:23-CV-1498-DAE, 2025 U.S. Dist. LEXIS 95909 (W.D. Tex. May 19, 2025) (in dispute over sublease at AUS's South Terminal, order denying defendant's motion to dismiss breach of contract claim related to proceeds from City's condemnation of the facility).

**First Amendment.** *MSP Small Bus. Concessions All. v. Metro. Airports Comm'n*, No. 24-cv-3764, 2025 U.S. Dist. LEXIS 84700 (D. Minn. May 5, 2025) (holding that a trade association representing small businesses at MSP did not have standing to bring a First Amendment claim over a policy limiting picketing, strikes, work stoppages, and boycotts because the harm was hypothetical).

**Concessions Contract.** *Mag U.S. Lounge Mgmt. LLC v. Ontario Int'l Airport Auth.*, No. 2:21-cv-04909-CAS(RAOx); 5:22-cv-01926-CAS(RAOx), 2025 U.S. Dist. LEXIS 76482 (C.D. Cal. Apr. 22, 2025) (granting motion for summary judgment and concluding that airport authority breached a contract with its existing parking operator by entering into a different contract with another operator, but denying related motions for summary judgment on issues of damages and payment of termination fees).





**Takings.** *Equitable Dev., LLC v. Marshfield Airport Comm’n*, No. 25-10736-BEM, 2025 U.S. Dist. LEXIS 71400 (D. Mass. Apr. 15, 2025) (denying motion for preliminary injunction, where it was unlikely plaintiff could prove commission acted in bad faith while condemning easements near an airport because there were negotiations and compensation offered).

**First Amendment.** *Conway v. City of Chicago*, No. 20 CV 4966, 2025 U.S. Dist. LEXIS 60535 (N.D. Ill. Mar. 31, 2025) (holding that an airport employee who was disciplined after reporting a supervisor is not acting as a “private citizen” and therefore does not have a cause of action for retaliation under the First Amendment).

**Breach of Contract.** *Greater Rockford Airport Auth. v. Schenker, Inc.*, No. 3:24-cv-50398, 2025 U.S. Dist. LEXIS 44786 (N.D. Ill. Mar. 12, 2025) (in matter concerning sublease of an air cargo facility, holding that airport’s termination of master lease and simultaneous assumption of existing sublease does not automatically terminate that sublease).

**TNCs; Standing.** *Avrissaint v. Sarasota Manatee Airport Auth.*, No. 8:23-cv-1729-SDM, 2025 U.S. Dist. LEXIS 43316 (M.D. Fla. Mar. 11, 2025) (holding that taxi drivers with operating agreement with airport sponsor lacked standing to challenge the sponsor’s decision to partner with Uber, because the operating agreement was intended to benefit patrons, not drivers).

**Grant Assurances and Leases.** *Joliet Avionics, Inc. v. City of Aurora*, No. 19 C 8507, 2025 U.S. Dist. LEXIS 55582 (N.D. Ill. Feb. 24, 2025) (denying reconsideration of decision that language of lease did not specifically incorporate expanded duties of airport minimum standards and FAA grant assurances).

**Standing.** *Brunner v. Cnty. of Yavapai*, No. CV-23-08517-PCT-KML, 2025 U.S. Dist. LEXIS 32171 (D. Ariz. Feb. 24, 2025) (holding that owner of a bankrupt airport business had standing to bring a § 1983 claim against airport authority for alleged personal discrimination but not for harms that befell the business, but dismissing the allegations on statute of limitations grounds).

**TNCs and Civil Rights.** *Naseri v. City & Cnty. of San Francisco*, No. 24-cv-05413-TSH, 2025 U.S. Dist. LEXIS 11671 (N.D. Cal. Jan. 22, 2025) (order granting municipal airport operator’s motion to dismiss rideshare driver plaintiff’s § 1983 claims that he was improperly banned from airport premises).

**First Amendment.** *Glover v. RDU Airport Auth.*, No. 5:23-CV-00704-M, 2025 U.S. Dist. LEXIS 7181 (E.D.N.C. Jan. 14, 2025) (in challenge to airport authority’s decision to ban plaintiff from airport premises, denying motion for summary judgement in part on the basis that First Amendment protects bizarre behavior on airport property and plaintiff’s use of a curse word alone did not interfere with the “intended purpose of the airport property”).

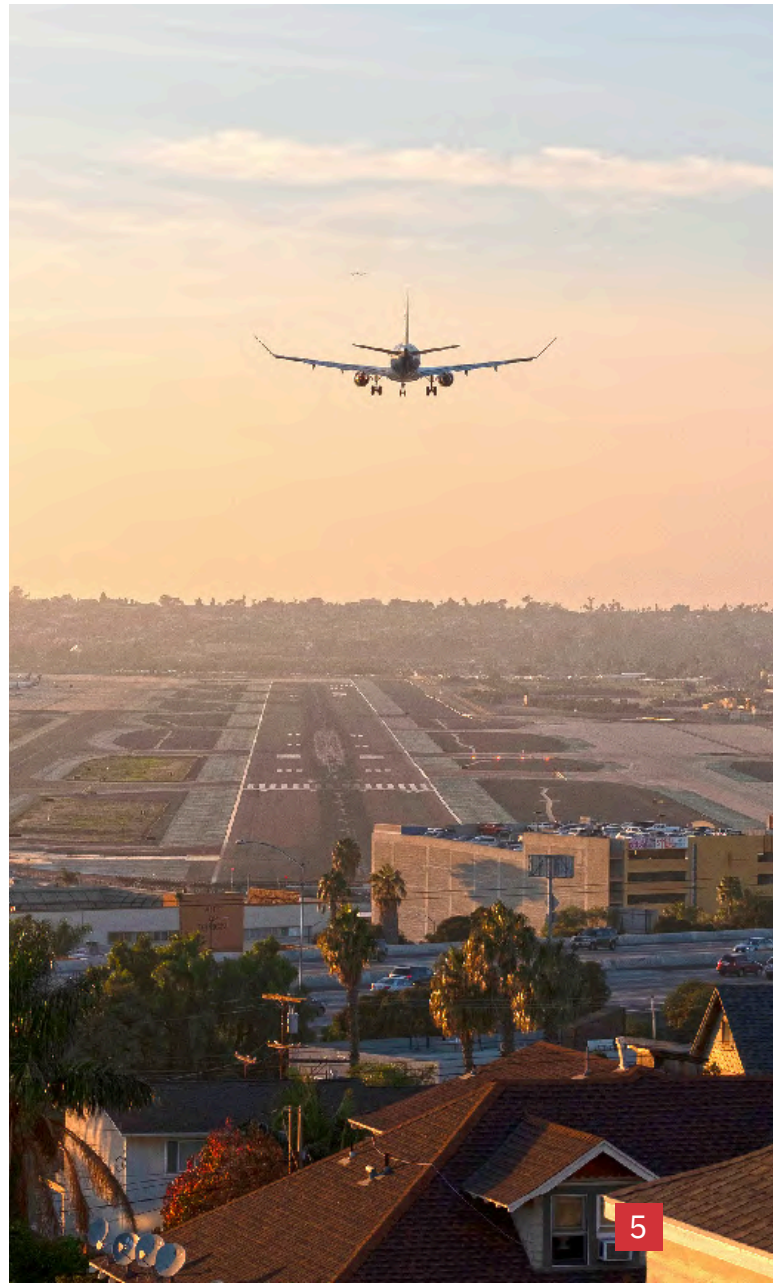
## State Courts

**Preemption.** *Town of Superior v. Bd. of Cnty. Comm’rs of the Cnty. of Jefferson*, No. 2024CV30221 (Colo. Dist. Ct., Boulder Cnty. Mar. 28, 2025) (order granting motion to dismiss because plaintiff’s request to enjoin “touch and go” operations would involve local regulation of aircraft operations, which is preempted by federal law), *appeal pending*.

## Part 16 Decisions

**Leaded AvGas.** *Aircraft Owners & Pilots Ass’n v. Cnty. of Santa Clara*, FAA Docket No. 16-22-08, Director’s Determination (Mar. 24, 2025) (finding sponsor in violation of Grant Assurances 22 and 23 for prohibiting the use and sale of 100LL at County airports), *appeal pending*.

**FBO Consolidation.** *Smith v. Okaloosa Cnty.*, FAA Dckt. No. 16-24-01, Director’s Determination (Mar. 20, 2025) (finding sponsor in violation of Grant Assurances 5, 22, and 23 by approving leases and assignments that allowed consolidation of incumbent FBOs to the potential exclusion of new entrants), *appeal pending*.



# FEDERAL LEGISLATION

H.R. 1, [One Big Beautiful Bill Act](#) (July 4, 2025).

# FEDERAL RULES, ORDERS, & GUIDANCE

## The White House

Exec. Order No. 14304, 90 Fed. Reg. 24,717, [Leading the World in Supersonic Flight](#) (June 6, 2025).

Exec. Order No. 14305, 90 Fed. Reg. 24,719, [Restoring American Airspace Sovereignty](#) (June 6, 2025).

Exec. Order No. 14307, 90 Fed. Reg. 24,727, [Unleashing American Drone Dominance](#) (June 6, 2025).

[Updating Permitting Technology for the 21st Century](#) (Apr. 15, 2025).

Exec. Order No. 14173, 90 Fed. Reg. 8633, [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#) (Jan. 21, 2025).

Exec. Order No. 14168, 90 Fed. Reg. 8615, [Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#) (Jan. 20, 2025).

Exec. Order No. 14159, 90 Fed. Reg. 8443, [Protecting The American People Against Invasion](#) (Jan. 20, 2025).

Exec. Order. No. 14154, [90 Fed. Reg. 8353, Unleashing American Energy](#) (Jan. 20, 2025).

Exec. Order No. 14151, [90 Fed. Reg. 8339, Ending Radical and Wasteful Government DEI Programs and Preferencing](#) (Jan. 20, 2025).

Exec. Order 14148, [90 Fed. Reg. 8237, Initial Recissions of Harmful Executive Orders and Actions](#) (Jan. 20, 2025).





## Council on Environmental Quality

Interim Final Rule: [Removal of National Environmental Policy Act Implementing Regulations](#) 90 Fed. Reg. 10,610 (Feb. 25, 2025).

[Memorandum for Heads of Federal Departments and Agencies](#) (Apr. 30, 2025).

## Department of Transportation and FAA Orders, Policies, & Advisory Circulars

DOT Build America Bureau, [Press Release: Secretary Duffy Removes Financing Policy Roadblock to Get America Building Again](#) (July 7, 2025) (extending eligibility for TIFIA loans to all types of transportation projects and up to 49% of eligible costs).

DOT, Notice of Availability and Request for Comments, [Procedures for Considering Environmental Impacts](#), 90 Fed. Reg. 29,621 (July 3, 2025) (comment deadline Aug. 4, 2025).

FAA, Notice of Rescission of FAA Order 1050.1F; Availability of FAA Order 1050.1G, [Request for Comments](#), 90 Fed. Reg. 29,615 (July 3, 2025) (comment deadline Aug. 4, 2025).

DOT, [Letter from Secretary Sean P. Duffy re: Non-Enforcement of DEI and Climate-Related Grant Conditions](#) (July 2, 2025).

FAA, Order 1050.1G, [National Environmental Policy Act Implementing Procedures](#) (June 30, 2025).

DOT, Order 5610.1D, [DOT's Procedures for Considering Environmental Impacts](#) (June 25, 2025).

Compliance Guidance Letter (CGL) 2025-02, [FAA Guidance Regarding the Use of Airport Revenue for Airport Ground Access Projects](#) (June 9, 2025).

Reauthorization Program Guidance Letter (R-PGL) 25-08: [Alaska and Other Non-contiguous States and Territories](#) (May 20, 2025).

FAA, [Questions/Answers on Grant Assurance 40, Access to Leaded Aviation Gasoline](#) (May 19, 2025).

Notice of Proposed Rulemaking, [Administrative Rulemaking, Guidance, and Enforcement Procedures](#), 90 Fed. Reg. 20,956 (May 16, 2025).

Advisory Circular No. 150/5200-34B, [Construction or Establishment of Landfills Near Public Airports](#) (May 15, 2025).

Reauthorization Program Guidance Letter (R-PGL) 25-07: [Civil Rights](#) (May 14, 2025).

Reauthorization Program Guidance Letter (R-PGL) 25-04: [Procurement](#) (May 12, 2025).

Reauthorization Program Guidance Letter (R-PGL) 25-05: [Funding and Formula Changes](#) (May 12, 2025).

Reauthorization Program Guidance Letter (R-PGL) 25-06: [Planning and Project Eligibility](#) (May 12, 2025).

FAA [Notice of Modification](#), Airport Improvement Program (AIP) Grant Assurances, 90 Fed. Reg. 17,501 (Apr. 25, 2025).

DOT, [Letter from Secretary Sean P. Duffy re: Grantee Legal Obligations](#) (Apr. 24, 2025).

Reauthorization Program Guidance Letter (R-PGL) 25-03: [Extended, Expanded, and Revised Programs](#) (Apr. 23, 2025).



Reauthorization Program Guidance Letter (R-PGL) 25-02: [AIP Discretionary Set Aside](#) (Apr. 4, 2025).

Reauthorization Program Guidance Letter (R-PGL) 25-01: [Runway Projects](#) (Apr. 4, 2025).

DOT, [Order to Ensure Reliance upon Sound Economic Analysis in Department of Transportation Policies, Programs, and Activities](#) (Jan. 29, 2025).

DOT, [Memorandum for Secretarial Officers and Heads of Operating Administrations](#) (Jan. 29, 2025).

## REPORTS, STUDIES, ARTICLES, & OTHER PUBLICATIONS

In Reverse Chronological Order

### U.S. DEPARTMENT OF TRANSPORTATION

#### Office of Inspector General

[Report No. AV2025025](#), FAA Has Improved Its Oversight of COVID-19 Relief Funds Despite Implementation Inconsistencies (Mar. 12, 2025).

[Report No. AV2025026](#), FAA Has Taken Steps To Prevent and Mitigate Runway Incursions, but Work Remains To Improve Data Analytics and Implement Key Initiatives (Mar. 12, 2025).

[Report No. SA2025024](#), Summary Report on Significant Single Audit Findings Impacting DOT Programs for the 3-Month Period Ending December 31, 2024 (Feb. 19, 2025).

[Report No. QC2025023](#), Quality Control Review on a Single Audit of the Port of Portland, Portland, OR (Feb. 18, 2025).

[Report No. IT2025018](#), DOT Is Taking Steps To Manage and Secure Its Mobile Devices, but Further Actions Are Needed (Feb. 12, 2025).

[Report No. ST2025017](#), DOT Can Improve Workforce Planning Procedures and Metrics for Estimating Needs and Assessing Capacity To Deliver IIJA Programs (Feb. 5, 2025).

[Report No. QC2025016](#), Quality Control Review of the Management Letter for the National Transportation Safety Board's Audited Financial Statements for Fiscal Years 2024 and 2023 (Jan. 29, 2025).

#### Government Accountability Office

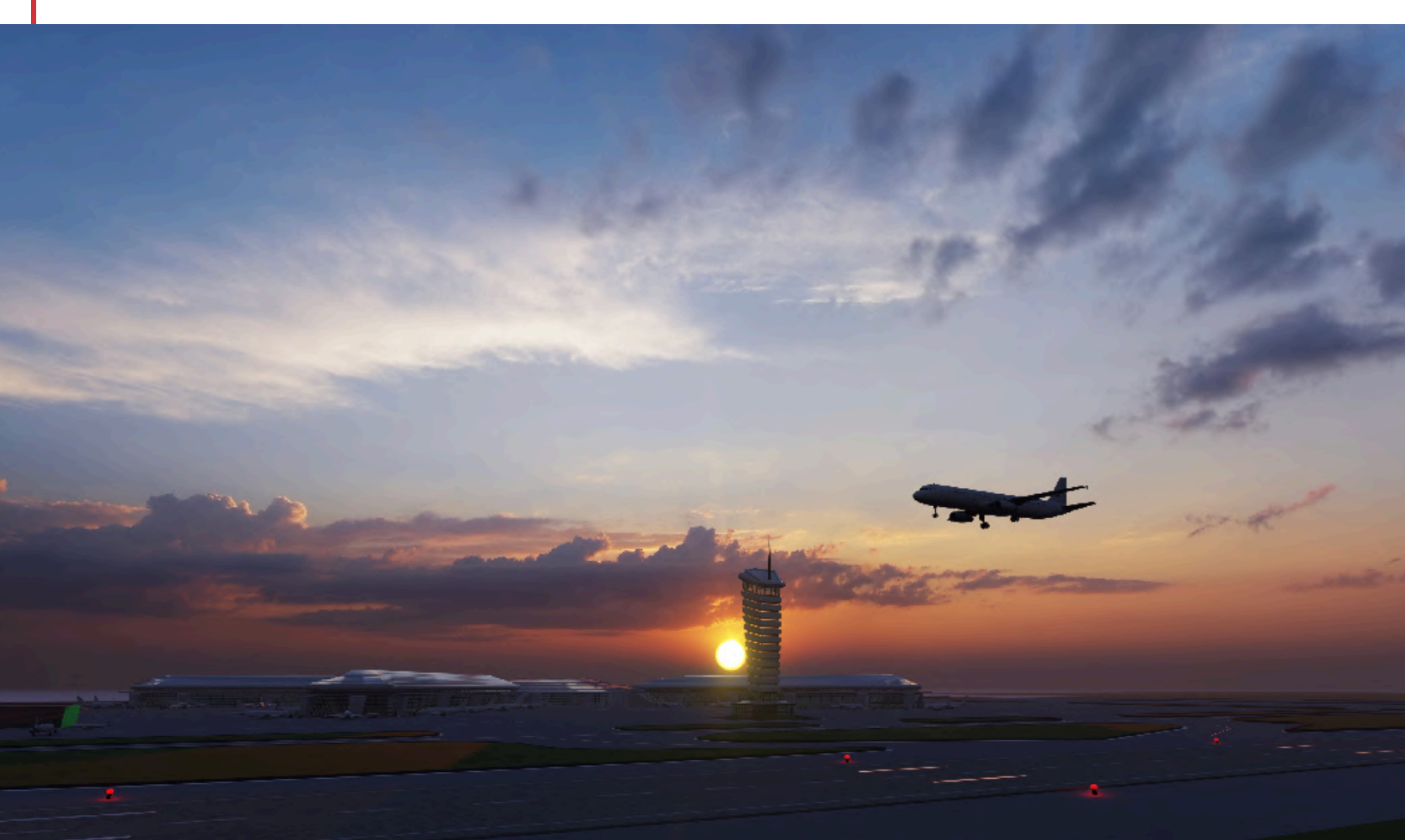
[Report No. GAO-25-108502](#), Federal Aviation Administration: Key Provisions in the 2024 Reauthorization Act and Related GAO Work (May 15, 2025).

### CONGRESSIONAL RESEARCH SERVICE

[Report R48543](#), Transportation Security: Background and Issues for the 119th Congress (May 23, 2025).

[Report No. IN12504](#), Reagan National Airport Slot and Perimeter Rules and Exemptions Authorized in 2024 (Feb. 6, 2025).





[Report No. IN12498](#), Midair Collision in Washington, DC, Focuses National Attention on Aviation Safety (Jan. 30, 2025).

[Report No. R48253](#), Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations for FY2025 (Jan. 29, 2025).

[Report No. IN12476](#), Drone Encounters Prompt Calls for Restrictions and Other Protections (Jan. 3, 2025).

## TRANSPORTATION RESEARCH BOARD, AIRPORT COOPERATIVE RESEARCH PROGRAM

Ordered by Report Number

### [Research Reports](#)

[Legal Research Digest 48](#): Legal Issues Concerning the Safety and Security of General Aviation Airports (May 2025).

[Research Report 277](#): Communicating a Balanced Look at Local Airport Activity and Climate Change (2025).

[Legal Research Digest 47](#): Accommodating Federal Agencies at Airports and Related Contractual Concerns (2025).

[Consensus Study Report](#): Developing a Research Agenda on Contrails and Their Climate Impacts (2025).

### [WebResources](#)

[WebResource 21](#): Environmental Stewardship and Compliance Training for Airport Employees (Jan. 2025).

### [Web-Only Documents](#)

[ACRP Web-Only Document 65](#): DOT and FAA Airport Legal Determination and Opinion Letter Abstracts of 2023 (2025).





## EDITOR'S NOTE

Kaplan Kirsch'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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Nicholas Clabbers  
*Editor*



### DENVER

1675 Broadway  
Suite 2300  
Denver, CO 80202  
303.825.7000

### NEW YORK

1500 Broadway  
Suite 1605  
New York, NY 10036  
646.883.5110

### SAN FRANCISCO

One Sansome Street  
Suite 2250  
San Francisco, CA 94104  
415.907.8704

### WASHINGTON, DC

1634 I Street, NW  
Suite 300  
Washington, DC 20006  
202.955.5600