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2023 MID-YEAR UPDATE

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INTRODUCTION

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

This Airport Law Digest includes a list of key airport-related cases decided over the first six months of 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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Congress Takes Up FAA Reauthorization

For airport policy, few actions have more impact than Congress's recurring reauthorization of the FAA and its programs. This September 30, the FAA's 5-year statutory authority sunsets, so Congress must reauthorize the agency. As usual, Congress will use this legislation as a vehicle to enact a wide range of aviation policies, concerning everything from aircraft safety to consumer regulation—and airports specifically.

Both the House and the Senate introduced their versions of a new FAA reauthorization bill in June. For airport sponsors, both bills have major implications.

Section 163: Both bills attempt to clarify the language in Section 163 of the 2018 FAA reauthorization bill, which took the FAA out of the approval process when a sponsor uses certain airport land. But Section 163 did not have the intended effect: the FAA instead has required airport sponsors to submit all land-use changes to the FAA to determine whether, in fact, the FAA retains regulatory authority over the proposed change, effectively adding a new layer to an already-lengthy review process. The 2023 reauthorization bills would prohibit the FAA from conducting such a threshold review and would clarify Congress's intent in 2018 that the FAA play no role in airport land use decisions when the land uses do not affect core FAA responsibilities.

AIP: Both bills would authorize the FAA to annually disburse \$4 billion in Airport Improvement Program (AIP) grants, up from \$3.35 billion currently. Both bills would also increase the share of AIP funds that may go to terminal-development projects. The House would reduce, from 75 to 60 percent, the share of entitlement funds that a large or medium hub must forgo if it raises its Passenger Facility Charge (PFC) above \$3. The House would also boost minimum AIP entitlements for smaller commercial-service airports. Meanwhile, the Senate would cut the AIP local-match requirement from 10 to 5 percent for non-hub and non-primary airports and allow limited AIP funding for public-private development projects.

New Grant Assurances: The Senate bill, but not the House version, would impose three new grant assurances on airport sponsors. The first would require sponsors to ensure that chain FBOs at their airports adequately disclose their fees to customers. The second would force sponsors to limit their own fees for transient-aircraft parking to the direct costs of maintaining the parking area, rather than including a share of the sponsor's indirect costs of airport operation. And the third assurance would, in practice, require sponsors who offered 100LL avgas in 2022 to keep making it available to GA aircraft for several more years.

Essential Air Service (EAS): The House bill would reduce EAS funding over the next five years and require a 5 percent local match for such funding. By contrast, the Senate bill would increase EAS funding over time.

Air Traffic Control: The House bill would make it easier for sponsors to apply for Federal Contract Tower funding and require the federal government to consider raising air traffic controllers' compensation. The Senate bill, meanwhile, would direct the FAA to move forward with authorizing remote towers, require the FAA to deploy the same equipment to contract towers that it uses in its own, and allow contractors to train air traffic controllers.

Last month, the House Transportation and Infrastructure Committee approved its version of the FAA reauthorization bill unanimously, 63-0, sending it to the House floor for amendment and a vote this month. In the Senate, the Commerce Committee's leadership has also released a bipartisan bill, but a dispute over pilot training requirements has stalled the committee's consideration and could delay Senate passage until August or September. Then, the chambers will need to negotiate a compromise bill for final passage.



It is important to understand that the process of bill drafting and amendment is complex, arcane, and subject to considerable political pressure. Therefore, while these provisions appear in the current respective House and Senate versions of the bill, amendments and changes are almost inevitable before the bill is enacted. Furthermore, while September 30 is the deadline to reauthorize the FAA, Congress has a long record of granting short-term extensions to FAA authority when it misses a reauthorization deadline. Many commentators were surprised by the speed with which the House Transportation and Infrastructure Committee passed its version of the bill and equally unsurprised that the bill hit a last-minute snag in the Senate. There is no good prediction on whether Congress will meet the September 30 deadline.

PFAS Firefighting Foams: New Alternatives, New Risks

The first half of 2023 saw every branch of the federal government addressing the legal and health challenges posed by PFAS, a toxic family of chemicals that has been a critical component of the firefighting foam that the FAA has long required Part 139 airports to use. While the U.S. military is testing several PFAS-free firefighting foams, the U.S. EPA has proposed new PFAS regulations, lawmakers have introduced legislation to address PFAS liability and alternatives, and several major PFAS manufacturers have reached multibillion-dollar settlements of contamination claims. All of these developments implicate airport sponsors.

Alternative Foams: In January, the Department of Defense (DoD) issued performance standards for fluorine-free foams (F3), a PFAS-free firefighting foam. DoD is presently testing several F3 candidates, and is likely to approve one or more later this year. Once DoD approves an F3, the FAA will permit Part 139 airports to use it in lieu of PFAS-containing foams. Still, it will likely take several months after DoD approval for F3 to become widely available.

EPA Policy: Last year, the EPA proposed to designate two common PFAS substances, PFOA and PFOS, as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Both have been common in firefighting foams. Then, this April, the EPA proposed to add seven additional PFAS substances as hazardous under CERCLA. Additionally, the EPA has proposed drinking-water standards that would essentially define any detectable PFAS contamination as unacceptable. While the EPA is preparing an “enforcement discretion policy” that would exempt certain entities, likely to include airport sponsors, from EPA penalties for past PFAS use, the EPA’s CERCLA and drinking-water standards could increase the risk that third parties might sue airport sponsors for PFAS contamination.

Congressional Action: Several senators have introduced legislation that would shield airport sponsors and certain other entities from liability for past PFAS use. Meanwhile, the Senate’s FAA reauthorization bill would authorize funds (subject to congressional appropriations) to airport sponsors to transition to F3 use and acquire F3-compatible firefighting equipment.

FAA Guidance: In May, the FAA issued its Aircraft Firefighting Foam Transition Plan to advise Part 139 airport sponsors on the shift from PFAS-containing foams to F3, including firefighter training, equipment upgrades, and other matters. Importantly, the Transition Plan states that the FAA will merely “encourage,” not require, those airport operators to switch from PFAS foams to F3. (Still, EPA mandates or state or local requirements may compel airport operators to make the switch).

Manufacturer Settlements: In June, four major PFAS manufacturers reached settlements with numerous plaintiffs, including some airport sponsors, regarding claims that PFAS contaminated their water supplies. In early June, Chemours, Corteva, and DuPont collectively agreed to pay \$1.2 billion to settle such claims. Then, in late June, 3M agreed to a \$10.3 billion payment. Meanwhile, federal litigation against other PFAS manufacturers continues.

A New Preference for Local and Economic Preference

Last year’s Infrastructure Investment and Jobs Act, better known as the Bipartisan Infrastructure Law (BIL), included a key policy change with respect to federal grants. Although the FAA had previously generally prohibited airport sponsors from using local hiring preferences in federally grant-funded projects, Section 25019(a) of the BIL allows most recipients



of grants from the U.S. Department of Transportation (DOT), including the FAA, to “implement a local or other geographic or economic hiring preference” for *construction* labor—not other kinds of hiring—so long as applicable state or local policies allow. Though Congress enacted the BIL last year, DOT is now providing additional guidance to airport sponsors—and making clear that local and economic hiring preferences for construction projects are not merely permissible, but encouraged. As DOT explained in a [report](#) issued this May, the Biden Administration and DOT “have been actively encouraging state and local agencies to use local/economic hiring preferences as a way to bring underrepresented populations into the construction workforce.” DOT particularly encourages covered grantees to include such preferences in project labor agreements.

Airport sponsors and their counsel are encouraged to review DOT’s recent guidance and consider whether and how to implement the new flexibility the BIL offers.

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

COURT DECISIONS

Federal Appellate Courts

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) (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).

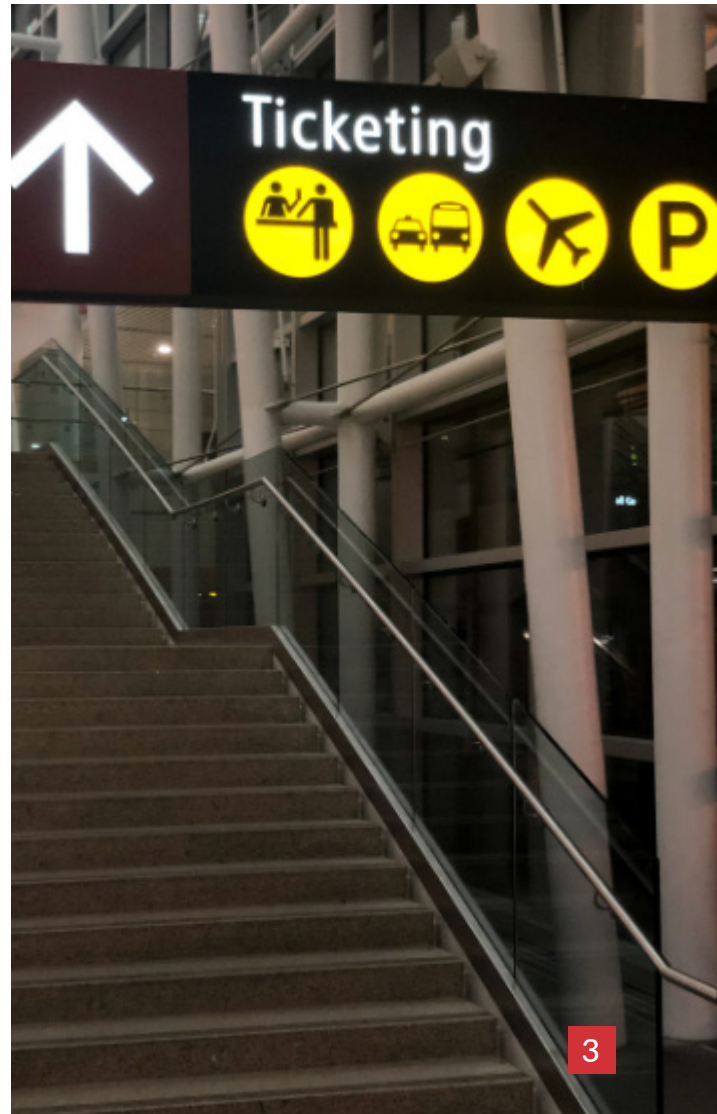
Federal Tort Claims Act

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

False Claims Act; Grant Compliance

United States ex. rel. Smith v. Odom, Case No. 3:20cv3678-MCR-ZCB (N.D. Fla. June 22, 2023) (not yet available under case decisions on LexisNexis) (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).



Premises Liability

Lara v. Port Auth. of N.Y. & N.J., 2023 U.S. Dist. LEXIS 30546 (S.D.N.Y. Feb. 23, 2023) (airport sponsor not liable for passenger's injury on jet bridge leased to airline because sponsor was an out-of-possession landlord and had not accepted liability for maintaining jet bridge, and was thus not liable for third parties' injuries under state law).

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).

Administrative Decisions

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

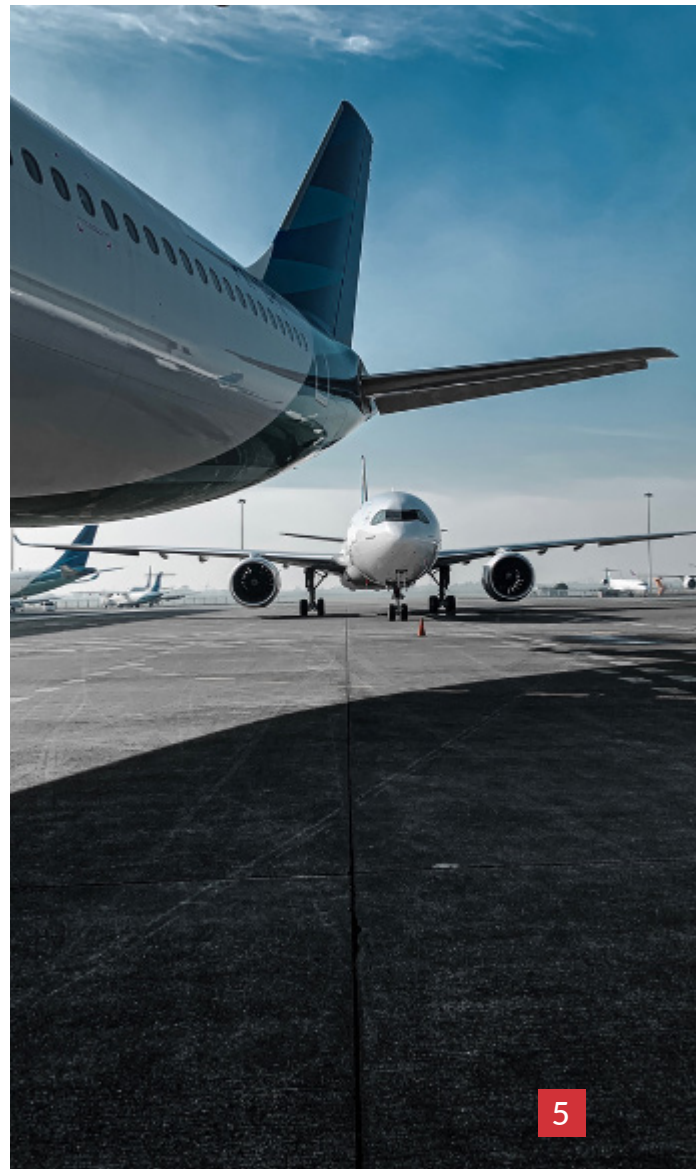
Dakota Terr. Tours, A.C.C. v. Yavapai Cnty., FAA Dckt. No. 16-17-18, Final Agency Decision (FAA May 9, 2023) (because FAA is final arbiter of aviation safety, sponsor did not have authority to decide for itself whether properly certificated aeronautical operator met safety qualifications to operate).

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 prohibit 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

[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 CRSSA, 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 In Reverse Chronological Order

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

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

[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

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

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 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).

Frequently Asked Questions, [Bipartisan Infrastructure Law](#) (Mar. 17, 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

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 later this year 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).

REPORTS, STUDIES, ARTICLES, & OTHER PUBLICATIONS

In Reverse Chronological Order

U.S. DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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).

FAA, Report to Congress, [FY2023 – FY2027 National Aviation Research Plan](#) (Feb. 23, 2023).

FAA, Report to Congress, [National Spaceports Policy](#) (Feb. 15, 2023).

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).

Office of Inspector General

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).

Office of Inspector General, [Report No. AV2023036](#), FAA Has Deployed a Prototype System for Monitoring Commercial Space Operations but Faces Integration Challenges (June 21, 2023).

Office of Inspector General, [Report No. AV2023035](#), FAA Faces Controller Staffing Challenges as Air Traffic Operations Return to Pre-Pandemic Levels at Critical Facilities (June 21, 2023).

Office of Inspector General, [Report No. SA2023026](#), Summary Report on Significant Single Audit Findings Impacting DOT Programs for the 3-Month Period Ending March 31, 2023 (May 3, 2023).

Office of Inspector General, [Report No. AV2023027](#), Opportunities Exist for FAA to Strengthen Its Workforce Planning and Training Processes for Maintenance Technicians (May 2, 2023).

Office of Inspector General, [Report No. AV2023025](#), FAA Has Completed 737 MAX Return to Service Efforts, but Opportunities Exist to Improve the Agency's Risk Assessments and Certification Processes (Apr. 26, 2023).

Office of Inspector General, [Report No. AV2023024](#), FAA's Office of Investigations and Professional Responsibility Needs to Enhance Internal Controls for Conducting Administrative Investigations (Apr. 12, 2023).

Office of Inspector General, [Report No. FS2023020](#), FAA Can Strengthen Its Oversight of the AIP Acquired Noise Compatibility Land Program (Feb. 28, 2023).

Office of Inspector General, [Audit Announcement](#), Audit Initiated of Air Carrier Flight Delays and Cancellations (Feb. 21, 2023).



Office of Inspector General, [Audit Announcement](#), Audit Initiated of FAA's Status of NextGen Implementation (Feb. 21, 2023).

Office of Inspector General, [Audit Announcement](#), Audit Initiated of DOT's Consolidated Financial Statements for 2023 and 2022 (Feb. 13, 2023).

Office of Inspector General, [Audit Announcement](#), Audit Initiated of FAA's Terminal Flight Data Manager (Feb. 10, 2023).

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).

Office of Inspector General, [Report No. QC2023016](#), Quality Control Review of the Management Letter for the Department of Transportation's Audited Consolidated Financial Statements for Fiscal Years 2022 and 2021 (Feb. 8, 2023).

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).

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[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).

[Report No. GAO-23-106477](#), Priority Open Recommendations: Department of Transportation (May 2023).

[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).

CONGRESSIONAL RESEARCH SERVICE

[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 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 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).





EDITOR'S 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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