



KAPLAN KIRSCH ROCKWELL

**SEMI-ANNUAL**

# **AIRPORT LAW DIGEST**

**2021 YEAR IN REVIEW**

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## INTRODUCTION

The global disruption that began with the onset of the COVID-19 pandemic continued throughout 2021. The airport industry has been forced to adjust to the new normal as variants of the virus threatened to slow the economic and travel recovery. While it remained a driving factor in local and national decision-making, COVID was not the only big story of the year in the airport industry. A major highlight of the year was Congress's November passage of a large-scale bipartisan infrastructure package, which included billions of dollars for airports and other modes of transportation for the next five years. FAA plans to begin releasing funds for airports in the next few months. Combined with funding from the three previous COVID rescue grant programs, sponsors will now have a significant opportunity to fund needed projects at airports across the country. Other major developments in airport law included judicial decisions on Metroplex and noise issues, ridesharing, and air carrier access, [FAA's publication of a long-awaited study on airport noise annoyance](#), and revisions to important FAA guidance materials on grant assurance compliance (see below) and [airport emergency plans](#).

This Airport Law Digest provides a list of legal documents and decisions in the last year; 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 have organized all COVID-related materials at the end of the Digest for ease of reference.

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 & Rockwell attorney who normally represents you.

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## FEDERAL AND SELECT STATE COURT DECISIONS

### Airport Development

*Silver Comet Terminal v. Paulding Cty. Airport Auth.*, No. 4:18-CV-00239, 2021 U.S. Dist. LEXIS 165349 (N.D. Ga. Aug. 20, 2021) (finding no breach of option agreement where Airport Authority had terminated the agreement because private developer had not exercised right to lease the terminal building and no passenger service was operating at the airport).

### Drones

*Elec. Privacy Info. Ctr. v. Drone Advisory Comm.*, 995 F.3d 993 (D.C. Cir. Apr. 30, 2021) (holding that privacy group was not entitled to certain records produced and maintained by subgroups of the FAA's former Drone Advisory Committee because those subgroups did not report to or communicate directly with FAA).

### Employment Discrimination

*Edmonds-Radford v. Southwest Airlines, Inc.*, No. 20-1132, 2021 U.S. App. LEXIS 33124 (10th Cir. Nov. 8, 2021) (holding, among other things, that terminated airline employee could not sue airline for retaliation under the Rehabilitation Act because that act only applies if employee was subjected to discrimination under a "program or activity receiving Federal financial assistance," and the airline, despite benefiting from federal support of a hub airport and an airline it later acquired, was not itself a recipient of federal financial assistance).

*Peterkin v. Prospect Airport Servs.*, Civ. Act. No. 21-490, 2021 U.S. Dist. LEXIS 109612 (E.D. Pa. June 11, 2021) (dismissing various employment-related claims against airport proprietor where plaintiff was employee of ground service contractor and had not established that proprietor was a joint employer).

### Environmental Review

*Ctr. for Cmty. Action & Env'tl. Justice v. FAA*, No. 20-70272, 2021 U.S. App. LEXIS 34541 (9th Cir. Nov. 18, 2021) (denying petition for review of FAA's FONSI with respect to proposed air cargo facility at San Bernardino International Airport, with court holding that FAA's Environmental Impacts desk reference (Order 1050.1F) is not binding upon FAA and that California's decision to issue environmental impact report under California Environmental Quality Act did not indicate that FAA should have conducted environmental impact statement under NEPA) (petition for rehearing pending).

*City of Sacramento v. FAA*, No. 20-72150, 2021 U.S. App. LEXIS 32973 (9th Cir. Nov. 5, 2021) (holding city forfeited right to appeal FAA's allegedly insufficient environmental, noise, or safety reviews of revised flight procedures because it missed appeal deadline, but further holding that, even if appeal were timely, court would have denied city's petition because the changes to flight procedures were not significant, but rather limited to updating runway numbers to account for magnetic shifts).

### FOIA

*Jobe v. NTSB*, No. 20-30033, 2021 U.S. App. LEXIS 18135 (5th Cir. June 17, 2021) (holding that that outside parties to an NTSB investigation are considered governmental consultants subject to FOIA and not exempt under the "intra-agency" communication privilege).

### Hazards

*Short v. United States*, 847 Fed. Appx. 5637 (9th Cir. Feb. 25, 2021) (finding that for the purposes of liability under Federal Tort Claims Act, Forest Service was not mandated to close an airport on federal property or remove trees even if they constituted a "hazard" under FAA regulations, and the Forest Service appropriately mitigated risks by showing the trees in the FAA's Airport Master Record).





## Metroplex/NextGen

*City of Los Angeles v. FAA*, No. 19-73164, 2021 U.S. App. LEXIS 32107 (9th Cir. Oct. 26, 2021) (holding that an FAA letter that denied making changes to flight tracks from Hollywood Burbank Airport was not a “final order” and was therefore not subject to judicial review).

*City of Los Angeles v. Dickson*, No. 19-71581, 2021 U.S. App. LEXIS 20248 (9th Cir. July 8, 2021) (granting petition for review of FAA decision setting flight procedures at Los Angeles International Airport and finding that FAA did not conduct the required environmental review under NEPA).

*Arapahoe Cty. Pub. Airport Auth. v. FAA*, No. 20-1075, 2021 U.S. App. LEXIS 17023 (D.C. Cir. June 8, 2021) (per curiam) (dismissing petitions for review of FAA’s Denver Metroplex plan, holding that petitioners had failed to provide evidence of standing to pursue the case and that standing was not self-evident on the face of the pleadings).

## Preemption

*Seaplane Adventures, LLC v. Cty. of Marin*, No. C 20-06222, 2021 U.S. Dist. LEXIS 225101 (N.D. Cal. Nov. 22, 2021) and No. C 20-06222, 2021 U.S. Dist. LEXIS 214648 (N.D. Cal. Nov. 5, 2021) (in case concerning county’s ban on charter and sightseeing flights during pandemic, holding in part that Federal Aviation Act did *not* preempt county’s ban on sightseeing flights, but *did* preempt county’s ban on charter flights for transportation between separate points).

*Delta Air Lines, Inc. v. N.Y. City Dep’t of Consumer Affairs*, No. 17-CV-1343, 2021 U.S. Dist. LEXIS 193022 (S.D.N.Y. Sept. 30, 2021) (holding that the Airline Deregulation Act preempts New York City’s paid sick leave act, and explicitly disagreeing with the contrary holding of the Ninth Circuit in *Air Transp. Ass’n of Am., Inc. v. Wash. Dep’t of Labor & Indus.*, No. 19-35937, 2021 U.S. App. LEXIS 22584 (9th Cir. July 29, 2021) (see below)).

*Air Transp. Ass’n of Am., Inc. v. Wash. Dep’t of Labor & Indus.*, No. 19-35937, 2021 U.S. App. LEXIS 22584 (9th Cir. July 29, 2021) (affirming summary judgment in favor of Washington State and holding that state paid sick leave requirement was not preempted by Airline Deregulation Act).

*Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157 (9th Cir. Feb. 23, 2021) (affirming district court’s decision that neither the Federal Aviation Act nor the Airline Deregulation Act preempts California state requirement for meal and rest breaks because they have no direct implications for safety).

## Ridesharing

*Turo v. Sup. Ct. of San Francisco Cty.*, No. CGC-18-563803 (Cal. App. 1st June 16, 2021) (denying appeal of finding that Turo was a “rental car company” under California law).

*Mass. Port Auth. v. Turo, Inc.*, No. SJC-13012 (Mass. Apr. 21, 2021) (affirming preliminary injunction prohibiting operation of ridesharing service at Boston Logan Airport without a permit, finding that Turo was not immune from regulation under the Communications Decency Act and that the airport sponsor was likely to succeed in its claims that Turo was aiding and abetting trespassing).

*Turo Inc. v. City of Los Angeles*, 847 Fed. Appx. 442 (9th Cir. Mar. 10, 2021) (reversing district court grant of preliminary injunction against ridesharing service at Los Angeles International Airport, finding that low level of activity from Turo as compared to overall traffic at LAX would not result in irreparable harm).

## Security

*Lee v. Stewart*, No. 20-5952, 2021 U.S. App. LEXIS 25409 (6th Cir. Aug. 24, 2021) (affirming summary judgment in favor of airport authority that revoked airline employee’s SIDA badge after she made statements in anti-terrorism training regarding her ability to build a bomb and carry an AK-47).



## Slots

*Spirit Airlines, Inc. v. U.S. Dep't of Transp.*, Case. No. 19-1248, 2021 U.S. App. LEXIS 15144 (D.C. Cir. May 21, 2021) (finding that FAA decision not to immediately allow new flights at Newark Liberty International Airport (EWR) following Southwest Airlines's cessation of flights from EWR was arbitrary and capricious because it failed to assess the impact of that decision on competition at EWR and consider alternative means to alleviate congestion).

## Surplus Property Act

*Dynamic Collision, LLC v. City of Gadsden*, No. 4:21-cv-01583, 2021 U.S. Dist. LEXIS 242204 (N.D. Ala. Dec. 20, 2021) (remanding case to state court where plaintiff alleged that airport authority would violate Surplus Property Act deed restrictions by leasing airport property for use as a rendering plant).

## Takings

*Boggs v. City of Cleveland*, 2021 U.S. Dist. LEXIS 101308 (N.D. Ohio May 28, 2021) (dismissing § 1983 claims based on takings from aircraft overflights on statute-of-limitations grounds and holding that the action accrued upon opening of new runway, and finding that plaintiffs were not entitled to relief under the Uniform Relocation and Real Property Acquisition Act because that statute provides no private right of action).

## PENDING CASES

### Access Restrictions

*Palm Beach Cty. v. FAA*, No. 21-10771 (11th Cir. briefing completed Aug. 27, 2021) (challenge to FAA Final Agency Decision finding that County's restriction on jet aircraft operations is not grandfathered under ANCA and is an ongoing violation of Grant Assurance 22).

### Air Carrier Access

*Delux Pub. Charter, LLC v. Cty. of Orange*, No. 8:20-cv-2344 (C.D. Cal. amended complaint filed June 17, 2021) (alleging *de facto* ban of JSX/JetSuiteX from John Wayne Airport in violation of Airline Deregulation Act and Airport Noise and Capacity Act, among other claims).

### Environmental Review

*Lowman v. FAA*, No. 21-14476 (11th Cir. filed Dec. 28, 2021) (petition for review of FAA FONSI and EA for cargo facility development at Lakeland Linder International Airport).

### Metroplex/Next Gen

*City of Scottsdale v. FAA*, No. 20-1070 (D.C. Cir. filed Mar. 10, 2020) (challenging revisions to flight procedures at Phoenix Sky Harbor Airport) (parties currently briefing case prior to possible oral argument).

*City of N. Miami Beach v. FAA*, No. 20-14677A (11th Cir. amended petition for review filed Dec. 28, 2020) (petition for review of FAA decision setting flight procedures at Miami International Airport).

### Revenue Diversification

*Port Auth. of N.Y. & N.J. v. FAA*, No. 21-1086 (D.C. Cir. filed Mar. 11, 2021) (petition for review of FAA finding that Port Authority diverted revenues without grandfathering right and insufficiently accounted for revenue use) (case held in abeyance while FAA reviews Port Authority's corrective action plan).

### Skydiving

*City of Casa Grande v. FAA*, No. 19-70137 (9th Cir. filed Jan. 14, 2019) (petition for review of FAA Part 16 finding that City violated Grant Assurances 22 and 23 by refusing to approve an on-airport parachute drop zone (PDZ); case presently in mediation).

*Kurtz v. FAA*, No. 20-73440 (9th Cir. filed Nov. 23, 2020) (challenge to FAA approval of the City of Casa Grande's decision to establish an off-airport PDZ; oral argument scheduled for January 13, 2021).





**Ground Leases.** *Wilson v. City of Marina*, FAA Docket No. 16-21-13, Director's Determination (Nov. 30, 2021) (finding no violations of Grant Assurance 22 or 23 when sponsor refused to lease property to complainant that had not submitted all required application information or detailed proposal).

**Lease Termination.** *Marina Aviation, LLC v. City of Marina*, FAA Docket No. 16-21-12, Director's Determination (Oct. 27, 2021) (finding no violations of Grant Assurance 22 or 23 where sponsor refused to extend tenant's lease and tenant had history of delinquent payments and lease defaults).

**Skydiving.** *Mile-Hi Skydiving Ctr. v. City of Longmont*, FAA Docket No. 16-19-03, Final Agency Decision (Oct. 20, 2021) (affirming Director's Determination finding no Grant Assurance violations where sponsor established a separate parachute drop zone and charged a per-square-foot nonexclusive access fee for the use of the drop zone).

**Part 16 Procedures.** *Vanduinen v. Alpena Cty. Airport*, FAA Docket No. 16-21-05, Order of Dismissal (Sept. 24, 2021) (dismissing complaint for failure to adequately describe efforts at good faith resolution).

**Current Compliance.** *CTI Aviation Servs., LLC v. Millington Airport Auth.*, FAA Docket No. 16-20-02, Director's Determination (Sept. 23, 2021) (finding sponsor not in violation of various Grant Assurances in part because many of the alleged violations had already been remedied).

**Air Tours.** *Dakota Territory Tours v. Yavapai Cty. and Sedona-Oak Creek Airport Auth.*, FAA Docket No. 16-17-18, Director's Determination (July 29, 2021) (finding that sponsor's alleged noncompliance with state RFP process and breach of contract were not violations of the Grant Assurances, while also finding that sponsor's refusal to lease space in terminal and on the airfield to helicopter operator and allowing another helicopter operator to function as sole service provider was violation of Grant Assurances 22 and 23).

**Exclusive Rights.** *IBC Airways, Inc. v. Broward Cty.*, FAA Docket No. 16-21-03, Director's Determination (May 14, 2021) (dismissing complaint under Grant Assurances 5, 22, and 23 where allegations related to sponsor's refusal to intervene in subtenant dispute about permissible services within a particular leasehold).

**Access Restrictions.** *Forman v. Palm Beach Cty.*, FAA Docket No. 16-17-13, Final Agency Decision (Jan. 13, 2021) (affirming Director's Determination finding County's restriction on jet aircraft operations as not grandfathered under ANCA and an ongoing violation of Grant Assurance 22) (appeal pending, see above).

**Airport Revenue.** *United Airlines, Inc. v. Port Auth. of N.Y. & N.J.*, FAA Docket No. 16-14-13, Order (Jan. 11, 2021) (largely affirming Director's Determination findings that Port Authority's grandfathered status did not exempt it from all airport revenue use restrictions and that the Port Authority's accounting practices were deficient and lacked transparency in violation of Grant Assurance 22) (appeal pending).

**Rates and Charges and Exclusive Rights.** *Star Marianas Air, Inc. v. Commonwealth Ports Auth.*, FAA Docket No. 16-18-01, Final Agency Decision (Jan. 10, 2021) (affirming Director's Determination holding that sponsor's rates and charges structure did not violate the Anti-Head Tax Act and Grant Assurance 1, and that complainant had failed to provide evidence of an exclusive right at the airport).

**Fees, Rates, and Charges.** *Sound Aircraft Servs., Inc. v. Town of E. Hampton*, FAA Docket No. 16-14-07 (Jan. 4, 2021) (affirming Director's Determination that sponsor's increase in landing fees was not a violation of Grant Assurance 24).

## RESEARCH WARNING FOR AIRPORT LAWYERS

As we have indicated in prior Airport Law Digests, Lexis and Westlaw databases may not contain all Part 16 decisions. Lexis Plus has only inconsistently updated its database of FAA Part 16 decisions since September 2017, and we cannot confirm that the database is complete. While many recent decisions do appear to be present, there are also several which are missing. We have been unable to determine why this continues to be an issue. We have been unable to confirm if Westlaw Next is currently experiencing a similar issue, but know that it has in the past. We recommend caution when researching FAA Part 16 decisions on either Lexis Plus or Westlaw Next and to supplement that research with FAA resources and Airport Cooperative Research Program Legal Research Digest 21. New Part 16 decisions are intermittently uploaded to [FAA's website](#) and [Regulations.gov](#).

# FEDERAL LEGISLATION

[Infrastructure Investment and Jobs Act](#), Pub. L. No. 117-58 (Nov. 15, 2021).

## FEDERAL RULES, ORDERS, & GUIDANCE In Reverse Chronological Order

### THE WHITE HOUSE

Executive Order No. 14,036, [Promoting Competition in the American Economy](#) (July 9, 2021) (among other things, directing DOT to review “slot” system at DCA, JFK, and LGA).

Memorandum for the Heads of Executive Departments and Agencies, [Regulatory Freeze Pending Review](#) (Jan. 20, 2021) (freezing further action on rules and regulations that had not yet been published in the Federal Register).

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

Order 5190.6B, Change 1, [Airport Compliance Manual](#) (eff. Nov. 22, 2021) (making changes to Chapters 1, 9, 10, 11, and 23 as the first phase of a complete rewrite of the Manual).

**Kaplan Kirsch & Rockwell has prepared a summary of the pertinent changes to the Airport Compliance Manual. [Click to read the summary.](#)**

Notice of Grant of a Petition for Rulemaking, [Airport Concession Disadvantaged Business Enterprise \(ACDBE\) Program](#), 86 Fed. Reg. 58,053 (Oct. 20, 2021).

Part 139 CertAlert, No. 21-05, [Part 139 Extinguishing Agent Requirements](#) (Oct. 4, 2021) (concerning research and process for certifying non-PFAS-containing AFFF).

Advisory Circular No. 150/5230-4C, [Aircraft Fuel Storage, Handling, and Dispensing on Airports](#) (Sept. 23, 2021).

Part 139 Cert Alert, No. 21-04, [Updated Guidance for Airport Emergency Plans \(AEP\) under 14 CFR Part 139.325\(b\)\(7\)](#) (Sept. 21, 2021) (concerning responses to unauthorized UAS operations).

Notice of Availability, [Passenger Facility Charge \(PFC\) Program: Eligibility of Ground Access Projects Meeting Certain Criteria](#), 86 Fed. Reg. 48,793 (Aug. 31, 2021) (announcing publication of PFC Update PFC 75-21, [available here](#)).

Reopening of Comment Period, [Safety Management System for Certificated Airports](#), 86 Fed. Reg. 47,266 (Aug. 24, 2021) (briefly reopening comment period on SNPRM originally published on July 14, 2016).

Compliance Guidance Letter No. 2021-03, [FAA Review of Existing and Proposed Residential Through-the-Fence Access Agreements](#) (July 21, 2021).

Draft Advisory Circular No. 150/5190-4B, [Airport Compatible Land Use Planning](#) (June 22, 2021) (comment period expired Aug. 6, 2021).

Advisory Circular No. 150/5320-6G, [Airport Pavement Design and Evaluation](#) (June 7, 2021).

Policy, [Review of Solar Energy System Projects on Federally-Obligated Airports](#), 86 Fed. Reg. 25,801 (May 11, 2021).

Notice, [Funding Opportunity for Environmental Mitigation Pilot Program](#), 86 Fed. Reg. 25,060 (May 10, 2021).

Notice, [Airport Investment Partnership Program: Application Procedures](#), 86 Fed. Reg. 20,586 (Apr. 20, 2021).

Final Rule, [Operation of Small Unmanned Aircraft Systems Over People](#), 86 Fed. Reg. 4314 (Jan. 15, 2021).

Final Rule, [Remote Identification of Unmanned Aircraft](#), 86 Fed. Reg. 4390 (Jan. 15, 2021).

Request for Comments, [Overview of FAA Aircraft Noise Policy and Research Efforts: Request for Input on Research Activities to Inform Aircraft Noise Policy](#), 86 Fed. Reg. 2722 (Jan. 13, 2021).

Final Rule, [Special Flight Authorizations for Supersonic Aircraft](#), 86 Fed. Reg. 3782 (Jan. 15, 2021).





## COUNCIL ON ENVIRONMENTAL QUALITY

Interim Final Rule and Request for Comments, Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures, 86 Fed. Reg. 34,154 (June 29, 2021) (extending period by two years for federal agencies to propose their own regulations to implement July 2020 CEQ final rule revising NEPA procedures).

## ENVIRONMENTAL PROTECTION AGENCY

[PFAS Strategic Roadmap: EPA's Commitments to Action 2021 – 2024](#) (Oct. 18, 2021).

Advanced Notice of Proposed Rulemaking, [Addressing PFOA and PFOS in the Environment: Potential Future Regulation Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act](#) (Jan. 14, 2021) (not published in Federal Register and under review pursuant to regulatory freeze order of January 20, 2021).

# REPORTS, STUDIES, ARTICLES, & OTHER PUBLICATIONS

## U.S. DEPARTMENT OF TRANSPORTATION

Office of Inspector General, [Report No. AV2022004](#), FAA Lacks Effective Oversight Controls To Determine Whether American Airlines Appropriately Identifies, Assesses, and Mitigates Aircraft Maintenance Risks (Oct. 20, 2021).

Office of Inspector General, [Report No. AV2021035](#), FAA's Approach for Establishing and Modifying Air Traffic Controller Staffing Levels Needs Improvement To Properly Identify Staffing Needs at Contract Towers (Aug. 18, 2021).

Office of Inspector General, [Report No. AV2021034](#), FAA Can Increase Its Inspector Staffing Model's Effectiveness by Implementing System Improvements and Maximizing Its Capabilities (Aug. 11, 2021).

Office of Inspector General, [Report No. IT2021033](#), FAA Is Taking Steps to Properly Categorize High-Impact Information Systems but Security Risks Remain Until High Security Controls Are Implemented (Aug. 2, 2021).

Office of Inspector General, [Report No. ZA2021026](#), Gaps in Guidance, Training, and Oversight Impede FAA's Ability To Comply With Buy American Laws (June 2, 2021).

Office of Inspector General, [Report No. AV2021024](#), DOT Appropriately Relied on Unsubsidized Carriers in Accordance With Its Policy but Conducted Limited Oversight of the Essential Air Service Communities They Serve (May 19, 2021).

Office of Inspector General, [Report No. AV2021023](#), NextGen Benefits Have Not Kept Pace With Initial Projections, but Opportunities Remain To Improve Future Modernization Efforts (Mar. 30, 2021).

FAA, Final Report, [Analysis of the Neighborhood Environmental Survey](#) (updated Feb. 2021).

Office of Inspector General, [Report No. AV2021017](#), Gaps in FAA's Oversight of the AIP State Block Grant Program Contribute to Adherence Issues and Increase Risks (Feb. 10, 2021).

## U.S. GOVERNMENT ACCOUNTABILITY OFFICE

[Report No. GAO-22-104429](#), Observations on the Ongoing Recovery of the Aviation Industry (Oct. 2021).

[Report No. GAO-21-103933](#), FAA Could Improve Outreach Through Enhanced Noise Metrics, Communication, and Support to Communities (Sept. 2021).

[Report No. GAO-21-105202](#), Actions Needed to Improve Federal Oversight of Assistance to Individuals, Communities, and the Transportation Industry (July 2021).

[Report No. GAO-21-105192](#), TSA Field Testing Should Ensure Screening Systems Meet Detection Standards (July 2021).

[Report No. GAO-21-397](#), Aviation Services: Information on Airports Exercising Their Right as the Sole Provider of Fuel (July 2021).





[Report No. GAO-21-105268](#), FAA Continues to Update Regulations and Faces Challenges to Overseeing an Evolving Industry (June 2021).

[Report No. GAO-21-354](#), Passengers with Disabilities: Airport Accessibility Barriers and Practices and DOT's Oversight of Airlines' Disability-Related Training (Apr. 2021).

[Report No. GAO-21-165](#), Unmanned Aircraft Systems: FAA Could Strengthen Its Implementation of a Drone Management System by Improving Communication and Measuring Performance (Jan. 2021).

## CONGRESSIONAL RESEARCH SERVICE

[Report No. IF11989](#), Congress Expands Buy America Requirements in the Infrastructure Investment and Jobs Act (P.L. 117-58) (Dec. 7, 2021).

[Report No. IF11949](#), Addressing Unruly Airline Passengers (Oct. 19, 2021).

[Report No. R46920](#), Federal Airport Noise Regulations and Programs (Sept. 27, 2021).

[Report No. R46904](#), Legislative Reforms to Commercial Aircraft Certification (Sept. 9, 2021).

[Report No. R46783](#), Trusted Traveler Programs (May 5, 2021).

[Report No. R43545](#), Airport Privatization: Issues and Options for Congress (Mar. 11, 2021).

[Report No. R42781](#), Federal Civil Aviation Programs: In Brief (Jan. 22, 2021).

## TRANSPORTATION RESEARCH BOARD, AIRPORT COOPERATIVE RESEARCH PROGRAM

### Research Reports

[Research Report 235](#): Guidebook for Conducting Airport User Surveys and Other Customer Research (Dec. 2021).

[Research Report 234](#): Rapid Slab Repair and Replacement of Airfield Concrete Pavement (Aug. 2021).

[Research Report 231](#): Evaluating the Traveler's Perspective to Improve the Airport Customer Experience (June 2021).

[Research Report 233](#): Airport Biometrics: A Primer (May 2021).

[Research Report 232](#): Playbook for Cultivating Talent in the Airport Environment (May 2021).

[Research Report 230](#): Enhancing Academic Programs to Prepare Future Airport Industry Professionals (Apr. 2021).

[Research Report 229](#): Airport Collaborative Decision Making (ACDM) to Manage Adverse Conditions (Apr. 2021).

[Research Report 228](#): Airport Microgrid Implementation Toolkit (Apr. 2021).

[Research Report 227](#): Evaluating and Implementing Airport Privatization and Public-Private Partnerships (Apr. 2021).

[Research Report 225](#): Rethinking Airport Parking Facilities to Protect and Enhance Non-Aeronautical Revenues (Mar. 2021).

[Research Report 226](#): Planning and Design of Airport Terminal Restrooms and Ancillary Spaces (Jan. 2021).

### Synthesis Reports

[Synthesis 115](#): Practices in Airport Emergency Plans (Mar. 2021).

### Legal Research Digests

[Legal Research Digest 43](#): Legal Considerations for Telecommunications at Airports (Oct. 2021).

[Legal Research Digest 42](#): Legal Implications of Data Collection at Airports (June 2021).

[Legal Research Digest 41](#): Legal Issues Relating to Airport Commercial Contracts (Feb. 2021).



# COVID-19 MATERIALS

There have been many, many documents and cases published regarding COVID-19 in the past twelve months. The list below is not exhaustive but is intended to be a summary of the new material from this year which is most relevant to airport sponsors.

## Federal Legislation

[American Rescue Plan Act of 2021](#), Pub. L. No. 117-2 (Mar. 11, 2021).

## Administrative Materials

FAA, Frequently Asked Questions, [Airport Rescue Grants](#) (updated Nov. 24, 2021) (guidance concerning grants to airports under American Rescue Plan Act).

FAA, Frequently Asked Questions, [Airport Coronavirus Response Grant Program](#) (updated Nov. 24, 2021) (guidance concerning grants to airports under the Coronavirus Response and Relief Supplemental Appropriation Act).

OSHA, Interim Final Rule, [COVID-19 Vaccination and Testing: Emergency Temporary Standard](#), 86 Fed. Reg. 61,402 (Nov. 5, 2021) (imposing vaccine mandate on certain covered employers).

The White House, Executive Order No. 14,042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#) (Sept. 9, 2021) (imposing vaccine mandate on federal contractors and subcontractors).

Centers for Disease Control and Prevention, Update, [Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs](#) (June 10, 2021) (announcing intent to formally modify mask mandate order to remove requirement for masks in outdoor spaces at airports).

Centers for Disease Control and Prevention, Order, [Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs](#) (eff. Feb. 1, 2021).

Department of Homeland Security, TSA Security Directive 1542-21-01, Security Measures – Face Mask Requirements (Jan. 31, 2021).

## Select Cases

**Employer Vaccine Mandate.** *Mass. Building Trades Council, et al. v. Dep't of Labor*, No. 21-7000 (6th Cir. Dec. 17, 2021) (dissolving emergency stay of OSHA vaccine mandate, allowing interim final rule to go into effect) (appeal pending) [NOTE: OSHA has announced it will exercise enforcement discretion pending review of the case in the Supreme Court.]

**Mask Mandate.** *Corbett v. TSA*, No. 21-1074, 2021 U.S. App. LEXIS 36433 (D.C. Cir. Dec. 10, 2021) (rejecting petition for review of TSA Security Directive imposing mask mandate in airports, holding that TSA had statutory authority to promulgate the Directive because COVID pandemic posed threat to security of transportation system).

**Federal Contractor Vaccine Mandate.** *State of Georgia v. Biden*, Civ. Action No. 1:21-cv-163 (S.D. Ga. Dec. 7, 2021) (issuing nationwide preliminary injunction against enforcement of Executive Order 14,042, which imposed COVID-19 vaccine mandate on federal contractors and subcontractors) (appeal pending). [NOTE: Several other courts have enjoined enforcement of EO 14,042 in specific states.]

**Mask Mandate.** *Wall v. CDC*, No. 6:21-cv-975, 2021 U.S. Dist. LEXIS 206511 (M.D. Fla. Oct. 7, 2021) (dismissing traveler's claim that mask requirement at Orlando International Airport violates Florida governor's order banning local mask mandates; court holds that governor's order does not apply to federal regulations, that mask mandate is federal, not local; and that, in any event, the airport authority is not a "local government" subject to governor's order).

## Other Publications

Congressional Research Service, [Report No. LSB10589](#), Legal Issues Related to Transportation Mask-Wearing Mandates (Apr. 12, 2021).

United States GAO, [Report No. GAO-21-412T](#), COVID-19 Pandemic: Preliminary Observations on Efforts Toward and Factors Affecting the Aviation Industry's Recovery (Mar. 2021).







## 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.

The Airport Law Digest is a semi-annual publication of Kaplan Kirsch & Rockwell LLP and is provided as a complimentary service to registrants of the annual Airport Law Workshop. The Digest is for informational purposes only and is not for the purpose of providing legal advice – including the application of law to any particular set of facts and circumstances. Readers are urged to consult their counsel and consultants concerning their own situation and any specific legal questions.

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](mailto:info@kaplankirsch.com) or at one of our offices below.

Nick Clabbers  
*Editor*



### **BOSTON**

225 Franklin Street  
26th Floor  
Boston, MA 02110  
617.329.4687

### **DENVER**

1675 Broadway  
Suite 2300  
Denver, CO 80202  
303.825.7000

### **NEW YORK**

450 7th Avenue  
Suite 1404  
New York, NY 10123  
646.883.5110

### **SAN FRANCISCO**

595 Pacific Avenue  
4th Floor  
San Francisco, CA 94133  
628.209.4151

### **WASHINGTON, DC**

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