

42nd Annual AAAE
Airport Law Workshop
Phoenix, AZ

Session #2

Federal Law Affecting Airports (and Some State Laws)



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Speaker



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Sources of Airport Law

Federal Law

- U.S. Constitution
- Federal law
 - Title 49, United States Code
 - Title 14, Code of Regulations
 - Generally applicable laws
- Grant Assurances
- Caselaw
- “Part 16” Decisions
- Guidance, Policies etc.
- Executive Orders
- Other Federal Agencies

State/Local Law

- State Constitutions and Laws
 - States have laws specific to airports
 - Provide for creation of airports or airport governing bodies and regulate them
 - Generally applicable laws
- Local Laws



Constitutional Issues

Supremacy Clause

- Express Preemption
 - Airline Deregulation Act
 - FAA Reauthorization Act(s)
- Implied Preemption
 - Field preemption
 - Conflict preemption

14th Amendment

- Right to travel
- Equal protection

Commerce Clause

- Congress has the power to regulate interstate commerce.
- Dormant Commerce Clause

Additional

- 1st Amendment:
 - Speech, free exercise, free press free assembly, petition the government
- 2nd Amendment:
 - Keep and bear arms
- 4th Amendment:
 - Search and seizure
- 5th Amendment:
 - Self-incrimination

Title 49 U.S.C (Transportation)

Subtitle VII - Aviation Programs (§§ 40101 et seq.)



Part A: Air Commerce and Safety

- Aircraft, air carriers
- Aviation safety (TSA provisions)

Part B: Airport Development and Noise

- Airport Improvement Program (AIP) & grants
- Surplus property for airports
- Streamlining for airport development
- Minority and disadvantaged business participation
- Noise

Part C: Financing

- Airport and airway trust fund & funding

Part D: Public Airports

Part E: Miscellaneous (Buy American)

Specific Statutes



Airline Deregulation Act (49 U.S.C. § 1371)



Anti-Head Tax Act (49 U.S.C. § 40116)



Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47107)



Aviation Safety and Noise Abatement Act
(49 U.S.C. § 47501)



Airport Noise and Capacity Act (49 U.S.C. § 47521)



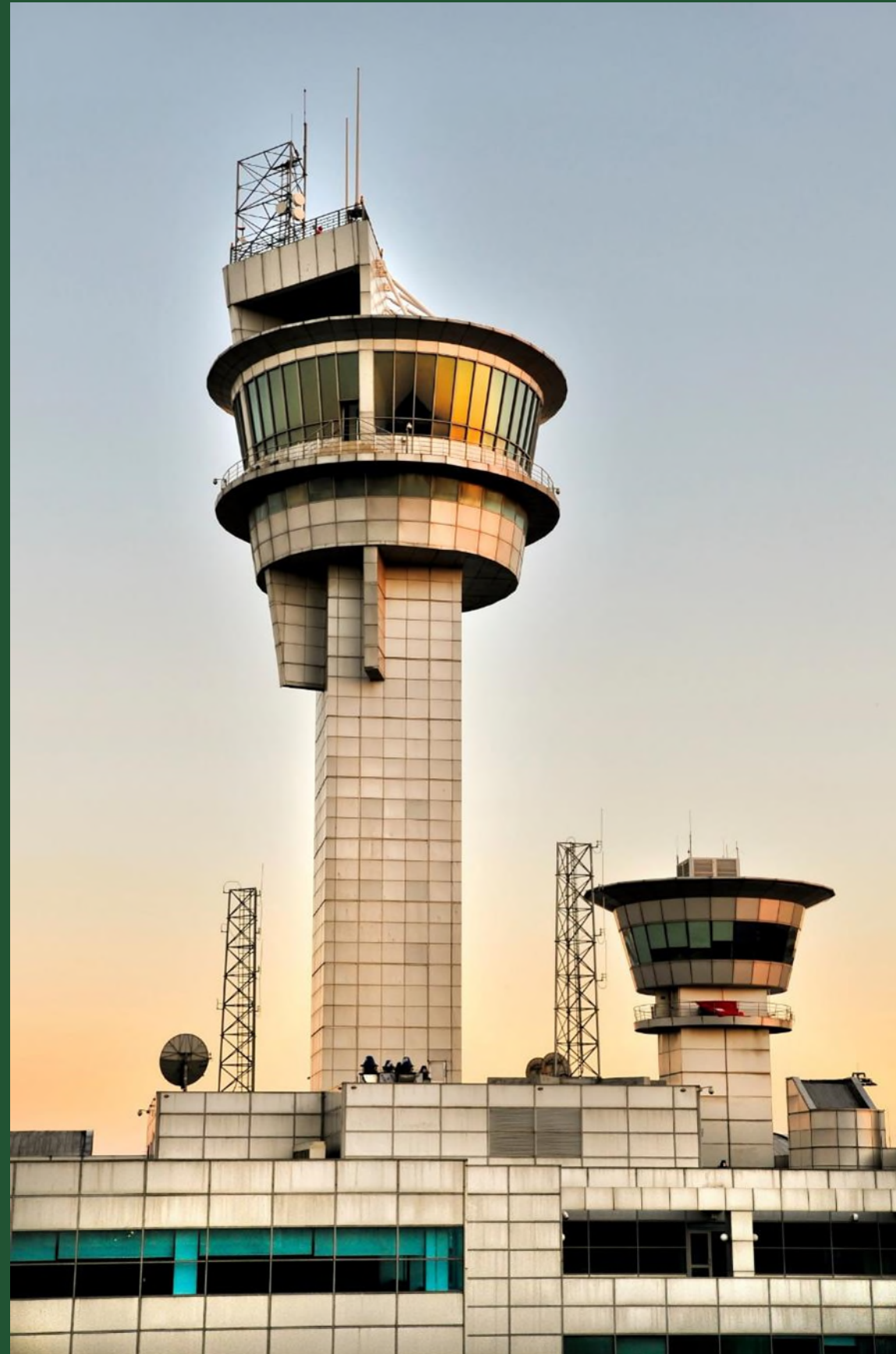
FAA Reauthorization Acts



Appropriations



Public Laws



FAA Authority under Subtitle VII

Many airport requirements start with Subtitle VII:

- AIP Grants
- Grant Assurances
- Land acquisition, use, and disposition
- Revenue and revenue use
- Planning, design, and construction
- Aircraft and other vehicles in flight
- Noise
- Anti-Head Tax Act
- Title VI, DBE, and ACDBE





TSA Authority

- Aviation and Transportation Security Act
 - ❖ 49 U.S.C. § 114
- Airport Security
 - ❖ 49 U.S.C. § 44901
 - ❖ 49 C.F.R. Subchapter C
- Sensitive Security Information
 - ❖ 49 U.S.C. § 40119

Regulations



2 C.F.R. Part 200 (Federal procurement)

6 C.F.R. (Homeland Security)

14 C.F.R. (Federal Aviation Regulations)

40 C.F.R. (Environmental)

49 C.F.R. (Department of Transportation)



Grant Assurances

- Federal obligations in exchange for federal funding under the FAA's Airport Improvement Program (AIP)
- Prescribed by statute
 - 49 U.S.C. §§ 47106 & 47107
- Annexed to grant *agreement*, which has “general” and “special” conditions

ASSURANCES AIRPORT SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term “public agency sponsor” means a public agency with control of a public-use airport; the term “private sponsor” means a private owner of a public-use airport; and the term “sponsor” includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

40 Grant Assurances



1. General federal requirements	11. Pavement preventative maintenance	21. Compatible land use	31. Disposal of land
2. Responsibility/authority	12. Terminal development prerequisites	22. Economic nondiscrimination	32. Engineering & design services
3. Sponsor fund availability	13. Accounting system, audit, & record keeping	23. Exclusive rights	33. Foreign market restrictions
4. Good title	14. Minimum wage rates	24. Fee & rental structure	34. Policies, standards & specifications
5. Preserving rights & powers	15. Veteran’s preference	25. Airport revenues	35. Relocation & real property acquisition
6. Consistency with local plans	16. Conformity to plans & specifications	26. Reports & inspections	36. Access by intercity buses
7. Consideration of local interest	17. Construction inspection & approval	27. Use by government aircraft	37. Disadvantaged business enterprises
8. Consultation with users	18. Planning projects	28. Land for federal facilities	38. Hangar construction
9. Public hearings	19. Operation & maintenance	29. Airport layout plan (ALP)	39. Competitive access
10. Metropolitan planning organization	20. Hazard removal and mitigation	30. Civil rights	40. Leaded aviation gasoline

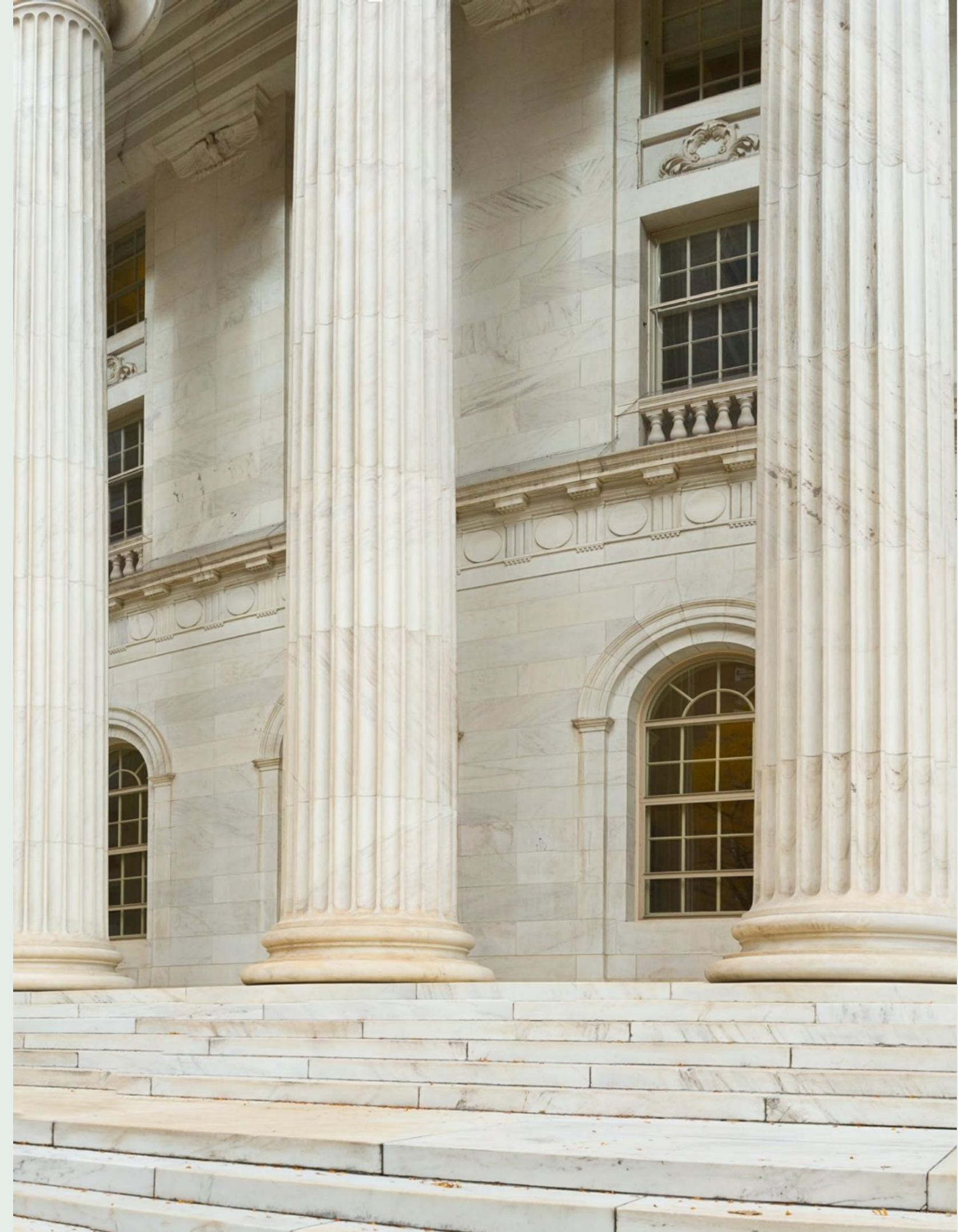
Caselaw

Federal Courts

- 49 U.S.C. § 46110 (final FAA decisions reviewed in U.S. Courts of Appeals)

Administrative Adjudications

- 14 C.F.R. Part 16 formal decisions
- 14 C.F.R. Part 13 informal decisions



Executive Orders and Actions

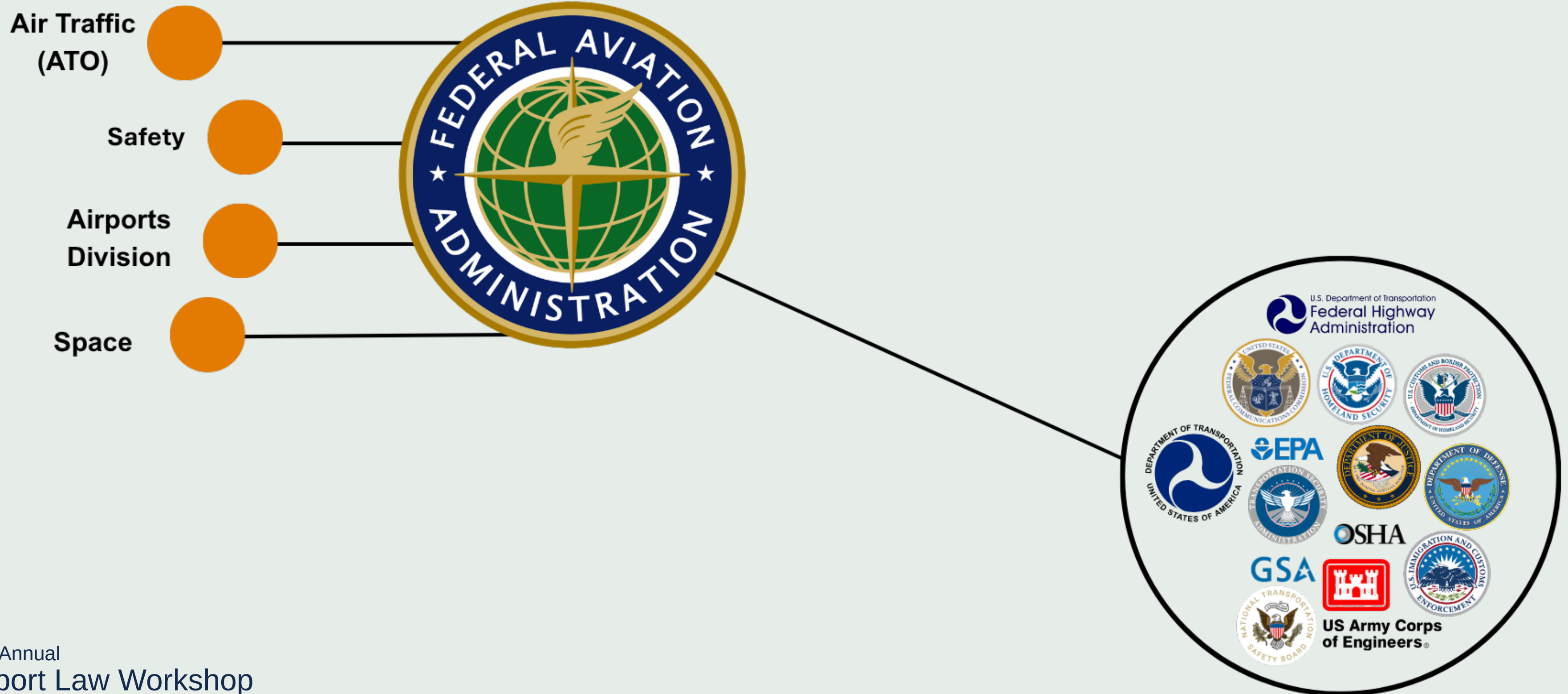
Examples:

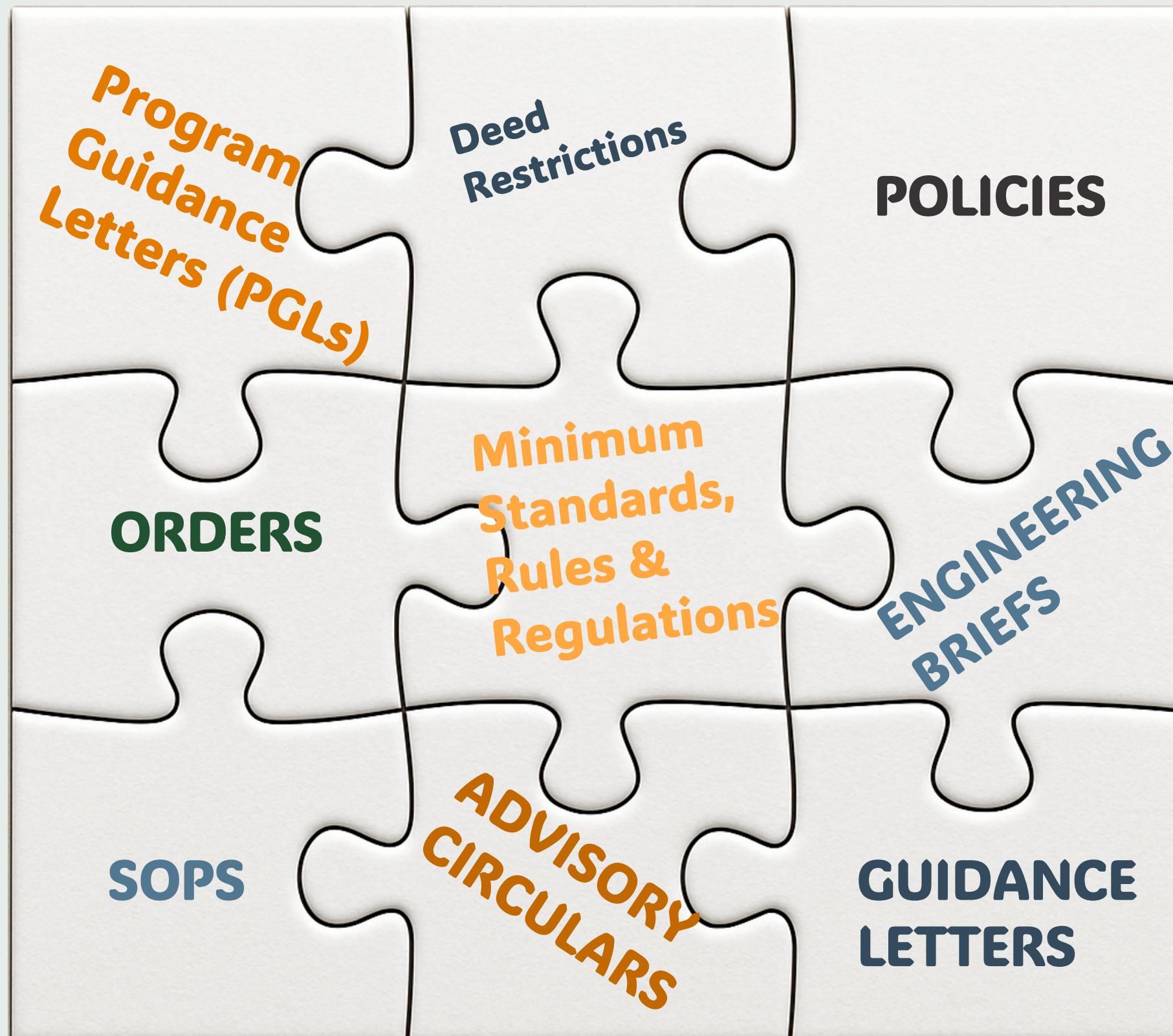
- Executive Order 14161, *Protecting The United States From Foreign Terrorists And Other National Security And Public Safety Threats* (January 20, 2025)
- Presidential Proclamation 10949, *Restricting The Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats* (June 4, 2025)
- Presidential Memorandum, *Paying Our Great Transportation Security Administration Officers and Employees* (March 27, 2026)





(Other) Federal Agencies





Other Sources of Airport Law



Where do I find all of this stuff?

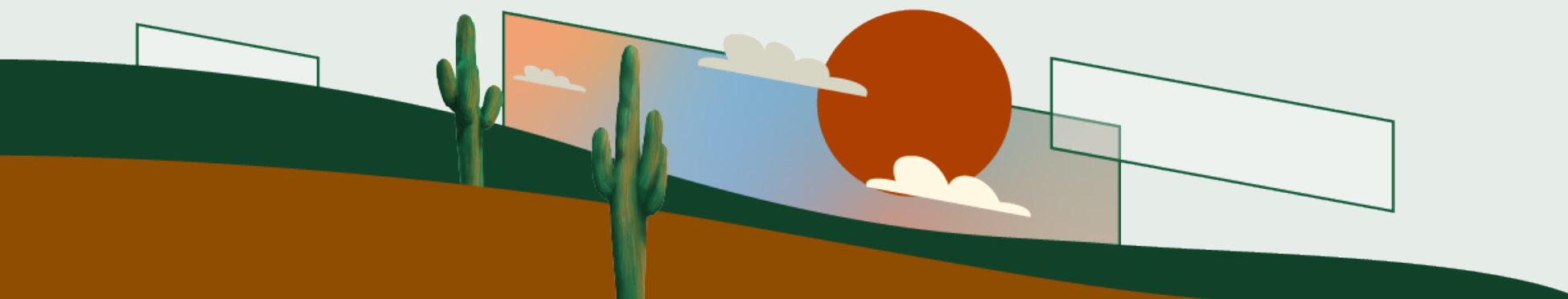


FAA Documents

- **FAA Orders**
https://www.faa.gov/regulations_policies/orders_notices/
- **FAA Advisory Circulars**
https://www.faa.gov/regulations_policies/advisory_circulars/
- **FAA Policies & Guidance Letters**
https://www.faa.gov/regulations_policies/policy_guidance
- **FAA Standard Operating Procedures**
<https://www.faa.gov/airports/resources/sops>
- **FAA Part 16 Decisions**
<https://part16.airports.faa.gov/>
- **Legal Opinions & Chief Counsel Interpretations**
https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations

Your Documents

- **Minimum Standards**
- **Airport Rules and Regulations**
- **Deed restrictions**
- **Easements, covenants**
- **Local zoning and land use codes**
- **Use and Lease Agreements**
- **Grant Agreements**
- **Airport Layout Plans (ALPs) and Exhibit “A” Property Maps**





So Many Disciplines...

- Preemption
- Regulatory compliance
- Real estate
- Administrative law
- Environmental law
- Civil rights
- Land use
- Bonds and Finance
- Municipal law
- Bankruptcy



Planning, Design, and Construction

Infrastructure Investment and Jobs Act (IIJA)

2 C.F.R. Part 200

- Uniform administrative requirements, cost principles, and audit requirements for federal awards (a/k/a OMB Uniform Guidance)

Generally Applicable Laws

- Davis-Bacon Act: prevailing wage, 40 U.S.C. §§ 3141-44, 3146, 3147
- Brooks Act: procurement of planning, design and engineering, 40 U.S.C. § 1101
- Fair Labor Standards Act, 29 U.S.C. § 201
- Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4601 et seq.





Civil Rights – Anti-Discrimination

Title VI of the Civil Rights Act of 1964

- 42 U.S.C. § 2000d and 49 C.F.R. Part 21 (DOT implementation)
- No discrimination on the basis of race, creed, color in federally assisted programs

Age Discrimination Act of 1975

- 42 U.S.C. § 6101
- No discrimination on the basis of age in federally assisted programs

Age Discrimination in Employment Act of 1967 (ADEA)

- 29 U.S.C. § 621
- No discrimination against people age 40 or over

Disadvantaged Business Enterprises

- 49 U.S.C. § 47123
- 49 C.F.R. Part 26

Airport Concessions Disadvantaged Business Enterprises

- 49 C.F.R. Part 23



Civil Rights - Accessibility

Section 504 of the Rehabilitation Act of 1973

- 29 U.S.C. § 794
- No discrimination or exclusion from participation in programs or activities receiving federal financial assistance solely because of disability

Americans with Disabilities Act of 1990

- 42 U.S.C. § 12101
- No discrimination against a qualified individual with a disability in employment
- No qualified individual shall be excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of disability by a public entity.

Airlines:

Air Carrier Access Act

- 49 U.S.C. § 41705
- No discrimination by airlines against passengers on the basis of disability





Intellectual Property

- Applies to the sponsor's or airport's IP *and* to the use of others' IP
- Copyright Act - 17 U.S.C. § 101
- Visual Artists Rights Act - 17 U.S.C. § 106A
 - Certain exclusive rights granted to artists regarding control of visual artworks
 - May limit removal or destruction of art
- Lanham Act (trademarks) - 15 U.S.C. § 1051
- Patent Act - 35 U.S.C. § 1

State and Local Laws

Airport Ownership and Sponsorship

- Creation of airport authorities and sponsors
 - State-created authorities
 - Multi-jurisdictional authorities
 - Permission for local governments and others to create airport authorities
- Specification of powers and land use

Airport Activity Regulation – May Be State or Local

- Zoning and land use
- Tort, trespass, and takings laws
- Local or state tax (but see Anti-Head Tax Act)
- Tall Towers Acts
- Section 403.4115, Florida Statutes: publicly owned airports must report monthly re: aircraft using the airport for climate modification activities

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Questions?




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Thank You!



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