REDUCING REGULATORY BURDENS ON AIRPORTS:
The Airport Industry’s Urgent Need for Regulatory Relief and Empowerment

OVERVIEW

The White House should direct the Federal Aviation Administration (FAA), Transportation Security Administration (TSA), and Customs and Border Protection (CBP) to reduce, eliminate, and not add to burdens imposed on airports, and to pay particular attention to easing burdens imposed on smaller airports, which have fewer resources to comply with federal mandates.

A guiding principle should be to examine statutory mandates and roll back regulations to meet the requirements of the statute and not extend the agency’s reach beyond those requirements.

- Existing regulatory obligations imposed by the federal government on airports have strayed from that mission and are costly and burdensome.
- These obligations are not only costly but also impede airports’ ability to be entrepreneurial and creative, to effectively compete and succeed in today’s dynamic aviation industry.
- Unfortunately, FAA, TSA, and CBP regularly impose regulatory burdens on airports without going through a proper regulatory process that includes analysis of alternatives, benefits and costs, and federalism implications.
- Reducing unnecessary regulatory burdens, streamlining processes, reprioritizing federal programs to correspond to the needs of airports, and empowering airports to operate in a more business-like fashion can fuel more timely airport infrastructure investments and more efficient operations, to the benefit of the traveling public, accelerate the creation high-paying jobs, allow for more innovation and responsiveness to the needs of our aviation industry partners, and lower costs to airport tenants and passengers.

FEDERAL AVIATION ADMINISTRATION

FAA’s role in regulating airports should be re-focused on its primary function of protecting the public: oversight of airfield/airspace standards and safety, as well as airport-related air traffic control functions. The agency should not stray from this core competency.

FAA should be directed to take effective measures to re-orient its airport compliance program to carry out its stated purpose and focus only on protecting important federal interests that concern the public welfare, rather than scrutinizing the details of airport operators’ business decisions.
Moreover, FAA should ensure consistency in the application of standards nationwide by adopting and promoting the least burdensome interpretation of FAA requirements across the board, and educating and directing its regional and local airports offices to implement those less burdensome interpretations.

- Airports believe that FAA’s role in regulating airports should focus on its core mission of safety oversight and refrain from interfering in airport/tenant relations and the market forces that drive the aviation industry.

- For example, an Airport Cooperative Research Program study found that the regulatory burden imposed on just the small commercial service airports alone amounted to more than $2 billion from 2000 to 2010.

- The federal government’s heavy-handed approach to airport regulation is not justified by the level of federal investment in airports (with funds collected from aviation users, not general tax revenues). Federal Airport Improvement Program (AIP) grants, on average, amount to less than 25% of airports’ capital spending and less than 9% of their total annual revenue.

- This contribution level, while important, does not justify the extensive and pervasive federal regulatory over-reach into areas not related to the AIP-funded project or land purchased with such funds.

- In accepting AIP funds, airports agree to “grant assurances” that specify the conditions under which the federal money may be spent.

- Currently, there are 39 grant assurances, each with multiple subparts as well as a requirement to comply with over 50 other laws, orders and regulations. Some of these relate to the projects that are being funded. Others help ensure that airport revenues are reserved for airport purposes. However, others run far afield, dictating how an airport develops land it purchased with its own funds, and extensively managing relations between airports and their tenants and other users.

- Although FAA states that the purpose of its Airports Compliance Program for enforcing these grant assurances is to “protect the public interest in civil aviation,” more often than not it is used by airport tenants or would-be tenants not for the public interest, but simply to promote their own parochial interests, such as seeking to keep out competition, gain an advantage over a competitor, or gain leverage in lease negotiations with the airport.

Therefore, the airport industry recommends the Administration take the following steps to reduce regulatory burdens on airports now and in the future.

**Federal Approvals for Use of Airport Land and Facilities**

The Administration should eliminate the need for federal approvals for non-aeronautical development of airport land acquired by the airport operator without federal assistance. Instead, the federal government should simply prohibit development that interferes with safe and efficient aircraft operations and require that fair market rentals are received by the airport for use of the land.

Doing so ensure that the core aviation function of the airport will be preserved, while at the same time, preventing airport initiatives from being ensnared in extensive and expensive federal reviews and analyses, including the National Environmental Policy Act (NEPA), which unduly delay projects and often cause developers to look elsewhere to build. Airports should also be given latitude in determining what constitutes fair market value (FMV) in a business context, rather than being subject to FAA formulas on theoretical FMV. This reform will enable airports to undertake or facilitate development of revenue-producing, non-aeronautical facilities to make productive use out of land that is not needed for aeronautical purposes, and to provide a new stream of
revenue for airport purposes. Airports would still have to comply with all applicable stand-alone local, state, and federal permitting requirements.

Airports have also expressed concerns that the requirements of the Endangered Species Act impact their ability move forward with critical infrastructure projects. We urge you to examine the consequences of the Act as it currently stands and explore common sense approaches to mitigating wildlife hazards.

**Federal Approvals for Leasing of Non-aeronautical Land or Facilities**

FAA regulation of non-aeronautical leases is cumbersome and inefficient, which has caused many delayed or foregone economic opportunities at airports across the country.

For example, FAA “informally” imposes a maximum fair market lease term of 50-years, except where an airport makes a case to FAA that a longer lease term is justified. This can be a very frustrating and time consuming process. Such a limitation makes no sense for non-aeronautical facilities. Many developers or companies believe they cannot attain an acceptable Return on Investment (ROI) without longer leases for some types of facilities, and therefore will forego leasing at the airport in favor of non-airport parcels that are not so restricted. Airports should not be precluded from such opportunities.

Airport operators have expressed concerns that the FAA unnecessarily delays the ability of airports to lease non-aeronautical land for private businesses. Those delays can prompt businesses to consider locating its operations elsewhere, which can cost the airport community jobs and economic development.

**Federal Approvals for Non-Airfield Facilities**

The only requirements for buildings, roadways, etc. should be that they not interfere with the safe and efficient operation of aircraft and they comply with local building codes. FAA should not be involved in terminal, roadways, hangars, and other commercial building development, with the exception of the filing of a form to allow FAA to determine if a proposed development poses a hazard to aviation, as is required for nearby off-airport property construction projects. Requirements for airports to submit plans and specifications, etc. to the FAA should be eliminated.

**Federal, State, and Local Agencies Use of Airport Space**

Eliminate inconsistent and potentially confusing provisions regarding the terms by which Federal, State, and Local Agencies may use airport land or facilities. These should simply say that such agencies must all pay Fair Market Value (FMV) rent for land or space used on an airport, with the exception of land required for navigational equipment required on an airfield that relate to aircraft operations at that airport. Flexibility in determining FMV in real business market conditions should be allowed, including consideration of the actual value of in kind services.

**Potential Development in Runway Protection Zone**

FAA should reduce restrictions on uses within a Runway Protection Zone (RPZ), e.g., by relaxing land use prohibitions outside of the center portion of the RPZ, in order, for example, to allow access roads to otherwise land-locked parcels, which would create opportunities for safe, productive use of airport land.

**Airport Contracts and Leases**

FAA should have no say in the non-aeronautical business leases of an airport. Keeping FAA in the middle of reviewing airport leases for which they have no expertise is burdensome, counterproductive, and impedes airport operators from conducting their business in a way that best serves their airports and communities. Thus, FAA oversight should be eliminated.
An example of the pervasiveness of FAA oversight is the fact that the agency has required airports to submit lease logs, detailing virtually all leases the airport has entered into. This is an onerous and unnecessary requirement.

DOT should clarify that any remaining regulations relating to concessions apply only to concessions that primarily serve the traveling public (and do not, for example, apply to businesses that serve the public from a facility in an office park located on airport property).

As an example of the detail to which FAA/DOT regulate airport leasing, they prohibit five-year exclusive use leases for certain types of concessions or other non-aeronautical development. This can make it very difficult for airports to attract competitive proposals from developers and should be eliminated.

Airport Business Practices
FAA should not have a say in the business practices of an airport.

Implementation of the National Environmental Policy Act
The level of regulatory control and oversight being exercised by FAA as it interprets, enforces, and burdens airports with National Environmental Policy Act (NEPA) compliance is excessive. Airports spend a significant amount of time ensuring they are in compliance with NEPA. The inconsistent, and seemingly arbitrary, enforcement of NEPA by local FAA officials causes significant delays in planning, design, and construction of needed airport infrastructure. This is inefficient and adds significant cost to an already cumbersome process. A comprehensive review to weed out excessive processes and requirements should be undertaken. Airports recommend the following specific reforms:

- In states with rigorous environmental laws, a simple certification process could be employed that the FAA would accept as meeting NEPA requirements. There may well be other areas of environmental regulation and processing that could be streamlined.

- Changes to the ALP that only reflect aeronautical tenant development changes to the Existing Conditions drawing(s) should not require FAA approval, provided the project is consistent with the ALP planned future development and land uses. This will reduce the cost of tenant development and therefore encourage more aeronautical development. The Master Planning Process that goes into developing an ALP is an extensive public process. Improvements that are relatively small in scope, are consistent with an already approved ALP, do not result in significant impacts, and should not be subject to NEPA review. They would still require typical agency review, such as an FAA review for impacts to airspace and air traffic control, a Corp of Engineers review for impacts to wetlands, EPA and other agency environmental permits, etc.

- FAA should reexamine the list of projects that qualify for Categorical Exclusion (CATEX) and expand to include others that warrant exception from full environmental analysis.

- FAA has worked on new Standard Operating Procedures for updating CATEX instructions to make them clearer, and to identify more projects that could be eligible for processing as a CATEX versus a more extensive Environmental Analysis. Completing this process would help streamline the approval of certain projects. FAA should widely disseminate and explain any revisions to airports and FAA field staff.

- FAA should evaluate environmental streamlining actions undertaken in recent years and determine whether further actions are warranted to accelerate environmental review.
Air Service Incentives
A key component of airports’ public responsibility is to encourage and facilitate convenient air service to the community’s desired destinations, and foster price and service competition. With the four largest airlines now controlling 85 percent of the air service market, FAA should relax its restrictions on how airports may induce airlines to increase air service. FAA should allow airports more flexibility in designing, implementing, and participating in incentive programs to foster more air service to their communities. Specifically:

- Direct FAA to review best practices and the benefits to airports of incentives designed to attract and retain air service, including airline revenue guarantees, and to work with airports to pursue programs that best achieve those goals.

- FAA should allow greater flexibility in the extent to which airports may be involved with developing incentives by third parties without imposing AIP-based limitations on such incentive programs, e.g., they cannot be limited to one carrier, even if selected by a fair process (e.g., an RFP process).

- Airports should also be allowed to (1) specify the air service schedule, competitive pricing or equipment that would qualify flights for incentives in order to meet the community’s needs, (2) provide a robust menu of start-up services and facilities to new entrant or expanding incumbent air carriers, and (3) provide vouchers for airport-related services as incentives for passengers to use the new service.

Passenger Facility Charge (PFC) Reforms
Airports seek strong Administration support for legislative action to implement fundamental PFC reforms: eliminate the statutory cap on the level of PFC that may be imposed by an airport, eliminate the extra “significant contribution” standard for review of PFCs above $3.00, and extend the streamlined process for imposing and using PFCs from non-hub airports to all hub sizes.

On the regulatory front, FAA should not be allowed to impose the details of AIP eligibility on airfield projects, but should allow broad categories of projects to be eligible for PFC funding. As such, airports urge the Administration to prod FAA to interpret the PFC statute and regulations more generously so as to restore the original intent of the PFCs as a supplement to AIP and airport revenues, with eligibility that includes all AIP eligible items and additional items as well, such as gates and related facilities. In recent years, FAA seems to have merged PFC eligibility with AIP eligibility; this limitation diminishes the value and utility of PFCs.

Further, FAA should allow greater PFC funding of projects such as airport terminals. Currently, excessive FAA and airport staff and consultants’ time must be devoted to extremely detailed analysis of PFC eligibility, for instance whether various portions of terminals are eligible or ineligible for PFC funding.

To further complicate matters, if an airport wants to use PFCs to build a new concourse with additional gates, it will have to file one application for the terminal/gate area and another one for the apron. These two aspects of the project are inextricably linked, but FAA requires the airport to treat them as separate projects and the FAA must render two decisions.

These requirements serve no compelling federal interest, but cause airports and FAA to spend considerable time and effort preparing and reviewing PFC applications, respectively. To address these concerns, FAA should expand and simplify PFC eligibility standards to the maximum extent possible.

Also, eligible security projects should include those on the public side of security checkpoints (e.g., closed-circuit TV cameras and other measures to help detect and prevent violence against passengers and members of the public in pre-screening areas in and around terminal, and in baggage claim areas, to help prevent and address
incidents such as those that have occurred in the U.S. and around the world in airport terminals outside of the secured areas.

**Require Rigorous Analysis of Existing and Potential New Regulations**

The federal government’s regulatory reach over airports should be smaller, and the government should not impose additional regulatory burdens that are a drag on local, state, and regional economies.

In implementing the Executive Order on reducing regulatory burdens, the Administration should limit FAA regulation of airports only to those areas in which there is truly a national interest and require the FAA to use a full notice/comment rulemaking process before imposing new burdens or restrictions on airports.

This includes public notice and opportunity for comment, realistic analysis of costs/benefits and federalism implications (since airports are operated by local, state, and regional governmental entities), and avoiding unfunded mandates.

In implementing the Executive Order mandate of a Two-for-One elimination of regulations when adding a new significant regulation, FAA should be required to ensure that, if it imposes a new regulatory burden on airports, the two regulations it eliminates must reduce the regulatory burdens on airports, not on some other regulated entity.

The Administration also should provide an exception to the regulatory moratorium and the Two-for-One reduction that allows agencies to promulgate new regulations/revisions that reduce regulatory burdens on airports.

The FAA also should be directed to end its current practice of imposing burdens through a variety of extra-regulatory practices, e.g., imposing requirements on airports via FAA policy or advisory circulars; treating draft policies as final, enforceable requirements; and imposing regulations on airports through FAA “internal guidance.” In short, Advisory Circulars should always remain advisory; compliance by airports should not be required, whether or not an airport accepts a federal grant or imposes a PFC.

This reform will preclude FAA from evading the President’s Executive Order on reducing regulatory burdens by disguising regulations as “guidance” or “advisory” materials. It will also ensure that airports have the opportunity to participate in the development of any new requirements that will be imposed on them, and that new requirements cannot be added without serious analysis of their potential burdens.

FAA should be prohibited from directly or indirectly enforcing existing guidance, advisory circulars, and policies that impose burdens or restrictions on airports unless they have gone through a full regulatory notice and comment and review process.

In order to ensure that the review and scaling back of burdensome regulations is a continuing, institutionalized process, rather than a “one-and done” approach that agencies comply with but then revert back to business as usual, airports should be given a seat at the table with regulatory agencies so as to be able to prevent or modify proposed new regulations that would be unduly burdensome, and to further weed out existing, unnecessary regulations. Airports urge the White House to:

- Establish an **Airport Deregulation Advisory Committee**, with responsibility for examining existing FAA, TSA, and CBP regulation of airports, advising the Secretary of Transportation or Homeland Security, as appropriate, and providing recommendations on streamlining the FAA/TSA/CBP regulation of public-use airports.
• Establish an **Airport Rulemaking Advisory Committee** or **Airport Subcommittee** under the Aviation Rulemaking Advisory Committee, with responsibility for making recommendations on new or amended rules, orders, policies and guidance to promote the streamlining and improved efficiency of FAA/TSA/CBP regulation of public-use airports.

**FAA should also undertake meaningful outreach to airports prior to implementing new airspace classifications or air traffic control (ATC) procedures affecting airports and the surrounding communities (e.g. metroplex).**

To accomplish this goal, the Administration should require the FAA Administrator to ensure that affected airports, surrounding communities, and the FAA Office of Airports are notified and provided an opportunity to comment on potential/proposed airspace and ATC decisions affecting airports and surrounding communities, including but not limited to changes in routes, and approach or departure procedures that will change noise contours. This process should also be used before FAA issues a finding of hazard or no hazard with respect to a structure located in the vicinity of an airport. This should include permanent and temporary obstructions and any related restrictions affecting an airport.

**Airport Improvement Program (AIP) Reforms**

**AIP Contracting/Construction Reforms**

Allow airports to employ alternative project delivery methods, including Design Build and Construction Manager at Risk, on AIP-funded projects without requiring extraordinary justification.

While FAA’s guidance nominally allows for innovative project delivery methods, in practice, the agency appears to have a bias towards traditional Design Bid Build methods. FAA has rarely allowed for Design Build and Construction Manager at Risk in complex projects (phasing, construction methods, sensitivity to timing, etc.), and even then, only after substantial justification as to why the sponsor recommends the alternative delivery, including a pro forma cost comparison between the alternative delivery and traditional Design Bid Build. FAA should allow other, proven methods of delivering projects without requiring a super-justification for them. It should simply identify what it is that is required for an alternative delivery method, apply the standards equally, and provide reasonable consideration of any established alternative delivery method.

Allow airports to promote early completion and savings for critical federally-funded airport projects by soliciting contractors to bid the number of days to complete the project, and employing contractual provisions, such as incentive payments and more efficient project delivery methods that have worked in the private sector and in other federal transportation grant programs.

Reducing the time it takes to complete airport infrastructure projects helps minimize disruptions that negatively impact airlines, passengers, and other airport customers. Completing projects early would be particularly helpful to airports in northern tier states with short construction cycles.

Allow the reimbursement of other airport funds by AIP entitlement funds for construction projects to help inconsistent federal funding cycles.

Airports are already given this option for land acquisition. Expanding it to construction projects would help mitigate the problems of FAA making a flurry of grants at the end of the fiscal year (which is the end of many airports’ construction seasons), and the fits and starts of serial reauthorization and appropriations extensions that have plagued the AIP program over the recent years.
Expand the eligibility of projects for AIP or PFC funding, including infrastructure repair work that restores the functionality and extends the useful life of facilities.

FAA’s current policy virtually bans “repair” that is short of “reconstruction or rehabilitation.” Repair projects and activities are a cost-effective way to help to restore functionality and extend the useful life of facilities at airports. This saves money by preventing facility degradation and deferring the need for more expensive reconstruction and rehabilitation.

Allow funding for terminal modifications to enhance security wherever they are needed.

Such terminal modifications can relate, for instance, to installation of innovative technology (e.g., smart doors) to prevent unauthorized ingress through a TSA exit lane. Also, as noted above, under PFCs, eligible security projects should include those on the public side of security checkpoints (e.g., closed-circuit TV cameras and other measures).

Ensure the availability of AIP funding for secondary runways so that they do not fall into disrepair.

Many secondary runways were constructed with funding by the grant programs in the past. FAA has recently taken the position that, to be eligible for AIP funding, a crosswind runway has to meet the same standard of 500 annual itinerant operations as the main runways. If wind coverage is at 95 percent for the main runway, it is not likely that the crosswind runway in a given year would exceed the 500 standard, especially at small airports.

Limit FAA’s planning design and construction review and approval processes for airfield projects only to those projects or elements of projects clearly within its statutory responsibility. Discretion should be given to airport operators unless there is a direct impact on the safety of the airport system.

Timely review and approval of projects: In cases where FAA review and approval is required, the FAA should establish clear timelines for these activities and ensure the resources will be available to meet this timeline.

Modernize airport design standards.

FAA’s standards and guidelines requirements for design and construction should be revamped to be more practical and align with standard design and construction practices without giving up safety as the primary objective. All design standards should have a rational justification that is consistent with current research, aircraft requirements and capabilities, and safety risk analyses. Standards without such justification should be eliminated.

For instance, a prudent measure would be to modify FAA’s construction guidance to allow airports to use comparable specifications instead of a to-the-letter application of the FAA’s own construction specifications. A specific example would be to allow use of state DOT-approved materials in paving projects where they have a proven track record and are economically justified.

FAA requires use of base materials in paving projects that meet its nationwide specifications. Naturally, these must address a full range of conditions that may occur someplace in the country (e.g., extreme heat, extreme cold), but many areas of the country do not experience the full range of these conditions. It adds undue cost to a project to ensure that the materials can withstand conditions that don’t occur at a particular airport.
Provide flexibility to airports in the application of FAA standards on the appropriate size and timing of project elements for the use of entitlement funds and PFCs, as long as the project makes business sense.

An example would be the size of Aircraft Rescue and Fire Fighting facilities and equipment. For instance, an airport’s FAA aircraft-based ARFF index may allow for only 3 ARFF vehicles. However, if one vehicle goes out of service, and there is no spare, the airport would have to drop to a lower index, which would drastically impact the size of aircraft that could land there. Maintaining a spare ARFF is essential, but is currently not eligible for AIP or PFC funding, nor is the portion of the ARFF facility that houses the spare vehicle.

AIP Funding Process Reforms

Streamline the AIP Grant Process for Entitlement Funds into a “receive and report” process.

There is no need for FAA to impose on airports an elaborate application process for funds airports are entitled to, by law. A simple request from an airport for the funds for eligible projects, followed by a close-out report when the project finishes, is sufficient to protect the federal interest.

This would help alleviate, for example the problem of FAA pushing airports to bid out projects by early spring, so that “real numbers” are used for costs, but then not issuing many AIP grants until September, when many airports’ construction seasons are over, and the project has to be carried over to the following year.

Eliminate the need for a pre-application and application for projects using entitlement funds.

Airports should be able to use their entitlements funds for any eligible capital project on the airport, without requiring a specific FAA approval

Eliminate all non-statutory grant assurances for the receipt of entitlement funds.

In addition, the FAA should eliminate the requirement for airports to include language in AIP funded contracts relating to laws that already apply to any citizen or business, such as “No Human Trafficking.”

Eliminate paperwork burdens such as the comprehensive airport Lease Log and the Sponsor’s Grant Assurance Compliance Certification Checklist.

Private/Public Partnerships
Enhanced public/private partnerships can help provide airports with additional project delivery options and fuel new investment, but changes are needed to help spur these arrangements.

- Provide airports with additional flexibility on the use of PFC and airport revenue in recognition that successful P3s require contribution of public (here, airport), funds. PFCs, for instance, can be used make P3s a more viable financing tool, as leverage to make P3 projects work or to ensure the financier that there is a steady revenue stream. Given the multitude of capital needs that airports have and the fact that their PFCS are often committed to other projects, uncapping the PFC is critically needed in order to make P3s a viable option for funding airport infrastructure.

- Clarify and promote the use of public-private partnerships for airport facilities and services less than the sale or lease of airports, such as by clarifying the application of the grant assurances to the private
developer and allowing for the contribution of AIP grant funds to leverage private sector investment without federalizing the entire project.

**Airport Rates and Charges**

The Administration should permit airports to utilize free market value principles in establishing airline rates and charges. These same fair market principles are imposed on airports by FAA in other areas of their business practices, such as leases, land disposal, concessions, etc. If this broad, simple, and fair provision is not adopted, then the Administration should at least allow airports to:

- Modify historic cost to adjust for value of land and/or replacement costs.
- Pre-fund projects consistent with International Civil Aviation Organization (ICAO) principles.
- Vary charges during peak, non-peak and seasonal periods, to rationalize demand and improve utilization of infrastructure, as the airlines do.

Airports that do not reach agreement with air carriers and other aeronautical users on fees charged for the use of airport facilities, must comply with a detailed rates and charges policy in imposing fees by ordinance. Airports, like other organizations that manage infrastructure and offer their facilities at a price to users, are in the best position to set pricing regimes in order to pay for the costs of establishing, operating, and maintaining their facilities. Airports should have more flexibility in establishing their rates and charges, for example, to allow them to construct new gates in anticipation of new entrant or low-fare carriers wanting to provide service at their facility. Under the present policy, airports cannot charge for projects under construction in anticipation of new air service (unless they are specifically designated as “congested” and, even then, only under specific conditions). As enplanements continue to rise and as aircraft take-offs and landings increase at an even faster pace, airports need the option of building more gates.

**Use of Airport Revenue**

The FAA/DOT Revenue Use Policy that implements the statutory prohibitions against diversion of airport revenue (49 U.S.C. Sec. 47107(b)(k)(l) and (m) and Sec. 47133) should be revised and simplified so that an airport operator must comply with the specific statutory requirements, but otherwise is simply required to use airport revenues for the betterment of the airport, aviation system, airport-owned facilities or air service in their community, and not for any non-airport related purpose. Essentially the only oversight by FAA here should be related to revenue diversion. Use of funds for any activity that is related to supporting the development (capital infrastructure and air service), operation, and maintenance of the airport should be allowed.

**TRANSPORTATION SECURITY ADMINISTRATION**

TSA’s important security function requires the agency and its industry partners to be nimble and not get bogged down in procedural requirements when addressing immediate threats. However, when not facing imminent threats, the agency must follow normal rulemaking procedures that include consultation with regulated parties and a full consideration of costs and benefits as well as effectiveness of alternative proposals to meet regulatory aims.

**Issue Binding, Immediately Effective Security Directives Only to Address Immediate Threats**

TSA should be required to adhere to the statutory standard contained in the Aviation and Transportation Security Act (ATSA), the Homeland Security Act of 2002, and in TSA security regulations that Security Directives only address immediate threats. Under the previous Administration, TSA abused this emergency procedure to regulate by Security Directive in non-emergency situations. Airports agree that the TSA needs the
ability to avoid the formal rulemaking process to effectively address immediate threats, but that regulatory option should be strictly limited to those situations.

TSA has begun to address some of the past abuses, such as an initiative to include “sunset dates” in Security Directives. In addition, the agency is conducting a review, in coordination with industry, of Security Directives to validate their relevance. However, airports strongly believe that in non-emergency situations, TSA should be required to implement a coordinated rulemaking process, which affords industry an opportunity to comment and even identify other procedures that provide the same level of security while minimizing unintended and costly operational impacts.

Compliance with Executive Orders Requiring Agencies to Consult with Industry
TSA should be required to comply with Executive Orders requiring agencies to “seek the views of those who are likely to be affected,” prior to the issuance of a notice of proposed rulemaking. Application of these requirements is important to allow a full understanding of the cost implications of a proposed rulemaking.

Standardized Vetting, Adjudication, Redress Services (Universal Fee NPRM)
Airports strongly believe that airports’ ability to review and make suitability determinations about applicants and recurrently vetted badge-holders is a distinct security feature that should not be changed.

The Universal Fee notice of proposed rulemaking (Standardized Vetting, Adjudication, Redress Service) has the potential to significantly increase costs to airport operators for the processing of background checks of applicants for unescorted access to security identification display areas, and consultation with airports would be very valuable in eliciting these concerns.

Airports also have substantive concerns—we believe that new requirements contemplated in the rulemaking may degrade security. “[T]he ability for airport or aircraft operators to review every applicant’s criminal record and to make a determination about their ongoing suitability for unescorted access privileges is a critical layer of security” (Final Report of the Aviation Security Advisory Committee’ (ASAC) Working Group on Airport Access Control). But this could be eliminated or reduced by the universal fee proposal.

Airport Security Program and 49 CFR 1542 Implementation Guidance (“ASP Guidance”)
Airports urge the Administration to require TSA to rescind the ASP Guidance and adhere to the notice and comment process to impose new regulatory requirements.

The ASP Guidance, issued in 2014, is the third in the series of guidance documents that modify, expand upon, and alter long-standing interpretations of airport security regulations. TSA issued the document without providing airport operators the opportunity to provide comment. Indeed, the document includes two-hundred pages of new and amended “requirements.”

Airports are concerned that the ASP Guidance is being used by TSA Inspectors as justification to require airport operators to implement new “regulatory” measures through the threat of enforcement activities.

During the required annual TSA review process, airports report that TSA Inspectors require them adhere to guidance contained in the ASP Guidance or run the risk of their Federal Security Directors (FSDs) refusing to approve their Airport Security Programs. The Administration should prohibit this counterproductive approach.

Exclusive Area Agreements
TSA should expand eligibility for exclusive area agreements beyond aircraft operators and foreign air carriers to include entities such as private management companies to assume security responsibilities as
well. Security requirements under the exclusive area agreements would remain the same and should continue to be included in Airport Security Programs.

Current regulation (49 CFR 1542.111) allows airport operators to form exclusive area agreements with only an aircraft operator or foreign air carrier. Exclusive area agreements allow airport operators to approve a single air carrier to assume responsibility for specified security measures for all or portions of certain areas of an airport.

Given the constantly changing aviation landscape, airport operators are increasingly seeking innovative public/private partnerships to not only fund infrastructure investment but also manage the day-to-day operations of an airport terminal – a model successfully adopted in Europe and around the globe. Expanding the Exclusive Area Agreement regulatory restriction beyond aircraft operators and foreign air carriers will allow airport operators to designate entities such as private management companies to assume security responsibilities as well. It makes sense that the entity closest to the day-to-day operations of any part of an airport facility -- whether it be private management companies, aircraft operators or foreign air carriers – assume the appropriate security responsibilities as well. This ensures that security remains a top priority, resources are appropriately balanced, and the responsible entity has complete ownership of the success of the enterprise.

**CUSTOMS AND BORDER PROTECTION**

The Administration should seek to reduce, simplify, and streamline the regulatory processes and administrative procedures at CBP to make them more predictable for stakeholders. CBP should seek to work with stakeholders to provide for the expansion of services that will further protect the security of the United States, while not creating additional onerous and costly regulations. The Acting Commissioner of CBP has indicated that it is in the process of developing two reforms. These are important to airports, and the Administration should ensure that the final result delivers on the promised regulatory relief to airports.

**Airport Technical Design Standards (ATDS)**

Airports should not be required to conform to the stipulated facility design standards at no cost to the federal government. The ATDS requirements amount to an unfunded mandate on the state and local governments which own and operate airports in the United States.

We urge the Administration to be flexible in its application of the current standards, which should be treated as guidelines, not as requirements. CBP’s standards should be scalable and directly related to the expected volume of passengers as well as being modest in order to minimize the cost and other burdens on airports, airlines and their passengers. The ATDS should apply only to physical design elements not to operating or policy issues like advertising in CBP space or parking for personal vehicles of its employees.

These were issued without a full regulatory review process. Nonetheless, CBP treats the ATDS as a regulatory requirement placed upon airports that receive or are interested in receiving international air service. Although CBP sought comments from ACI-NA and U.S. and Canadian airports during its preparation of the most recent version expected this year, it has not and is not expected to respond to many of our key concerns.

Our members find CBP’s ATDS to be onerous and inflexible. The ATDS is especially burdensome for smaller airports, including user fee and general aviation airports, and may be so costly that they abandon the international air services they are trying to attract. This greatly hurts the local, regional, and national economies.

CBP space requirements appear to be excessive, particularly in the case of small airports. Moreover, in order to hold down the impact of changes by CBP once it has approved the initial design, the agency should be required
to bear the cost of any such changes. Even changes that appear to be minor to CBP can be costly. Making CBP bear that cost will make the agency more disciplined in its approach.

We also believe that CBP should review and update the ATDS on an ongoing and incremental basis to provide greater flexibility in designing facilities. CBP should consult with ACI-NA, AAAE, and affected U.S. and Canadian airports to update and improve the ATDS.

**CBP/User Fee Airport Memorandum**

CBP should be directed to consult with airports to develop an improved Memorandum to enhance operations and reduce costs for both parties. The revised Memorandum should also outline the procedures and expected timelines in which airports can meet the requirements to become a port of entry.

U.S. airports that have low or seasonal levels of international service (typically small commercial or general aviation airports) operate under what is known as “user fee status” and pay CBP directly for services provided. A Memorandum is signed by CBP with each user fee airport to outline the relationship between CBP and the airport. While not promulgated by regulation, CBP imposes the Memorandum on interested airports.

The current User Fee Airport program creates many challenges for airport operators including a lack of consultation, notice and flexibility regarding changes in CBP charges, policies and procedures, which can have significant impacts on airport operations and budgets. CBP should be directed to take a more flexible approach and consider the unique characteristics of individual airports and also to recognize some of the user fee airports may grow to warrant official port of entry status. Airports currently in the User-Fee Airport Program that meet the CBP published criteria for Port of Entry status should be expeditiously approved for Port of Entry designation through a more streamlined and predictable application and review process.

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1 ACRP Report 90: Impact of Regulatory Compliance Costs on Small Airports, 2013

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